MEIGUO BANQUANFA
JINGDIAN ANLI PINGXI

美国历史上出现了很多版权经典案例，很多版权法的法律原则、经典学说和理论都是在这些经典案例的审理过程中，由法官发展和创立的。研究和学习这些经典案例，可以帮助我们轻松了解和深入学习美国的版权法。

美国版权法经典案例评析

周长玲／主　编
朱　斌／副主编

中国政法大学出版社

MEIGUO BANQUANFA
JINGDIAN ANLI PINGXI

美国历史上出现了很多版权经典案例，很多版权法的法律原则、经典学说和理论都是在这些经典案例的审理过程中，由法官发展和创立的。研究和学习这些经典案例，可以帮助我们轻松了解和深入学习美国的版权法。

美国版权法经典案例评析

周长玲／主　编
朱　斌／副主编

中国政法大学出版社

图书在版编目（CIP）数据

美国版权法经典案例评析 / 周长玲主编.-- 北京：中国政法大学出版社，2013.3
ISBN 978-7-5620-4703-2

Ⅰ.①美… Ⅱ.①周… Ⅲ.①版权-著作权法-案例-美国 Ⅳ.①D971.23

中国版本图书馆CIP数据核字(2013)第045554号

书　　名　美国版权法经典案例评析
MEIGUO BANQUANFA JINGDIAN ANLI PINGXI

出版发行　中国政法大学出版社(北京市海淀区西土城路25号)
北京100088信箱8034分箱　邮政编码100088
邮箱 academic.press@hotmail.com
http://www.cuplpress.com (网络实名：中国政法大学出版社)
(010)58908437(编辑室) 58908285(总编室) 58908334(邮购部)

承　　印　固安华明印刷厂

规　　格　720mm×960mm　16开本　22.125印张　360千字

版　　本　2013年5月第1版　2013年5月第1次印刷

书　　号　ISBN 978-7-5620-4703-2/D·4663

定　　价　68.00元

序 言

众所周知，美国具有联邦法律和州法律两套法律体系，虽然美国建国初期就制定了成文的联邦宪法，但其基本法律制度是以判例法为主，即上级法院的判例对下级法院在审理类似案件时具有法律约束力。美国法官在审理案件时，除了要确定案件事实外，首先要考虑以前类似案件的判例，将本案件事实与以前案件事实加以比较，然后从以前的判例中找出可以适用于本案的法律原则，作为判决本案的法律依据；同时，法官也可以在审理案件中进一步发展、完善原有的法律原则和创设新的法律原则，即法官造法。

虽然美国的基本法律制度以判例法为主，但是美国版权法从建立到现在，却属于联邦成文法。从美国历史上第一部《1790 年版权法》产生至今，美国版权法已经走过了 200 多年的历史。期间，美国版权法的修订极为频繁，小范围的修订几乎每隔几年就进行一次；大范围的修订也有多次，其中重大的修订有 3 次。依此，美国历史上形成了 3 部代表性的版权法，即《1790 年版权法》、《1909 年版权法》和《1976 年版权法》。这 3 部版权法分别代表了美国历史上不同时期科学技术发展与版权保护水平的状况。

虽然在美国，版权法是成文法，但是，其中的一些原则却是美国法官在判例中创立和发展起来并最终在成文法中确立的。美国历史上出现了很多版权经典案例，这些版权经典案例对美国版权法的发展和完善起到了巨大的推动作用。很多版权法的法律原则、经典学说和理论都是在这些经典案例的审理过程中，由法官发展和创设并被不断修订的版权法所确立。可以说，研究和学习美国历史上经典的版权案例，可以帮助我们轻松了解和深入学习美国的版权法。

本书精选了 15 个美国历史上的经典版权案例，目的是想通过对这些经典案例进行介绍和评析，帮助读者了解、熟悉美国版权法及其发展，同时领略美国法官审理案件时独特的逻辑思维和分析问题的方法，让这些经典案例带领读者徜徉于美国的版权历史，体味美国版权法的独特。

本书将每个案例分为三个部分：第一部分是基本案情，第二部分是法院的审理及判决，第三部分是评析。在第一部分中，主要介绍案件的基本情况，包括原被告的情况，审理案件的法院，基本事实，争议的焦点等。第二部分是将法院的主要审理意见进行翻译，并将案例原文提供给读者。因为本书编者的英文水平有限，难免会对法院审理意见的翻译和理解存在错误，因此，提供原文的目的是让有一定英文基础的读者，能够亲自从案例原文中准确体会美国法官的审理思路、逻辑思维和对案件的观点。第三部分，是本书对案件的评析，包括对案件争议焦点、案件适用的主要法律进行简明阐述，归纳法官对争议焦点的态度和观点。最后结合我国著作权法对案件进行分析，并阐明案件的现实意义。

本书由我担任主编，朱斌担任副主编，编委会成员还有王依爽、李莉莎、冯敬之、乔磊、杜颖等（以姓氏笔画为序）。囿于本书编写人员的能力，书中难免会出现错误，望请读者谅解！

另外，本书的出版得到了北京释胜律师事务所的资助，在此深表谢意！

周长玲

2012 年 6 月 18 日

【目 录】
contents

贝克诉希尔登案

【基本案情】

1859年，本案原告（被上诉人）的立遗嘱人查尔斯·希尔登（Charles Selden）采取了一些必要的步骤以此来取得一本名为《希尔登摘要分类账本或简化帐本》（Selden's Condensed Ledger, or Book—keeping Simplified）作品的版权。该作品的目的在于说明和解释一种特有的记账方法。1860年和1861年，查尔斯·希尔登取得了其他几种账本书籍的版权，这些书籍主要是针对上述的特有的记账方法做了一些增加和改进。原告主张版权的书籍包括对记账方法的介绍以及用于记账的固定划线、显示标题的表格和空白表格。该记账方法与复式记账本的作用相同，只是对表格的栏目和标题的安排有独特性，其独特性表现在这种记账方法可以在账本的一页或者两页上记录一天、一个星期甚至一个月的全部经营信息。

被告（上诉人）贝克（Baker）制作和使用的账本，使用了与原告相似的记账方法，但是栏目的安排和标题的安排以及使用的项目名称与原告的不同。贝克被指控侵犯原告关于记账方法书籍作品的版权。被告贝克在答辩中否认了查尔斯·希尔登是这些书籍的作者或创作人，并否认被控的侵权行为，他在辩论中坚持认为，本案所涉及的作品并非版权法意义上的作品，无法获得版权法的保护，因此他并没有被控的侵权行为。

双方进入了举证阶段，原告向法官出示了其创作的各种作品，包括被告所销售和使用的涉及侵权的作品，同时，双方的证人也都出席法庭进行证明。一审判决原告胜诉，被告不服，提出上诉。

本案争议的焦点主要是：原告希尔登是否可以依据版权法的规定，以一本说明和介绍簿记制度的书籍来主张簿记制度（记账的方法）作为其专有财产？

【法院审理与判决】

本案由联邦最高法院审理，由布莱德雷法官（Mr. Justice BRADLEY）陈述法庭的判决意见：

原告声称自己拥有涉案系列书籍的版权，这些书籍里的文章是介绍和解释簿记系统的使用方法，该方法附有某些表格和空白格，包括线条、标题、系统的插图以及该系统在实践中应当如何使用和应用。此系统与复式记账本的效果相同，获得的结果也一样，但其特殊之处在于，它特别编排了栏目与标题，在账本中以单页或者双页来呈现一天、一星期或一个月账目的整体运行情况。就效果而言，被告采用的是类似的记账方法，并且结果也是类似的；但其不同之处在于栏目的设置和标题的使用是有区别的。如果原告的立遗嘱人拥有使用其在书籍中说明的簿记账本系统的排他权利，即使被告的格式安排有区别，也很难认定被告并未侵权；但是如果假设该制度是面向大众开放使用的，则似乎同样难以认定被告所制作出的书籍侵犯了原告的版权，因为在这种情况下，原告的书籍仅仅是一本说明簿记系统制度的作品而已。科学的事实或者一种艺术的方法是属于整个世界的共有财产，任何作者皆有权以他自己的方式来表达并阐述它，或者加以解释和使用。

作为一名作家，原告希尔登以一种特有的方式来说明这项制度。可以认定的是，被告贝克所制作和使用的账簿实际上的编排和该制度本质上是相同，但证据无法证明其侵犯到原告希尔登的版权，因为后者的书仅仅是一本说明性的作品；证据同样无法证明被告以任何方式侵犯到原告希尔登的权利，除非原告享有该制度的排他性权利。

原告的证据主要是直接证明被告贝克所使用的制度和原告希尔登书中所解释和说明的制度是相同的。因此原告希尔登在获得其书籍版权的同时，决定其是否能获得使用其书籍中所打算说明和解释的该簿记账本系统或方法的排他权利就变得非常重要。原告是否能够拥有这种簿记账本系统方法的排他权利是有争议的，因为没有人可以在使用该系统的同时不使用其书籍上所附录的用来说明该系统相同区隔划线和标题。换句话说，说明该制度的区隔划线和标题作为该书籍的一个部分是否能够获得版权法的保护这个观点是有争议的；同时，凡是制作或使用类似的区隔划线和标题，或者制作与编排实际上与该制度相同的区隔划线和标题，必定会侵犯到其版权。而这正是本案所

要确定的问题。用另一种方式来说，这个问题就是原告是否可以依据版权法的规定，以一本说明该制度的书籍来主张簿记制度作为其专有财产？原告的控诉主张和依据该控诉所提出的诉讼要求都是以该假设为基础的。

我们不能假定原告账簿中的区隔线可以依据1859年版权法所列出的任何特殊类别标的物（书籍除外）来主张专有权。当时实施中的法律是1831年的法律，而且该法律仅仅提到了书籍、地图、图表、音乐作品、印刷品和雕刻品的规定。一个包含区隔线和空白栏的记账账簿并不在这些项目之列，除非它们能够被涵盖在书籍这一类中。

毫无疑问，一本主题为簿记的作品，即使只是说明众所周知的系统，仍然可以成为版权法所规定的主体，但是在这种情况下，它只能被作为一本书籍来主张权利。这样的一本书籍既可以解释旧的制度也可以解释全新的制度；作为一本书籍，并且作为作者的作品，它所传递的信息是关于簿记主题的，其包含了详细的方法解释说明，它可能是一种非常具有使用价值的社会知识。但是书籍和书籍内容所阐述的技术之间存在着显著的区别。这一点很明显，因此几乎不需要任何观点来支持它。与本案的簿记方法和书籍所涉及的问题相同，其他技术内容所涉及的方法本身与表述其方法的书籍也可以断定存在着相同的区别。药物成分和使用的论文（无论是新药还是旧药）；手表或搅拌器的制作和使用的说明书；油漆或染色颜料的混合与使用介绍；或产生透视效果的划线方法的著述都可以成为版权法的客体，但是毫无争议，没有人能够主张该著述的版权能够赋予其著述中所涉及的技术或者制作方法任何专有权利。

只要不是抄袭其他的作品，书籍都能够获得版权保护，这与作品是否新颖无关，也不需要新颖性或类似的要件。所描述或说明的技术和事物的新颖性，与版权的有效性并无任何关联。如果未经审查新颖性，即赋予该书作者其书中所论述的技术的专有财产权，这既令人惊讶，也是对公众的欺骗。这个问题主要是专利法的领域，而并非版权法的领域。一项发明、技术或制造的发现，必须在取得专有权之前先接受专利局的审查；而且它只能在通过审查，获得专有权时，才能够获得法律的保障。

专利权的授予和版权这两件事物之间的差异可以从刚才列举出来的主题中得到说明。以药品为例子。某些混合物被发现具有很大的治疗价值。如果发现者写作并且出版了有关该主题的书籍（如同一般医生通常的作法），他无

法获得制造和销售该药品的排他权利；他应当将这一权利赋予社会公众。如果他希望取得这种排他权利，他必须以新的技术，制造方法或者新的组合成分来制造该混合物并获得专利权。如果他愿意，他可以获得其著作的版权，但是那只能保障他印刷和出版自己的著作的排他权利。所有其他的发明或者发现也是如此。

关于说明透视图画法书籍的版权，无论其中含有多少插图或者说明，都无法赋予作者对书中所描述的绘画模式任何排他权利，即使这些方法从未有人知道或者使用。作者所拥有的权利只是出版这本书，而不包含该技术的专利权，该专利权赋予给了公众。实际上，书本中描述的技术与运用该技术在实践中复制所解释的线条和图案没有什么区别。假设他以说明文字来取代图表（仅出现在有文字之处），则毫无疑问，将该技术运用到实践的人可以合法地画出作者心中所想的线条和图案，而作者对线条和图表的想法是通过文字来阐述的。

数学作品的版权不能赋予作者对于其研究的运算方法或者用来解释其方法的图表排他性权利，因此也不能阻止工程师在需要的场合随时使用该方法。出版科学书籍或者使用技术的真正目的在于将书中所包含的有用的知识传输给全世界。但是如果这些知识没有遭到非法的盗版就无法使用的话，则该目的可能就会无法达成。

如果没有方法和图表来说明该书，则书中所教授的技术便无法使用，这类方法和图例是该技术的必要附带物，并且将其专有权赋予大众；而公开的目的并不是为了在其他作品中出版该技术的说明，而是为了实际的应用。

当然，这些观察并不适用于装饰物的设计或者强调品位的绘画插图。它们的形式可以说就是它们的本质和目标，即制作成果的创造性，这是它们的最终目的。一方面，它们是产品和构思布局的结果，就如诗人的诗句和史学家的句点一样。另一方面，科学的指导和有用技术的规则和方法的最终目的是应用和使用，这也是公众想通过书籍所获得的东西。一本教授艺术的书籍，其他作品针对该书的方法进行相同的描述，无论是以文字还是图表的形式，都毫无疑问是侵犯了其版权。

现在回到本案所处理的问题上，我们从原告查尔斯·希尔登的作品中发现，他以区隔线和空栏，在一页或连续的数页中，以适当的标题来说明和描述特有的簿记制度。现在，任何人都无权印刷或者出版他的书或者书中的任

何资料。但是作为一本技术说明的著作，任何人都可以实施和使用他在书中所叙述和说明的技术。技术的使用和出版说明该技术的书籍是完全不同的两件事情。拥有关于簿记书籍的版权，并不等于享有这类书籍中所涉及的账本的制作、出售和使用的专有权。该技术并不能获得专利权的保护，而是对公众开放能够供公众自由使用。当然，在使用该技术时，账目的区隔线和标题必须作为该技术的附带物使用。

本案原告所提出的权利主张看似有理，但是混淆了书籍与书籍内容描述的技术二者的概念。

在描述该技术时，所采用的说明和图表比平时更符合使用该技术的操作员的实际工作。那些图表和说明包含账目的区隔与标题；并且在使用该技术时，这些区隔线与标题和记账员以他们自己的笔或文具上以他的印刷机所制作出来的区隔线和标题类似；然而在大部分的其他方法中，这些图表和说明只能以木材、金属、石头或者其他的具体表现形式表现出来，但这其中的原理是一样的。书中的技术说明虽然享有版权法所规定的权利，但是不能获得技术本身的专利专有权。该作品的一个目的是说明，另一个目的是使用。前者可以获得版权法的保障，而后者只能通过专利审查获得专利权来加以保障。

另一个案例是1869年的马林斯副大法官（Vice—Chancellor Malins）提出的Page v. Wisden（20 L. T. N. S. 435）案和本案有些类似的地方。该案中涉及的是一种板球计分纸的版权，法官认为它不是合适的版权主体，其理由部分是因为这种计分纸不是新的，更是因为“这本书所述的特殊方法成为版权法的主体并不合理”。这些案例很接近本案的案情，而且法院认为，本案所给定的一些命题均有确实的证据。

我们所获得的结论是：空白的账簿不是版权的客体，塞尔登不能仅仅凭借对记账方法书籍的版权就获得专有制作和使用其书中的编排和方法，以及书中所叙述和说明的账簿。

撤销巡回法院的决定，案件发回重审，驳回起诉。

特此决定。

【案例原文】

BAKER v. SELDEN

101 U. S. 99, 25 L. Ed. 841.

Mr. Justice BRADLEY delivered the opinion of the court.

Charles Selden, the testator of the complainant in this case, in the year 1859 took the requisite steps for obtaining the copyright of a book, entitled "Selden's Condensed Ledger, or Bookkeeping Simplified," the object of which was to exhibit and exhibit and explain a peculiar system of book – keeping. In 1860 and 1861, he took the copyright of several other books, containing additions to and improvements upon the said system. The bill of complaint was filed against the defendant, Baker, for an alleged infringement of these copyrights. The latter, in his answer, denied that Selden was the author or designer of the books, and denied the infringement charged, and contends on the argument that the matter alleged to be infringed is not a lawful subject of copyright.

The parties went into proofs, and the various books of the complainant, as well as those sold and used by the defendant, were exhibited before the examiner, and witnesses were examined on both sides. A decree was rendered for the complainant, and the defendant appealed.

The book or series of books of which the complainant claims the copyright consists of an introductory essay explaining the system of book – keeping referred to, to which are annexed certain forms or blanks, consisting of ruled lines, and headings, illustrating the system and showing how it is to be used and carried out in practice. This system effects the same results as book – keeping by double entry; but, by a peculiar arrangement of columns and headings, presents the entire operation, of a day, a week, or a month, on a single page, or on two pages facing each other, in an account – book. The defendant uses a similar plan so far as results are concerned; but makes a different arrangement of the columns, and uses different headings, If the complainant's testator had the exclusive right to the use of the system explained in his

book, it would be difficult to contend that the defendant does not infringe it, notwithstanding the difference in his form of arrangement; but if it be assumed that the system is open to the public use, it seems to be equally difficult to contend that the books made and sold by the defendant are a violation of the copyright of the complainant's book considered merely as a book explanatory of the system. Where the truths of a science or the methods of an art are the common property of the whole world, any author has the right to express the one, or explain and use the other, in his own way. As an author, Selden explains the system in a particular way. It may be conceded that Baker makes and uses account – books arranged on substantially the same system; but the proof fails to show that he has violated the copyright of Selden's book, regarding the latter merely as an explanatory work; or that he has infringed Selden's right in any way, unless the latter became entitled to an exclusive right in the system.

The evidence of the complainant is principally directed to the object of showing that Baker uses the same system as that which is explained and illustrated in Selden's books. It becomes important, therefore, to determine whether, in obtaining the copyright of his books, he secured the exclusive right to the use of the system or method of book – keeping which the said books are intended to illustrate and explain. It is contended that he has secured such exclusive right, because no one can use the system without using substantially the same ruled lines and headings which he has appended to his books in illustration of it. In other words, it is contended that the ruled lines and headings, given to illustrate the system, are a part of the book, and, as such, are secured by the copyright; and that no one can make or use similar ruled lines and headings, or ruled lines and headings made and arranged on substantially the same system, without violating the copy – right. And this is really the question to be decided in this case. Stated in another form, the question is, whether the exclusive property in a system of book – keeping can be claimed, under the law of copyright, by means of a book in which that system is explained? The complainant's bills, and the case made under it, are based on the hypothesis that it can be.

It cannot be pretended, and indeed it is not seriously urged, that the ruled lines of the complaint's account – book can be claimed under any special class of objects,

other than books, named in the law of copyright existing in 1859. The law then in force was that of 1831, and specified only books, maps, charts, musical compositions, prints, and engravings. An account – book, consisting of ruled lines and blank columns, cannot be called by any of these names unless by that of a book.

There is no doubt that a work on the subject of book – keeping; though only explanatory of well – known systems may be the subject of a copyright; but, then, it is claimed only as a book. Such a book may be explanatory either of old systems, or of an entirely new system; and, considered as a book, as the work of an author, conveying information on the subject of book – keeping, and containing detailed explanations of the art, it may be a very valuable acquisition to the practical knowledge of the community. But there is a clear distinction between the books, as such, and the art which it is intended to illustrate. The mere statement of the proposition is so evident, that it requires hardly any argument to support it. The same distinction may be predicated of every other art as well as well as that of book – keeping. A treatise on the composition and use of medicines, be they old or new; on the construction and use of ploughs, or watches, or churns; or on the mixture and application of colors for painting or dyeing; or on the mode of drawing lines to produce the effect of perspective, —would be the subject of copyright; but no one would contend that the copyright of the treatise would give the exclusive right to the art or manufacture described therein. The copyright of the book, if not pirated from other works, would be valid without regard to the novelty, or want of novelty, of its subject – matter. The novelty of the art or thing described or explained has nothing to do with the validity of the copyright. To give to the author of the book an exclusive property in the art described therein, when no examination of its novelty has ever been officially made, would be a surprise and a fraud upon the public. That is the province of letters – patent, not of copyright. The claim to an invention or discovery of an art or manufacture must be subjected to the examination of the Patent Office before an exclusive right therein can be obtained; and it can only be secured by a patent from the government.

The difference between the two things, letters – patent and copyright, may be illustrated by reference to the subjects just enumerated. Take the case of medicines. Certain mixtures are found to be of great value in the healing art. If the discov-

erer writes and publishes a book on the subject (as regular physicians generally do). He gains no exclusive right to the manufacture and sale of the medicine; he gives that to public. If he desires to acquire such exclusive right, he must obtain a patent for the mixture as a new art, manufacture, or composition of matter. He may copyright his book, if he pleases; but that only secures to him the exclusive right of printing and publishing his book. So of all other inventions or discoveries.

The copyright of a book on perspective, no matter how many drawings and illustrations it may contain, gives no exclusive right to the modes of drawing described, though they may never have been known or used before. By publishing the book, without getting a patent for the art, the latter is given to the public. The fact that the art described in the book by illustrations of lines and figures which are reproduced in practice in the application of the art, makes no difference. Those illustrations are the mere language employed by the author to convey his ideas more clearly. Had he used words of description instead of diagrams (which merely stand in the place of words), there could not be the slightest doubt that others, applying the art to practical use, might lawfully draw the lines and diagrams which were in the author's mind, and which he thus described by words in his book.

The copyright of a work on mathematical science cannot give to the author an exclusive right to the methods of operation which he propounds, or to the diagrams which he employs to explain them, so as to prevent an engineer from using them whenever occasion requires. The very object of publishing a book on science or the useful arts is to communicate to the world the useful knowledge which it contains. But this object would be frustrated of the knowledge could not be used without incurring the guilt of piracy of the book. And where the art it teaches cannot be used without employing the methods and diagrams used to illustrate the book, or such as are similar to them, such methods and diagrams are to be considered as necessary incidents to the art, and given therewith to the public; not given for the purpose of publication in other works explanatory of the art, but for the purpose of practical application.

Of course, these observations are not intended to apply to ornamental designs, or pictorial illustrations addressed to the taste. Of these it may be said, that their form is their essence, and their object, the production of pleasure in their contempla-

tion. This is their final end. They are as much the product of genius and the result of composition, as are the lines of the poet or the historian's periods. On the other hand, the teachings of science and the rules and methods of useful art have their final end on application and use; and this application and use are what the public derive from the publication of a book which teaches them. But as embodied and taught in a literary composition or book, their essence consists only in their statement. This alone is what is secured by the copyright. The use by another of the same methods of statement, whether in words or illustrations. In a book published for teaching the art, would undoubtedly be an infringement of the copyright.

Recurring to the case before us, we observe that Charles Selden, by his books, explained and described a peculiar system of book – keeping, and illustrated his method by means of ruled lines and blank columns, with proper headings on a page, or on successive pages. Now, whilst no one has a right to print or publish his book, or any material part thereof, as a book intended to convey instruction in the art, any person may practice and use the art itself which he has described and illustrated therein. The use of the art is a totally different thing from a publication of the book explaining it. The copyright of a book on book – keeping cannot secure the exclusive right to make. Sell, and use account – books prepared upon the plan set forth in such book. Whether the art might or might not have been patented, is a question which is not before us. It was not patented, and is open and free to the use of the public. And, of course, in using the art, the ruled lines and headings of accounts must necessarily be used as incident to it.

The plausibility of the claim put forward by the complainant in this case arises form a confusion of ideas produced by the peculiar nature of the art described in the books which have been made the subject of copyright. In describing the art, the illustrations and diagrams employed happen to correspond more closely than usual with the actual work performed by the operator who uses the art. Those illustrations and diagrams consist of ruled lines and headings of accounts; and it is similar ruled lines and headings of accounts which, in the application of the art, the book – keeper makes with his pen, or the stationer with his press; whilst in most other cases the diagrams and illustrations can only be represented in concrete forms of wood, metal, stone, or some other physical embodiment. But the principle is the same in all. The

description of the art in a book, though entitled to the benefit of copyright, lays no foundation for an exclusive claim to the art itself. The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters - patent.

Another case, that of Page v. Wisden (20 L. T. N. S. 435), which came before Vice - Chancellor Malins in 1869, has some resemblance to the present. There a copyright was claimed in a cricket scoring - sheet, and the Vice - Chancellor held that it was not a fit subject for copyright, partly because it was not new, but also because "to say that a particular mode of ruling a book constituted an object for a copyright is absurd".

These cases, if not precisely on point, come near to the matter in hand, and, in our view, corroborate the general proposition which we have laid down……

The conclusion to which we have come is, that blank account - books are not the subject of copyright; and that the mere copyright of Selden's book did not confer upon him the exclusive right to make and use account - books, ruled and arranged as designated by him and described and illustrated in said book.

The decree of the Circuit Court must be reversed, and the cause remanded with instructions to dismiss the complainant's bill; and it is so ordered.

【案例评析】

本案争议的焦点是原告希尔登是否可以依据版权法，以一本说明和介绍簿记制度的书籍来主张簿记制度（记账的方法）作为其专有财产？即版权保护的界限是什么？

一、依据美国版权法评析

（一）思想、表达二分法原则

思想、表达二分法原则的基本内容是：版权保护的是作品中原创性的思想表达，而不是作品中所包含的思想。

在本案审理时，美国版权法并没有版权保护界限的相关规定，本案是美国版权历史上第一个确立思想、表达二分法的经典判例。本案后，思想、表达二分法原则成为美国版权法赖以建立的基础，该原则被《1976 年版权法》