

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

World Programming Limited
Petitioner

v.

SAS Institute Inc.
Patent Owner

Case IPR2019-01458
Patent 7,170,519

**PATENT OWNER PRELIMINARY RESPONSE TO PETITION FOR
INTER PARTES REVIEW PURSUANT TO 37 C.F.R. § 42.107**

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	THE '519 PATENT AND ITS PROSECUTION HISTORY	3
	A. Overview of the '519 Patent.....	3
	B. Prosecution History of the '519 Patent	9
III.	THE PETITION SHOULD BE DENIED UNDER 35 U.S.C. §§ 312(a)(2) & 315(b) BECAUSE WPL INTENTIONALLY OMITTED “DECEMBER 2015 SOFTWARE LIMITED” AS A REAL PARTY-IN-INTEREST	19
	A. The Real Party-In-Interest Inquiry	21
	B. The 2018+ E.D. Texas Litigation – The Predicate Lawsuit For This IPR 22	
	C. The 2010+ E.D. North Carolina Litigation – The Earlier Case Between The Parties Resulting In A \$79 Million Judgment Against WPL..	23
	1. The Directors/Owners Of WPL And D2SL Largely Overlap	24
	2. D2SL Controls And Funds This IPR	26
	3. WPL’s Conduct Demonstrates Gamesmanship And Bad Faith	29
	D. D2SL Is An RPI, And WPL’s Glaring Omission Was Intentional.....	34
	E. Any Amended Petition Should Receive A New Filing Date.....	36
	F. A New Filing Date Would Time Bar the Petition.....	37
IV.	THE PETITION SHOULD BE DENIED BECAUSE IT FAILS TO MAP THE CHALLENGED CLAIMS, AS WPL CONSIDERS THEM PROPERLY CONSTRUED, TO THE ASSERTED PRIOR ART	38
	A. WPL does not offer constructions for many terms in dispute	38
	B. Petition has not identified a corresponding structure in its definition of “graph generator module”	42
V.	CONCLUSION	44

I. INTRODUCTION

World Programming Limited (“WPL”) seeks review of claims 5-11, 22-26, and 37-38 of U.S. Patent No. 7,170,519 (“the ’519 Patent”) based on obviousness grounds.¹ WPL’s petition is deficient and should not be instituted for a number of reasons, both procedural and substantive. For example, WPL intentionally omitted a real party-in-interest from its petition. Because WPL’s omission is an attempt to game the system and was made in bad faith, the Board should decline to exercise its discretion in this case to give WPL a free pass to correct its petition without concomitantly receiving a new filing date. WPL also has failed to properly map the claims—as construed by WPL—to the alleged prior art. WPL failed to propose constructions for a number of claim terms at in dispute, failed to alert to the Board to a number of conflicts between its proposed claim constructions and its positions in district court, and failed to abide by the requirements to properly construe means-plus-function terms. For these reasons, as explained herein, SAS Institute (“SAS”) respectfully requests that the Board deny institution of this IPR.²

¹ WPL seeks review of claims 1-4, 14-18, 21, 27, 29-30, 39, 42-46, 47, 49, 51-53, and 56 of the ’519 Patent in IPR2019-01457.

² To the extent the United States Court of Appeals for the Federal Circuit and/or the United States Supreme Court find the remedy in *Arthrex, Inc. v. Smith &*

II. THE '519 PATENT AND ITS PROSECUTION HISTORY

A. Overview of the '519 Patent

The '519 Patent, titled “Computer-Implemented System and Method for Generating Data Graphical Displays,” generally relates to the generation of data graphical displays using graph style data items that contain display characteristics for displaying the data in a non-textual format. The '519 Patent issued on January 30, 2007, from an application filed on April 15, 2002, and claims priority to Provisional Patent Application No. 60/368,898, filed on March 29, 2002.

The Background section of the '519 Patent recognizes that many types of software applications can display graphical data, such as data graphs, but the styles that define the appearance of the graphical displays were traditionally tightly coupled with the software application generating the graphical display. Ex. 1001 (the '519 Patent) at 1:27-31. For this reason, difficulties often arose during attempts to use graphical styles defined in one software application in a different software application. *Id.* at 1:31-33. The '519 Patent addresses this problem by providing a

Nephew, Inc., No. 2018-2140 (Fed. Cir. Oct. 31, 2019) to be insufficient to cure the Constitutional Appointments Clause defect the Federal Circuit identified in that case, and to the extent making a record of the issue in this preliminary response is required to preserve that argument, then SAS reserves the right to raise such a challenge.

system and method for generating data graphical displays using graph styles data that is substantially independent of the application generating the data or the application generating the graphical output. *See id.* at 2:38-40.

Fig. 1 of the '519 Patent (reproduced below) shows an example of a computer-implemented system 30 that generates graphical output 38 based on input data 32. *Id.* at 2:12-13. The system includes a graph generator software module 36 that processes the input data 32 to generate graphical output 38, such as pie charts, bar charts, maps, scatter plot, etc. *Id.* at 2:16-19. In order to determine how the graphical output 38 should appear, the graph generator 36 accesses graph styles data 40 that defines the display characteristics 42 of the input data 32. *Id.* at 2:20-23.

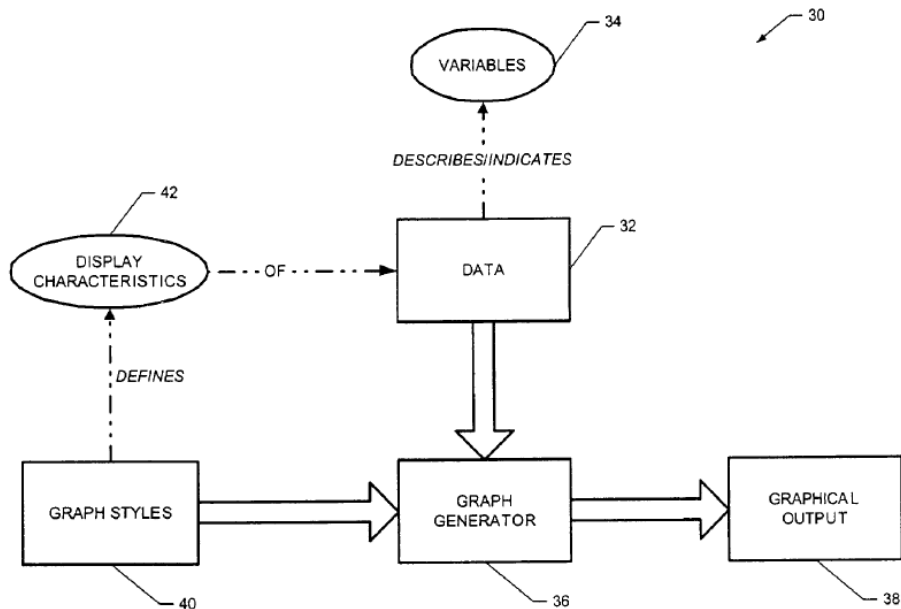


FIG. 1

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.