

EXHIBIT 1

United States Court of Appeals for the Federal Circuit

SAS INSTITUTE, INC.,
Plaintiff-Appellant

v.

WORLD PROGRAMMING LIMITED,
Defendant-Appellee

2021-1542

Appeal from the United States District Court for the Eastern District of Texas in No. 2:18-cv-00295-JRG, Chief Judge J. Rodney Gilstrap.

Decided: April 06, 2023

DALE M. CENDALI, Kirkland & Ellis LLP, New York, NY argued for plaintiff-appellant. Also represented by ARI LIPSITZ, JOSHUA L. SIMMONS; RAYMOND BENNETT, PRESSLY M. MILLEN, Womble Bond Dickinson (US) LLP, Raleigh, NC; CHRISTIAN E. MAMMEN, San Francisco, CA;

JEFFREY A. LAMKEN, MoloLamken LLP, Washington, DC, argued for defendant-appellee. Also represented by CALEB HAYES-DEATS; ELIZABETH CLARKE, EUGENE ALEXIS SOKOLOFF, Chicago, IL; BRADLEY WAYNE CALDWELL, WARREN JOSEPH MCCARTY, III, Caldwell Cassady & Curry, Dallas, TX.

ANNETTE LOUISE HURST, Orrick, Herrington & Sutcliffe LLP, San Francisco, CA, for amici curiae Oracle Corporation, Mathworks, Inc. Also represented by ANDREW D. SILVERMAN, New York, NY.

BRIDGET ASAY, Stris & Maher LLP, Montpelier, VT, for amici curiae Lucas Layman, Mark Sherriff, Laurie Williams. Also represented by ELIZABETH BRANNEN, Los Angeles, CA.

ROBERT WILLIAM CLARIDA, Reitler Kailas & Rosenblatt LLC, New York, NY, for amici curiae Sandra Aistars, Jon Garon, Hugh Hansen, J. Devlin Hartline, S. Todd Herremann, Loren Mulraine, Christopher Newman, Eric Priest, Mark F. Schultz, Steven Tepp.

NANCY E. WOLFF, Cowan, DeBaets, Abrahams & Shepard LLP, New York, NY for amici curiae American Photographic Artists, American Society of Media Photographers, Authors Guild, Inc., Digital Media Licensing Association, Dramatists Guild of America, Romance Writers of America, Songwriters Guild of America, Textbook & Academic Authors Association. Also represented by SARA GATES, Dentons US LLP, New York, NY.

SARANG DAMLE, Latham & Watkins LLP, Washington, DC, for amicus curiae Ralph Oman. Also represented by TYCE R. WALTERS.

MATTHEW S. HELLMAN, Jenner & Block LLP, New York, NY for amicus curiae Copyright Alliance. Also represented by GIANNI P. SERVODIDIO.

JEFFREY THEODORE PEARLMAN, Gould School of Law, University of Southern California, Los Angeles, CA, for amici curiae Harold Abelson, Guido van Rossum, Jon Bentley, Matthew Bishop, Joshua Bloch, Gilad Bracha, Daniel

SAS INSTITUTE, INC. v. WORLD PROGRAMMING LIMITED

3

Bricklin, Frederick Brooks, R.G.G. Cattell, David Clark, William Cook, Thomas H. Cormen, Miguel de Icaza, L. Peter Deutsch, Whitfield Diffie, David L. Dill, Dawson Engler, Bob Frankston, Neal Gafter, Erich Gamma, Andrew Glover, Allan Gottlieb, Robert Harper, Maurice Herlihy, Tom Jennings, Alan Kay, Brian Kernighan, David Klausner, Kin Lane, Ed Lazowska, Doug Lea, Bob Lee, Harry Lewis, Douglas McIlory, Paul Menchini, James H. Morris, Peter Norvig, Martin Odersky, David Patterson, Tim Peierls, Curtis Schroeder, Robert Sedgewick, Mary Shaw, Alfred Z. Spector, Michael Stonebreaker, Ivan E. Sutherland, Andrew Tanenbaum, Brad Templeton, Andries van Dam, John Villasenor, Jan Vitek, James H. Waldo, Daniel S. Wallach, Frank Yellin.

JONATHAN BAND, Jonathan Band PLLC, Washington, DC, for amicus curiae Computer & Communications Industry Association. Also represented by MATTHEW SCHRUEERS, ALEXANDRA STERNBURG, Computer & Communications Industry Association, Washington, DC.

MICHAEL BARCLAY, Electronic Frontier Foundation, San Francisco, CA, for amicus curiae Electronic Frontier Foundation. Also represented by CORYNNE MCSHERRY.

JOSEPH GRATZ, Durie Tangri LLP, San Francisco, CA for amicus curiae GitHub, Inc. Also represented by SAMUEL ZEITLIN.

ERIK STALLMAN, Samuelson Law, Technology & Public Policy Clinic, University of California, Berkeley School of Law, Berkeley, CA, for amici curiae Timothy K. Armstrong, Pamela Samuelson, Clark D. Asay, Jonathan Askin, Patricia Aufderheide, Derek E. Bambauer, Ann Bartow, James Bessen, Mario Biagioli, James Boyle, Oren Bracha, Dan L. Burk, Michael A. Carrier, Michael Carroll, Bernard Chao, Jorge L. Contreras, Christine Haight Farley, William T. Gallagher, Shubha Ghosh, Jim Gibson, James

Grimmelmann, Amy L. Landers, Edward Lee, Mark A. Lemley, Yvette Joy Liebesman, Lee Ann Wheelis Lockridge, Lydia Pallas Loren, Stephen McJohn, Mark P. McKenna, Michael J. Meurer, Timothy Murphy, Tyler T. Ochoa, Aaron Perzanowski, Cherly B. Preston, Jerome H. Reichman, Michael Rustad, Matthew Sag, Joshua D. Sarnoff, Niels Schaumann, Jason Michael Schultz, Roger V. Skalbeck, Elizabeth Townsend Gard, Rebecca Tushnet, Jennifer M. Urban. Also represented by CHARLES DUAN, Washington, DC.

Before NEWMAN, REYNA, and WALLACH, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge* REYNA.

Dissenting opinion filed by *Circuit Judge* NEWMAN.

REYNA, *Circuit Judge*.

SAS Institute, Inc. filed suit in the United States District Court for the Eastern District of Texas alleging, among other claims, nonliteral copyright infringement of its software by World Programming Limited. Both parties moved for summary judgment on non-infringement and copyrightability. The district court decided to hold a special hearing to assist it in deciding the scope of protection provided under copyright law to the elements asserted by SAS. It ordered the parties to submit supplemental briefing on the issue. The district court then reached several determinations. The district court first concluded that SAS demonstrated that it possessed valid copyright registrations covering SAS's asserted software. The district court then determined that World Programming provided evidence that showed the software program elements were not within the scope of protection under copyright law. Based on World Programming's evidentiary showing, the district court required SAS to demonstrate that its asserted program elements were copyrightable. Applying the abstraction-filtration-comparison test, the district court

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