



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

May 11, 2022

James T. Carmichael, Esq.  
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**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 software interface. At the top, there are navigation tabs: "Query Config", "OneClick", "Background Tasks", "Live Table Monitor", "Create Console", "Save", "Reload", and "Settings". Below these is a "Console" window with a query: "t=tbls.t2('SystemEquity'), \*Sec Sector = Security t=tbls.t2('SystemEquity'), \*Security)". The main area shows a table of securities data. The table has columns for Date, Id, Uid, Sym, Usym, Type, Maturity, Strike, Parly, Rate, Name, ContractSize, CcyPerPoint, IsCashSettled, MonthCode, IsTraded, and IsFilterEnabled. The data rows represent various call options for different securities, with dates ranging from 2016-03-29 to 2016-03-29 and various strike prices and par values.

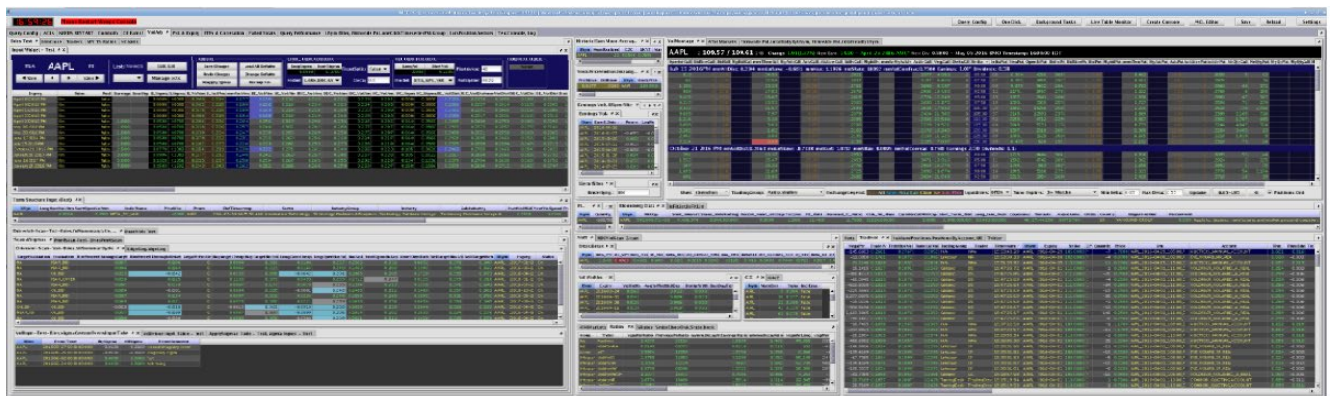
Date	Id	Uid	Sym	Usym	Type	Maturity	Strike	Parly	Rate	Name	ContractSize	CcyPerPoint	IsCashSettled	MonthCode	IsTraded	IsFilterEnabled
2016-03-29	10485890	12970252	UCO1-2017-01-20-38.00_CK	UCO1	Option	2017-01-20 17:30:00.000	38.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485921	12970252	UCO1-2017-01-20-36.00_PL	UCO1	Option	2017-01-20 17:30:00.000	36.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485922	12970252	UCO1-2017-01-20-37.00_PL	UCO1	Option	2017-01-20 17:30:00.000	37.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485923	12970252	UCO1-2017-01-20-39.00_PL	UCO1	Option	2017-01-20 17:30:00.000	39.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485924	12970252	UCO1-2017-01-20-39.00_PL	UCO1	Option	2017-01-20 17:30:00.000	39.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485925	12970252	UCO1-2017-01-20-40.00_PL	UCO1	Option	2017-01-20 17:30:00.000	40.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485926	12970252	UCO1-2017-01-20-41.00_PL	UCO1	Option	2017-01-20 17:30:00.000	41.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485927	12970252	UCO1-2017-01-20-42.00_PL	UCO1	Option	2017-01-20 17:30:00.000	42.0000	Put	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485986	12970252	UCO1-2017-01-20-28.00_CK	UCO1	Option	2017-01-20 17:30:00.000	28.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485990	12970252	UCO1-2017-01-20-30.00_CK	UCO1	Option	2017-01-20 17:30:00.000	30.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485991	12970252	UCO1-2017-01-20-31.00_CK	UCO1	Option	2017-01-20 17:30:00.000	31.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485992	12970252	UCO1-2017-01-20-32.00_CK	UCO1	Option	2017-01-20 17:30:00.000	32.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485993	12970252	UCO1-2017-01-20-33.00_CK	UCO1	Option	2017-01-20 17:30:00.000	33.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485994	12970252	UCO1-2017-01-20-34.00_CK	UCO1	Option	2017-01-20 17:30:00.000	34.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485995	12970252	UCO1-2017-01-20-35.00_CK	UCO1	Option	2017-01-20 17:30:00.000	35.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485996	12970252	UCO1-2017-01-20-36.00_CK	UCO1	Option	2017-01-20 17:30:00.000	36.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485997	12970252	UCO1-2017-01-20-37.00_CK	UCO1	Option	2017-01-20 17:30:00.000	37.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true
2016-03-29	10485998	12970252	UCO1-2017-01-20-38.00_CK	UCO1	Option	2017-01-20 17:30:00.000	38.0000	Call	American	100.0000	100.0000	100.0000	false	trading	false	true

Owner	Name	Enabled	Status	Query Type	Init/Run Time	Init/End Time	Last Update Time	Exception Details	Worker Host	Worker Name	Worker Port
curight	Test-TimeBomb	false	Script								
brasseur	Test-StockPriceMonitor	false	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
curight	Test-StockPriceMonitor	false	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
brasseur	Test-StockPriceMonitor	true	Running	Script	03/30/16 07:55:17	03/30/16 07:55:20	03/30/16 07:55:20		my4-idbquery14	worker_749	23744
brasseur	Test-StockPriceMonitor	true	Running	Script	03/30/16 07:55:15	03/30/16 07:55:20	03/30/16 07:55:20		my4-idbquery12	worker_771	23724
brasseur	DupeDividend	true	Running	Script	03/30/16 07:55:18	03/30/16 07:55:24	03/30/16 07:55:24		my4-idbquery13	worker_469	23468
brasseur	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_475	23474
brasseur	LiveFeedClickTimer	true	Running	Script	03/30/16 07:55:31	03/30/16 07:55:35	03/30/16 07:55:35		my4-idbquery14	worker_247	23746
brasseur	OptionsQuery	true	Running	Script	03/30/16 07:55:21	03/30/16 07:56:15	03/30/16 07:56:15		my4-idbquery16	worker_245	23746
brasseur	EarningsErrors	true	Running	Script	03/30/16 07:55:24	03/30/16 07:55:25	03/30/16 07:55:25		my4-idbquery13	worker_474	23474
brasseur	ShortTails	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
brasseur	JimWatch2016	true	Running	Script	03/30/16 07:55:25	03/30/16 07:57:35	03/30/16 07:57:35		my4-idbquery15	worker_322	23122
brasseur	RedeemRedeem	true	Running	Script	03/30/16 07:55:15	03/30/16 07:55:31	03/30/16 07:55:31		my4-idbquery2	worker_373	23772
brasseur	Animals	true	Running	Script	03/30/16 07:55:30	03/30/16 07:55:34	03/30/16 07:55:34		my4-idbquery1	worker_506	23490
curight	MapActiveAnomalous	true	Running	Script	03/30/16 07:55:26	03/30/16 07:55:33	03/30/16 07:55:33		my4-idbquery1	worker_499	23490
brasseur	VolatilityChangeOrder	true	Running	Script	03/30/16 07:55:26	03/30/16 07:55:56	03/30/16 07:55:56		my4-idbquery8	worker_241	23240
brasseur	MarketVolume	true	Running	Script	03/30/16 07:55:21	03/30/16 07:58:28	03/30/16 07:58:28		my4-idbquery16	worker_583	23852
brasseur	MissedEarnings	true	Running	Script	03/30/16 07:55:39	03/30/16 07:58:44	03/30/16 07:58:44		my4-idbquery14	worker_753	23752
brasseur	RecursionTemp	true	Running	Script	03/30/16 07:55:33	03/30/16 07:59:11	03/30/16 07:59:11		my4-idbquery15	worker_350	23458
curight	Test-irmMockPnl	false	Script								
brasseur	AcceptedSecurities	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
brasseur	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
brasseur	BuyInAllocationPnl	true	Running	Script	03/30/16 07:55:26	03/30/16 07:55:44	03/30/16 07:55:44		my4-idbquery12	worker_337	23286
curight	CopyDataToDyan	true	Running	Script	03/30/16 07:55:35	03/30/16 08:11:51	03/30/16 08:11:51		my4-idbquery14	worker_758	23752
brasseur	Webp-Audit	false	Script								
brasseur	AcceptedAccountMapping	false	Script								
brasseur	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
brasseur	DupeAT-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
brasseur	BuyInTradeIndicator	true	Running	Script	03/30/16 07:55:41	03/30/16 07:57:04	03/30/16 07:57:04		my4-idbquery11	worker_211	23210
brasseur	Earnings-Moves	true	Running	Script	03/30/16 07:55:39	03/30/16 07:56:16	03/30/16 07:56:16		my4-idbquery12	worker_207	23206
brasseur	ExpirationRiskyTrader	true	Running	Script	03/30/16 07:56:05	03/30/16 07:56:16	03/30/16 07:56:16		my4-idbquery7	worker_397	23394
brasseur	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_223	23221
brasseur	HermesPnl	true	Running	Script	03/30/16 07:56:36	03/30/16 08:10:11	03/30/16 08:10:11		my4-idbquery9	worker_224	23223
brasseur	RiskLimits	true	Running	Script	03/30/16 07:55:37	03/30/16 07:56:15	03/30/16 07:56:15		my4-idbquery10	worker_208	23207
brasseur	AdmParsysVolAr	false	Script								
brasseur	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_208	23207
brasseur	MasterSector	false	Script								
brasseur	EdmDlRunMv	false	Script								

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

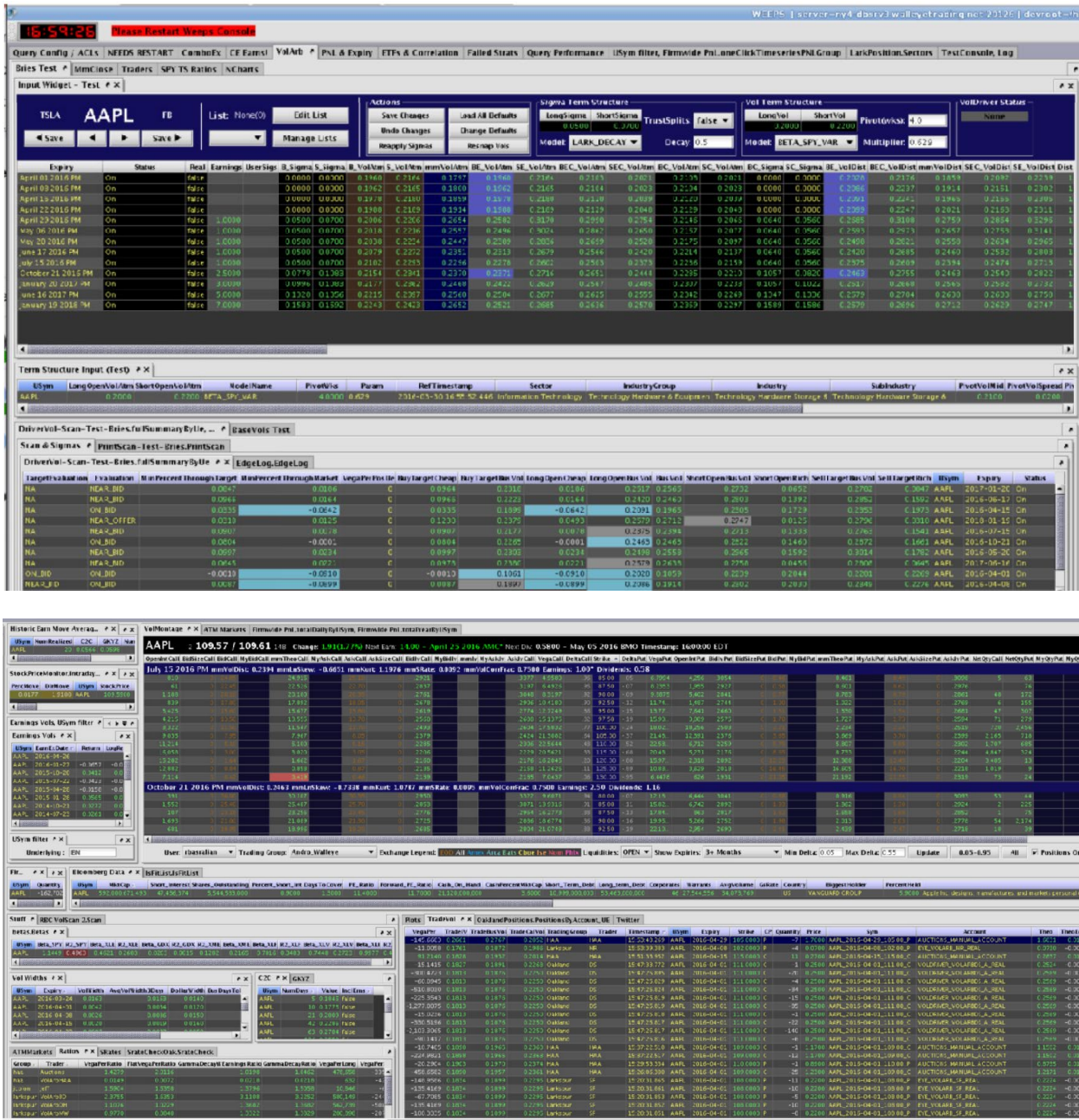
The search result screens are composed of entirely expected elements, with data displayed in standard table or line graph format, a master navigation toolbar across the top, and secondary command options framing the bottom and right-hand columns. These displays consist of a predictable combination of 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.



Though appearing somewhat more complex at first glance, the screens are merely divided into multiple uniform smaller screens, whose number and size appear to be determined by (1) the specific financial information recalled for the particular publicly traded company searched (here, Apple, Inc.) and (2) the industry standards and practices that dictate the display of stock market data. These external factors contribute to the determination of a lack of creative authorship. *See, e.g., Lexmark International Inc. v. Static Control Components, Inc.*, 387 F.3d 522, 535 (6th Cir. 2004) (noting that elements “dictated by practical realities—e.g., by hardware standards and mechanical specifications, software standards and compatibility requirements, computer manufacturer design standards, target industry practices, and standard computer programming practices—may not obtain protection”). Further, like the search result screens, the dashboard


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.

  
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**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