



Copyright Review Board  
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

May 11, 2022

James T. Carmichael, Esq.  
Carmichael IP, PLLC  
8000 Towers Crescent Drive  
13th Floor  
Tysons Corner, VA 22182

**Re: Second Request for Reconsideration for Refusal to Register Illumon Data System Screen Designs (Correspondence ID: 1-2WPF8FO; SR # 1-3277609557)**

Dear Mr. Carmichael:

The Review Board of the United States Copyright Office (“Board”) has considered Walleye Software LLC’s (“Walleye”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “Illumon Data System Screen Designs” (the “Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s denial of registration.

## **I. DESCRIPTION OF THE WORK**

The Work, which was submitted for registration as a claim in “2-D artwork, Computer User Interface Screen Designs,” consists of twenty-six computer-program-generated screen displays. The deposit copy is a twenty-six-page Portable Document Format (PDF) file, with each page containing the image of a screen produced by a computer program. The Work is attached in Appendix A.

## **II. ADMINISTRATIVE RECORD**

On April 7, 2016, Walleye filed an application to register a copyright claim in the Work. On July 5, 2017, a Copyright Office registration specialist refused to register the claim, finding that the Work “consists of screen displays that contain only graphical user interface elements; fairly familiar icons; and fairly minimal format or layout.” The specialist further found that “[a]ny set of elements that comprise the graphics that computer users interface with to manipulate or use the software is a system, as well [a]s a functional design . . . . Any familiar and common elements would be unoriginal . . . . Finally, the format or layout of screen content is too basic, expected, and minor to be copyrighted.” Initial Letter Refusing Registration from U.S. Copyright Office to Stephen Aycock at 1 (July 5, 2017).

Walleye then requested that the Copyright Office reconsider its initial refusal to register the Work. Letter from James T. Carmichael to U.S. Copyright Office (Oct. 2, 2017) (“First

Request”). After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claim and again concluded that the Work “as a whole consists of simple graphic shapes, words and alpha-numerical data, arranged in a basic contrasting color scheme” and that “[t]he arrangement of these non-copyrightable elements into an expected screen configuration demonstrates insufficient creativity to support a claim of copyright.” Refusal of First Request for Reconsideration from U.S. Copyright Office to James T. Carmichael at 3 (Feb. 27, 2018). The Office further refused to register the Work because “copyright does not protect the general layout and format of text or pictorial matter or the ideas expressed by either of these items. Consequently, the layout of the elements in [the Work] is not subject to copyright protection.” *Id.* (citations omitted).

Subsequently, on May 25, 2018, Walleye requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Letter from James T. Carmichael to U.S. Copyright Office (May 25, 2018) (“Second Request”). Walleye made three arguments to support registration of the Work: (1) “the screen design collective work includes unique and creative display designs including author-coined terms and original arrangements;” (2) the “visual design elements . . . have been selected and arranged in the work to visually interact with text in creative ways;” and (3) the Work “includes creative selection and application of color to tie together the different design features.” *Id.* at 3–4.

### III. DISCUSSION

After carefully examining the Work and applying the relevant legal standards, the Board finds that the Work does not contain the requisite authorship necessary to sustain a claim to copyright.

At the outset, the Board notes that the Copyright Office will register a screen display when there is a “sufficient amount of textual expression that is not a part of the [source] code” or “a sufficient amount of artwork or photos that are not generated by the computer program.” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 721.10(B) (3d ed. 2021) (“COMPENDIUM (THIRD)”). But the Work here, both in its individual elements and as a whole, fails to demonstrate copyrightable authorship.

The individual elements of the Work—words and short phrases, simple contrasting color combinations, tables, line graphs, and rectangular shapes—are not copyrightable. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 363 (1991); 37 C.F.R. § 202.1(a) (prohibiting registration of “words and short phrases such as names, titles, and slogans; familiar symbols or designs; [and] mere variations of . . . coloring”); COMPENDIUM (THIRD) § 921 (“The copyright law does not protect blank graphs, charts, tables, and figures that are designed for recording information and do not in themselves convey information.”). Additionally, Walleye’s argument that the Work includes “author-coined terms,” Second Request at 3, is unavailing. *See* COMPENDIUM (THIRD) § 313.4(C) (“The U.S. Copyright Office cannot register individual words . . . even if the word . . . is novel or distinctive.”). Similarly, Walleye’s use of color, selecting white for text entry screens, setting bright colors against a dark background for table displays, and framing screens in grey, does not merit protection because it “merely enhance[s] the visual display” of the data presented in the tables and graphs. COMPENDIUM (THIRD)

§ 313.4(K) (“[T]he Office may . . . refuse registration for a compilation of colors if the colors merely enhance the visual display of a chart, table, graph, device, or other article.”).

The Work as a whole is likewise insufficiently creative to support a claim to copyright, as the specific combination of these unprotectable elements does not constitute copyrightable authorship. The Board recognizes that “[i]n most cases, while the constituent elements of the user interface or screen display are not independently protectable,” the user interface may be protectable “with respect to its ‘unique selection and arrangement of all these features.’” *Real View LLC v. 20-20 Technologies, Inc.*, 683 F. Supp. 2d 147, 157 (D. Mass. 2010) (quoting *Apple Computer Inc. v. Microsoft Corp.*, 35 F.3d 1435, 1446 (9th Cir. 1994)). But not every combination will meet this threshold. *See Feist*, 499 U.S. at 358 (it is “plain from the statute” that “[n]ot every selection, coordination, or arrangement” is protectable).

Here, the combination of elements in the Work fails to meet the threshold for protection for several reasons. First, the deposit contains multiple screen displays that consist of blank fields with headings that provide descriptions of the software page. Appendix A at 1, 4, 8, 9, and 11. These screens contain only a negligible amount of written or artistic expression. The claim is based solely on the layout or format of the screen, which is not protected by copyright. *See* COMPENDIUM (THIRD) § 906.5; *Registration Decision: Registration and Deposit of Computer Screen Displays*, 53 Fed. Reg. 21,817, 21,819 (June 10, 1988). Second, several of the screen displays are blank forms designed to elicit rather than convey information. Appendix A at 7, 10, 14, 15, 16, 18. Applying the legal standards set forth in section 102(b), these blank forms are not subject to copyright protection. *See* 37 CFR § 202.1(c) (citing as “examples of works not subject to copyright . . . [b]lank forms . . . which are designed for recording information and do not in themselves convey information.”); COMPENDIUM (THIRD) § 313.4(G) (the Office “cannot register the empty fields or lined spaces in a blank form.”).

The remaining screen displays fail to meet the threshold of creativity for copyright protection. These screen displays may be divided into two categories: search result screens and dashboard screens. Representative samples of search result screens are reproduced below:

The screenshot displays a financial trading platform interface. At the top, there are navigation tabs: 'Query Config', 'Console Log', 'OneClick', 'Background Tasks', 'Live Table Monitor', 'Create Console', 'Save', 'Reload', and 'Settings'. Below these is a 'Query Config' window with a console log showing SQL-like queries for 'SystemEquity' and 'Security'. The main area features a 'Show Table' dropdown and 'Add Log Panel' and 'Close Tables/Widgets' buttons. A status bar at the bottom indicates 'ny4-1thbauey1.walleytrading.net | worker: 549 | 4GB'. The primary data table is titled 'Dismissing partition: 2016-03-29' and has columns for Date, Id, Uid, Sym, Usym, Type, Maturity, Strike, Parity, Style, Name, ContractSize, CcyPerPoint, IsCashSettled, MonthCode, IsTraded, and IsFilterEnabled. The table contains 20 rows of data for various call and put options on different symbols like 'AAPL', 'MSFT', and 'GOOGL'.

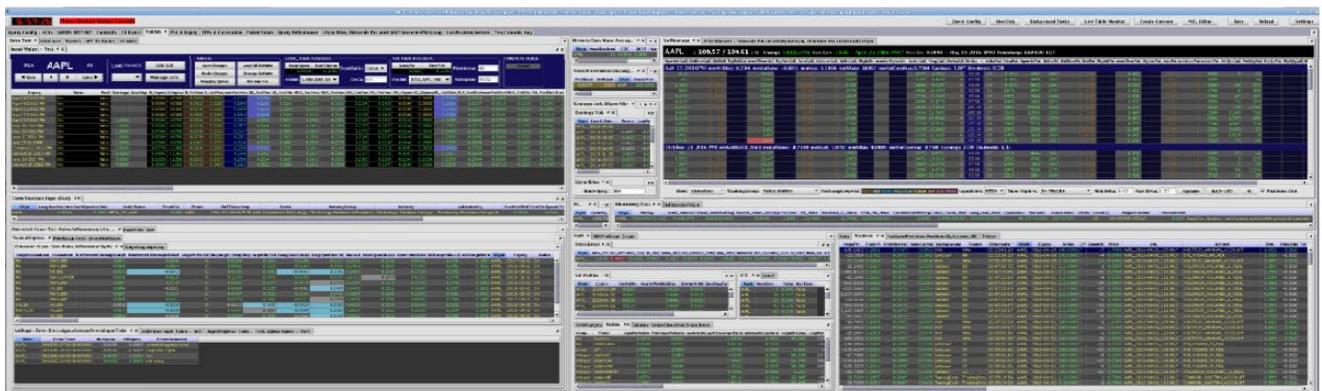
Date	Id	Uid	Sym	Usym	Type	Maturity	Strike	Parity	Style	Name	ContractSize	CcyPerPoint	IsCashSettled	MonthCode	IsTraded	IsFilterEnabled
2016-03-29	10485880	12970252	UCO12017-01-20-38.00_C	UCO1	Option	2017-01-20 17:30:00.000	38.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485821	12970252	UCO12017-01-20-36.00_P	UCO1	Option	2017-01-20 17:30:00.000	36.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485822	12970252	UCO12017-01-20-37.00_P	UCO1	Option	2017-01-20 17:30:00.000	37.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485823	12970252	UCO12017-01-20-39.00_P	UCO1	Option	2017-01-20 17:30:00.000	39.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485824	12970252	UCO12017-01-20-39.00_P	UCO1	Option	2017-01-20 17:30:00.000	39.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485825	12970252	UCO12017-01-20-40.00_P	UCO1	Option	2017-01-20 17:30:00.000	40.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485826	12970252	UCO12017-01-20-41.00_P	UCO1	Option	2017-01-20 17:30:00.000	41.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485827	12970252	UCO12017-01-20-42.00_P	UCO1	Option	2017-01-20 17:30:00.000	42.0000	Put	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485886	12970252	UCO12017-01-20-28.00_C	UCO1	Option	2017-01-20 17:30:00.000	28.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485890	12970252	UCO12017-01-20-30.00_C	UCO1	Option	2017-01-20 17:30:00.000	30.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485891	12970252	UCO12017-01-20-31.00_C	UCO1	Option	2017-01-20 17:30:00.000	31.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485892	12970252	UCO12017-01-20-32.00_C	UCO1	Option	2017-01-20 17:30:00.000	32.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485893	12970252	UCO12017-01-20-33.00_C	UCO1	Option	2017-01-20 17:30:00.000	33.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485894	12970252	UCO12017-01-20-34.00_C	UCO1	Option	2017-01-20 17:30:00.000	34.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485895	12970252	UCO12017-01-20-35.00_C	UCO1	Option	2017-01-20 17:30:00.000	35.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485896	12970252	UCO12017-01-20-36.00_C	UCO1	Option	2017-01-20 17:30:00.000	36.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485897	12970252	UCO12017-01-20-37.00_C	UCO1	Option	2017-01-20 17:30:00.000	37.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true
2016-03-29	10485898	12970252	UCO12017-01-20-38.00_C	UCO1	Option	2017-01-20 17:30:00.000	38.0000	Call	American	100.0000	100.0000	100.0000	false	trading	true	true

Owner	Name	Enabled	Status	Query Type	Init/Run Time	Init/Run Time	Last Update Time	Exception Details	Worker Host	Worker Name	Worker Port
curghnt	Test-TimeBomb	false		Script							
fraser	Test-StockPriceMonitor	false		Script							
curghnt	Test-StockPriceMonitor	false		Script							
curghnt	Test-StockPrice	true	Running	Script	03/30/16 07:55:09	03/30/16 07:55:32	03/30/16 07:55:32		my4-idbquery15	worker_341	23340
fraser	Test-StockPrice	false		Script							
fraser	DupeDividend	true	Running	Script	03/30/16 07:55:18	03/30/16 07:55:24	03/30/16 07:55:24		my4-idbquery12	worker_393	23190
fraser	DupeDividend	true	Running	Script	03/30/16 07:55:17	03/30/16 07:55:20	03/30/16 07:55:20		my4-idbquery14	worker_343	23744
fraser	DupeDividend	true	Running	Script	03/30/16 07:55:15	03/30/16 07:55:20	03/30/16 07:55:20		my4-idbquery12	worker_371	23724
fraser	GoldmanCashPos	true	Running	Script	03/30/16 07:55:18	03/30/16 07:56:02	03/30/16 07:56:02		my4-idbquery13	worker_469	23468
fraser	GoldmanCashPos	true	Running	Script	03/30/16 07:55:31	03/30/16 07:55:35	03/30/16 07:55:35		my4-idbquery13	worker_475	23474
fraser	OptionsQuery	false		Script							
fraser	StockPriceMonitor	true	Running	Script	03/30/16 07:55:21	03/30/16 07:56:15	03/30/16 07:56:15		my4-idbquery14	worker_247	23746
fraser	StockPriceMonitor	true	Running	Script	03/30/16 07:55:20	03/30/16 07:55:25	03/30/16 07:55:25		my4-idbquery16	worker_245	23946
fraser	StockPrice	true	Running	Script	03/30/16 07:55:24	03/30/16 07:56:06	03/30/16 07:56:06		my4-idbquery13	worker_474	23472
fraser	JimWatch2016	true	Running	Script	03/30/16 07:55:25	03/30/16 07:57:35	03/30/16 07:57:35		my4-idbquery14	worker_749	23748
fraser	Redeployment	false		Script							
fraser	Redeployment	true	Running	Script	03/30/16 07:55:15	03/30/16 07:55:31	03/30/16 07:55:31		my4-idbquery5	worker_323	23122
fraser	Redeployment	true	Running	Script	03/30/16 07:55:30	03/30/16 07:55:34	03/30/16 07:55:34		my4-idbquery2	worker_373	23772
curghnt	MapActiveAnomalies	true	Running	Script	03/30/16 07:55:26	03/30/16 07:55:33	03/30/16 07:55:33		my4-idbquery1	worker_506	23490
fraser	VolatilityChangeMonitor	true	Running	Script	03/30/16 07:55:26	03/30/16 07:55:56	03/30/16 07:55:56		my4-idbquery1	worker_498	23698
fraser	MarketVolume	true	Running	Script	03/30/16 07:55:21	03/30/16 07:58:28	03/30/16 07:58:28		my4-idbquery8	worker_241	23240
fraser	MissedEarnings	true	Running	Script	03/30/16 07:55:39	03/30/16 07:58:44	03/30/16 07:58:44		my4-idbquery16	worker_583	23852
fraser	RecursionTemp	true	Running	Script	03/30/16 07:55:33	03/30/16 07:58:11	03/30/16 07:58:11		my4-idbquery14	worker_723	23752
fraser	CarryCAC	true	Running	Script	03/30/16 07:55:27	03/30/16 07:55:57	03/30/16 07:55:57		my4-idbquery15	worker_350	23349
curghnt	Test-IRMCodePIL	false		Script							
fraser	AcceptedSecurities	true	Running	Script							
fraser	BuyInTradeIndicator	true	Running	Script	03/30/16 07:55:22	03/30/16 07:55:32	03/30/16 07:55:32		my4-idbquery10	worker_201	23200
fraser	BuyInTradeIndicator	true	Running	Script	03/30/16 07:55:26	03/30/16 07:55:44	03/30/16 07:55:44		my4-idbquery10	worker_204	23200
fraser	CommodityBuy	true	Running	Script	03/30/16 07:55:35	03/30/16 08:11:51	03/30/16 08:11:51		my4-idbquery12	worker_337	23286
curghnt	RiskCorr	false		Script							
fraser	Weeps-Audit	false	Running	Script	03/30/16 07:55:43	03/30/16 07:58:44	03/30/16 07:58:44		my4-idbquery14	worker_758	23757
fraser	AcceptedAccountMapping	false		Script							
fraser	BuyInTradeIndicator	true	Running	Script	03/30/16 07:56:04	03/30/16 07:57:31	03/30/16 07:57:31		my4-idbquery14	worker_767	23766
fraser	DupeIT-Address	false	Running	Script	05/20/16 07:56:02	03/30/16 07:56:29	03/30/16 07:56:29		my4-idbquery12	worker_206	23205
fraser	BuyInTradeIndicator	false		Script							
fraser	DailyBrokerCodeMapper	false		Script							
fraser	Earnings_Moves	true	Running	Script	03/30/16 07:55:41	03/30/16 07:57:04	03/30/16 07:57:04		my4-idbquery10	worker_208	23207
fraser	CheckRisk	true	Running	Script	03/30/16 07:55:33	03/30/16 07:55:38	03/30/16 07:55:38		my4-idbquery11	worker_213	23218
fraser	ExpirationRiskyTrader	true	Running	Script	03/30/16 07:56:05	03/30/16 07:56:16	03/30/16 07:56:16		my4-idbquery12	worker_207	23206
fraser	BreakAnnouncementList	true	Running	Script	03/30/16 07:56:24	03/30/16 07:57:02	03/30/16 07:57:02		my4-idbquery7	worker_397	23394
fraser	IRWeeks_PIL	true	Running	Script	03/30/16 07:56:36	03/30/16 08:08:11	03/30/16 08:08:11		my4-idbquery7	worker_223	23221
fraser	RiskLimits	true	Running	Script	03/30/16 07:55:37	03/30/16 07:56:15	03/30/16 07:56:15		my4-idbquery9	worker_224	23223
fraser	AdmWParsVolAR	false		Script							
fraser	StockPos	true	Running	Script	03/30/16 07:55:42	03/30/16 07:55:54	03/30/16 07:55:54		my4-idbquery10	worker_243	23246
fraser	MasterSector	false		Script							
fraser	AdmWParsVolAR	false		Script							

Appendix A at 13 and 20; see also *id.* at 2, 3, 5, 6, 17, 19, 21, 22, and 26.

The search result screens are composed of entirely expected elements, with data displayed in standard table or line graph format, a master navigation toolbar across the top, and secondary command options framing the bottom and right-hand columns. These displays consist of a predictable combination of only a few uncopyrightable elements and do not involve the necessary variety and composition of elements to qualify for registration. See *Feist*, 499 U.S. at 358; COMPENDIUM (THIRD) § 313.4(B) (“Works that contain no expression or only a *de minimis* amount of original expression are not copyrightable and cannot be registered with the U.S. Copyright Office.”).

Next, a representative sample of a dashboard screen is reproduced below:



Appendix A at 23; see also *id.* at 24, 25.

The dashboard screens repeat the same standard table layout, featuring basic contrasting colors and a master navigation toolbar across the top.



screens consist of a predictable combination of only a few uncopyrightable and utilitarian elements.

Walleye argues that its “choices as to [the] selection and arrangement” of the “artwork and text” “entail at least a minimal degree of creativity and are sufficiently original for copyright registration under *Feist*.” Second Request at 4. As noted above, the Board acknowledges that some combinations of unprotectable elements may contain sufficient creativity in their arrangement. Not every combination, however, will contain enough elements in an arrangement that is creative enough to qualify as an original work of authorship. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) (“[I]t is not true that any combination of unprotectable elements automatically qualifies for copyright protection”); COMPENDIUM (THIRD) § 905 (“In all cases, a visual art work must contain a sufficient amount of creative expression.”). While “the standard of originality is low . . . it does exist.” *Feist*, 499 U.S. at 362. Here, the selection and arrangement of the unprotectable elements are so obvious and so dictated by industry conventions and other external factors that “any person composing a compilation of [stock data screen displays] would necessarily select the same categories of information,” text, and artwork. *Matthew Bender & Co. v. W. Publ’g Co.*, 158 F.3d 674, 682 (2d Cir. 1998); *see id.* at 682–83 (“[C]reativity in selection and arrangement. . . is a function of (i) the total number of options available, (ii) external factors that limit the viability of certain options and render others non-creative, and (iii) prior uses that render certain selections ‘garden variety.’”).

Based on a review of the entirety of the Work, the author’s combination of uncopyrightable elements contains only a *de minimis* amount of expression and does not sustain a claim to copyright.

#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

  
\_\_\_\_\_  
**U.S. Copyright Office Review Board**  
Shira Perlmutter, Register of Copyrights  
Suzanne Wilson, General Counsel and Associate Register  
of Copyrights  
Kimberley Isbell, Deputy Director of Policy and  
International Affairs