

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SAS INSTITUTE INC.,

Plaintiff,

vs.

WORLD PROGRAMMING LIMITED et al.,

Defendants.

Civil Action No. 2:18-CV-00295-JRG

**JOINT STIPULATION AND ORDER OF DISMISSAL AND BRIEFING SCHEDULE ON
COSTS AND ATTORNEYS' FEES**

Before the Court is the parties' Joint Stipulation and Order of Dismissal and Briefing Schedule on Costs and Attorneys' Fees (the "Stipulation"). (Dkt. No. 473.) After consideration, the Court **APPROVES AND ACKNOWLEDGES** the Stipulation. Based thereon, it is **ORDERED** that:

1. SAS Institute Inc. ("SAS") filed this case on July 18, 2018 alleging copyright and patent infringement against World Programming Ltd. ("WPL) and others.¹ See Dkt. 1. SAS alleged copyright infringement of its "SAS System" and "SAS Manuals." *Id.* at Causes of Action

¹ SAS named the following additional defendants: MineQuest Business Analytics LLC; MineQuest LLC; Angoss Software Corporation; Luminex Software Inc.; YUM! Brands Inc.; Pizza Hut Inc.; Shaw Industries Group, Inc.; and Hitachi Vantara Corporation (collectively "Non-WPL Defendants"). Prior to the October 14, 2020 Copyrightability Hearing, all Non-WPL Defendants were dismissed from this case. See Dkt. 35 (Dismissing Hitachi Vantara Corporation); Dkt. 69 (Dismissing Angoss Software Corporation); Dkt. 73 (Dismissing MineQuest Business Analytics LLC and MineQuest LLC); Dkt. 262 (Dismissing Shaw Industries Group, Inc., YUM! Brands Inc., and Pizza Hut Inc.); Dkt. 435 (Dismissing Luminex Software, Inc.).

One through Four. SAS alleged patent infringement of four patents, U.S Patent Nos. 6,920,458, 7,170,519, 7,477,686, 8,498,996.² On September 30, 2019, WPL filed its Answer to SAS Institute Inc.'s Amended Complaint and First Amended Counterclaims. *See* Dkt. 168. WPL pleaded declaratory judgment counterclaims pertaining to SAS's copyright infringement allegations. *See id.* at Ninth Counterclaim (Declaratory Relief Regarding Non-Infringement of Purported Copyright(s) in "SAS System"); Tenth Counterclaim (Declaratory Relief Regarding Non-Infringement of Purported Copyright(s) in "SAS Manuals"); Eleventh Counterclaim (Declaratory Relief Regarding No Copyright in "SAS Language"); Twelfth Counterclaim (Declaratory Relief Regarding No Copyright in the Functionality of SAS System). WPL pleaded declaratory judgment counterclaims of non-infringement and invalidity as to the patents-in-suit. *Id.* at Counterclaims One through Eight, and Counterclaim Eighteen. WPL also pleaded counterclaims under Sherman Act §§ 1-2, Lanham Act § 43, Tortious Interference with Existing or Prospective Contractual Relations, and the North Carolina Deceptive Trade Practices Act. *Id.* at 63-80 (the "Damages Counterclaims" or Counterclaims 13 through 17).

SAS's Copyright Claims and the Court's Memorandum Opinion and Order

2. The Court conducted a Copyrightability Hearing on October 14, 2020. The Court issued its Memorandum Opinion and Order on October 26, 2020. Dkt. 465. The Court dismissed with prejudice SAS's copyright claims. *Id.* at 1. The Court also granted Defendants' Corrected Motion to Exclude Testimony of Dr. James Storer on Issues Related to Copyright Infringement (Dkt. 275). *Id.* at 15. The parties agree that all copyright claims by SAS against WPL in the SAS System and SAS Manuals were dismissed by the Court with prejudice.

² SAS originally asserted U.S. Patent Nos. 7,170,519, 7,477,686, and 8,498,996. SAS added infringement allegations of U.S Patent No. 6,920,458 in its August 2, 2019 Amended Complaint. *See* Dkt. 128.

3. With all claims of copyright infringement by SAS against WPL dismissed with prejudice, the parties agree that WPL's counterclaims of copyright non-infringement and non-copyrightability are moot. Accordingly, WPL's counterclaims of copyright non-infringement and non-copyrightability are **DISMISSED AS MOOT**.

SAS's Patent Claims

4. Prior to the Copyrightability Hearing, SAS agreed to withdraw its infringement allegations for all four Patents-in-Suit.

5. WPL maintains counterclaims seeking declaratory judgment of non-infringement and invalidity as to the Patents-in-Suit. However, the parties stipulate that SAS's infringement allegations for the Patents-in-Suit are dismissed with prejudice. Accordingly, SAS's infringement allegations for the Patents-in-Suit are **DISMISSED WITH PREJUDICE** and WPL's counterclaims of non-infringement and invalidity as to the Patents-in-Suit are **DISMISSED AS MOOT**.

WPL's Damages Counterclaims (Counterclaims 13 through 17)

6. In Counterclaims 13 through 17, WPL pleaded counterclaims under Sherman Act §§ 1-2, Lanham Act § 43, Tortious Interference with Existing or Prospective Contractual Relations, and the North Carolina Deceptive Trade Practices Act. SAS previously moved to dismiss, and then moved for summary judgment against WPL's counterclaims under Rule 56. *See* Dkt. 162, 263. The Court denied as moot SAS's motion to dismiss and motion for summary judgment without prejudice to refile. *See* Dkt. 436.

7. In order to obviate the need for trial at this time and to proceed to WPL's request for costs, including attorneys' fees (*see* below), as well as to secure a final judgment that SAS intends to appeal, the parties expressly stipulate and agree as follows:

- a. The parties stipulate and agree to the dismissal without prejudice of WPL's Damages Counterclaims (Counterclaims 13 through 17).
- b. The parties agree that the applicable statutes of limitations for the Damages Counterclaims will be tolled from the date of filing of the First Amended Counterclaims through the date the mandate issues from the appellate court in SAS's appeal of the final judgment dismissing SAS's copyright claims in this case (the "Mandate Issuance Date").
- c. If the dismissal of SAS's copyright claims is affirmed on appeal in all respects and SAS has not brought another suit against WPL in the interim, then WPL agrees to a full release of SAS with the same scope and preclusive effect as if the Damages Counterclaims had been dismissed by this Court with prejudice. For the avoidance of doubt, "another suit" does not include any steps taken by SAS to enforce the judgments against WPL in *SAS Institute Inc. v. World Programming Ltd.*, E.D.N.C. No. 5:10-cv-00025-FL (specifically including, but not limited to, any steps taken by SAS to enforce its judgment in the Eastern District of North Carolina or the Central District of California, or any steps taken by SAS to enforce its judgment in the Eastern District of Texas or to seek an offset of any costs or attorneys' fees awarded to WPL).^{3,4} If SAS does file another suit against WPL in the period between any judgment in this case and the Mandate Issuance Date, this dismissal of the counterclaims will remain 'without prejudice' in all respects. The parties agree that the effect of this with prejudice

³ SAS expressly reserves the right to setoff any costs and/or attorney's fees awarded by the Court in this action to WPL against the judgment in *SAS Institute Inc. v. World Programming Ltd.*, E.D.N.C. No. 5:10-cv-00025-FL, which has been registered in this district.

⁴ WPL does not agree that SAS should be entitled to any form of setoff resulting from costs and/or attorney's fees awarded by the Court in this action.

dismissal is only to the claims as pleaded in WPL's First Amended Counterclaims and does not apply to future conduct.

- d. If the dismissal of SAS's copyright claims is not affirmed in all respects, then:
- i. WPL may refile the Damages Counterclaims (without substantive revision) in the U.S. District Court for the Eastern District of Texas within 30 days of the Mandate Issuance Date.
 - ii. If WPL does not refile the Damages Counterclaims within this 30-day period, then WPL agrees to the same release set forth in paragraph 7(c) above.
 - ii. If WPL does refile the Damages Counterclaims within this 30-day period, the parties agree to the following (with respect to the Damages Counterclaims only):
 - A) The parties will file a joint motion to consolidate the Damages Counterclaims with this case and any copyright claims on remand.
 - B) The parties will file a joint motion for a protective order in the same form as the protective order entered in this case at Dkt. 93.
 - C) The parties will rely on the discovery and disclosures produced in this case and will take no further fact discovery.
 - D) The parties will rely on the expert reports served in this case and will take no further expert discovery. No further expert reports may be served by either side.
 - E) The parties agree to file a joint motion for the case to proceed immediately to summary judgment and pretrial motions with the parties able to file any appropriate summary judgment motions, motions to exclude experts, or other pretrial motions in accordance with the Rules.

8. In accordance with the parties' agreement and stipulation, WPL's Damages Counterclaims (Counterclaims 13 through 17) are **DISMISSED WITHOUT PREJUDICE**.

9. The Court expressly incorporates the terms of the parties' agreement herein and retains jurisdiction to enforce the parties' agreement.

10. The parties' Joint Motion to Modify the Final Pretrial Order (Dkt. 470) is **DENIED AS MOOT**.


Finality

11. All claims against all parties have been disposed of as indicated herein and there are no remaining claims that are ripe for trial. Accordingly, this is a final and appealable order. To avoid any issue regarding finality or the appealability of the Court's Memorandum Opinion and Order on October 26, 2020 (Dkt. 465), however, the Court expressly finds there is no just reason to delay entry of final judgment with respect to SAS's copyright claims against WPL or to delay any appeal of the October 26, 2020 Order. Accordingly, the Court specifically directs entry of final judgment, in accordance with its October 26, 2020 Order, with respect to SAS's copyright claims against WPL under Federal Rule of Civil Procedure 54(b). Pursuant to Federal Rule of Civil Procedure 54(d), Local Rule CV-54, and 28 U.S.C. § 1920, Defendant WPL is the prevailing party on SAS's copyright claims and its costs under 28 U.S.C. § 1920 shall be taxed against SAS on those claims. **WPL's Request for Additional Costs and Attorneys' Fees**

12. The Court understands that WPL intends to file a post-judgment Motion for Costs, including attorneys' fees, pursuant to 17 U.S.C. § 505 and 35 U.S.C. § 285. The Court hereby enters the following briefing schedule for that Motion, which will proceed in accordance with Federal Rule of Civil Procedure 54(d) and the Local Rules of this Court:

Opening (25 pages)	December 18, 2020
Response (25 pages)	January 12, 2021
Reply (7 pages)	January 20, 2021
Surreply (7 pages)	January 27, 2021

So ORDERED and SIGNED this 10th day of December, 2020.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

SO STIPULATED:

For Plaintiff SAS Institute, Inc.

Dated: December 10, 2020

BY:

/s/ Pressly M. Millen

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Dated: December 10, 2020

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