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*Cases and Materials on the Law of
Intellectual Property*—THIRD EDITION

PAUL GOLDSTEIN

University Casebook Series

**COPYRIGHT, PATENT,
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AND

**RELATED STATE
DOCTRINES**

**CASES AND MATERIALS ON
THE LAW**

OF

INTELLECTUAL PROPERTY

THIRD EDITION

By

PAUL GOLDSTEIN

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Stanford University**

**Westbury, New York
THE FOUNDATION PRESS, INC.
1990**

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615 Merrick Ave.
Westbury, N.Y. 11590

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Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Goldstein, Paul, 1943—

Copyright, patent, trademark, and related state doctrines : cases
and materials on the law of intellectual property / by Paul
Goldstein. — 3rd ed.

p. cm. — (University casebook series)

Kept up to date by case, problem, and statute supplements.

ISBN 0-88277-792-0

1. Intellectual property—United States—Cases. I. Title.

KF2978.G63 1990

346.7304'8—dc20

[347.30648]

90-3208
CIP



PREFACE

At a meeting of the American Bar Association's section on Patents, Trademarks and Copyrights, a seasoned copyright practitioner introduced his remarks with the observation that section members "are exposed to many occupational hazards. . . . One of the less serious ones—but still an obstacle faced almost daily—is the fact that most people do not understand the difference between patents, trademarks and copyrights. This applies to clients, other lawyers and at times even judges. When I tell a general practitioner that I am a copyright lawyer, he immediately corrects me: 'You mean patents!' He then says: 'Well, anyway, as a patent lawyer, you can copyright a name for me can't you?' " *

Why the confusion between copyright, patent and trademark law? One reason is that these laws occupy a common ground, each seeking to stimulate investment in information through the award of property rights. The information produced, and the specific intellectual property rights that attach, are sometimes hard to separate. Adding to the confusion is the fact that state laws—principally trade secret and unfair competition law and the right of publicity—also occupy this common ground.

Because these laws occupy a common field, they invite comparison. How, and how efficiently, does each law allocate costs among producers, distributors and consumers of information? The field also invites less theoretical inquiry. A lawyer must be prepared to pick out not only a single thread of protection for a client's project (one consisting, say, of trade secret and patent protection) but possibly a more ample fabric (a combination of trade secret, patent, copyright and trademark). The lawyer must also be alert to the possibility that a client's project will infringe the intellectual property rights of others. Although the lawyer will move easily from state to federal law, the lines between—like so many other lines in a federal system, bristle with conflict—often of a constitutional dimension.

In the years since publication of the second edition, the perceived importance of intellectual property has grown dramatically—in Congress and the courts, in boardrooms and in law firms. Congress has over this period repeatedly amended the copyright, patent and trademark acts in several important respects. The new Court of Appeals for the Federal Circuit has harmonized previously disparate patent law standards and, in the process, strengthened industry confidence in the patent system. The question of protection for computer programs, virtually untouched at the time of the last edition, is today one of intellectual property law's hottest

* Latman, Preliminary Injunctions in Patent, Trademark and Copyright Cases, 60 Trademark Rep. 506 (1970).

PREFACE

topics. As intellectual property's importance to the nation's balance of trade has come into clearer focus, Congress has moved to bring U.S. law into line with international treaty requirements and has employed trade measures to ensure worldwide protection for works originating in the United States.

The third edition reflects suggestions made by many users of the second. For their good advice, I am grateful to Louis B. Altman, Margreth Barrett, Joseph P. Bauer, Glenn K. Beaton, Andrew Beckerman-Rodau, Jay Dratler, Jr., Rochelle Cooper Dreyfuss, David R. Ellis, Thomas G. Field, Jr., Theodore M. Hagelin, I. Trotter Hardy, Jr., Thomas Hemnes, Paul Horton, Roberta Rosenthal Kwall, Marshall Leaffer, David A. Lowin, J. K. Mueller, Jr., Christopher H. Munch, John J. Murphy, A. Samuel Oddi, Dale A. Oesterle, Edmund J. Sease, Harold F. See, Rena C. Seplowitz, Jeffrey G. Sheldon, Walter G. Sutcliffe and Sherman Winnick. I am also grateful to my colleagues in the intellectual property practice at Morrison & Foerster for continually challenging me with questions at the law's cutting edge.

Stanford Law School, where I completed the first and second editions of this book, continued to provide a congenial setting for work on the third. I am particularly indebted to Dean Paul Brest for his generous support, and to the staff of the Robert Crown Law Library for helping so many times in so many ways. I am also grateful to Mark W. Lerner and Karen M. Wetherell, students at the Law School, for cite-checking and proofreading the text. Mark Lerner also prepared the Index. Their work was supported by a bequest from the Claire and Michael Brown Estate. Finally, I am indebted to my secretary, Lynne Anderson, for so cheerfully and efficiently overseeing production of the manuscript.

Note on Style. The articles and many of the cases appearing in these pages have been edited. The deletion of sentences and paragraphs is indicated by ellipses. The deletion of string citations is not indicated. Most footnotes have been excised. Those that remain have not been renumbered. Parallel citation to federal, state and regional reporters and to the United States Patent Quarterly has been employed where appropriate.

P.G.

Stanford, California
April, 1990

TABLE OF CASES

Principal cases are in italic type. Non-principal cases are in roman type. References are to pages.

-
- Abele, *In re*, 843
 Abend v. MCA, Inc., 692
 Addison-Wesley Pub. Co. v. Brown, pp. 69, 594
 Adkins v. Lear, Inc., 487
 Advisers, Inc. v. Wiesen-Hart, Inc., 547
 Aero Spark Plug Co. v. B. G. Corp., 522
 A. F. Stoddard & Co., Ltd. v. Dann, 421
 Aitken, Hazen, Hoffman, Miller, P. C. v. Empire Const. Co., 689
 Alberto-Culver Co. v. Andrea Dumon, Inc., 561
 A. Leschen & Sons Rope Co. v. American Steel & Wire Co., 202
 Alfred Bell & Co. v. Catalda Fine Arts, 570
 Alfred Dunhill, Ltd. v. Interstate Cigar Co., Inc., 356
 Alfred Dunhill of London v. Dunhill Shirt Shop, 84
 Allen, *In re*, 436
 Allen v. National Video, Inc., 185
 Allen v. Standard Crankshaft & Hydraulic Co., 373
 Allis-Chalmers Mfg. Co. v. Continental Aviation & Engineering Corp., 146
 Alva Studios, Inc. v. Winninger, 569, 570
 American Enka Corp. v. Marzall, 277
 American Foresight of Philadelphia, Inc. v. Fine Arts Sterling Silver, Inc., 198
 American Home Products Corp. v. Johnson & Johnson, 354
 American Institute of Architects v. Fenichel, 593
 American Metropolitan Enterprises of New York, Inc. v. Warner Bros. Records, Inc., 709
 American Steel Foundries v. Robertson, 201
 American Tobacco Co. v. Werckmeister, 543
 American Trading Co. v. H. E. Heacock Co., 201
 American Travel & Hotel Directory Co. v. Gehring Pub. Co., 715
 American Visuals Corp. v. Holland, 543
 American Washboard Co. v. Saginaw Mfg. Co., 68
 Amsterdam v. Triangle Publications, 583
 Anderson's-Black Rock, Inc. v. Pavement Salvage Co., 374
 Anthony, *In re*, 419
 Anti-Monopoly, Inc. v. General Mills Fun Group, Inc., 230
 Apple Computer, Inc. v. Franklin Computer Corp., 796, 797, 798
Application of (see name of party)
 Arc Music Corp. v. Lee, 716
 Arnesen v. Raymond Lee Organization, Inc., 356
 Arnstein v. Porter, 711
 Aro Mfg., Co. v. Convertible Top Replacement Co., 481
 Aronson v. *Quick Point Pencil Co.*, 21, 22, 48, 54, 110, 166
 Associated Film Distribution Corp. v. Thornburgh, 771
 Atari Games Corp. v. Oman, 552
 Atari, Inc. v. North American Philips Consumer Electronics Corp., 810
 Atlas v. Eastern Air Lines, Inc., 396
 Atlas Powder Co. v. Ireco Chemicals, 504
 Automatic Radio Mfg. Co., Inc. v. Hazeltine Research Inc., 487, 488
 Avco Corp. v. Precision Air Parts, Inc., 768
 Avia Group Intern., Inc. v. *L.A. Gear California, Inc.*, 863
 Baker v. Selden, 585, 592
 Baltimore Orioles, Inc. v. Major League Baseball Players Ass'n, 768
 Bartok v. Boosey & Hawkes, Inc., 691
 Basic Chemicals, Inc. v. Benson, 147
 Bass, *In re*, 408
 Bayer Co., Inc. v. United Drug Co., 228
 Beacon Looms, Inc. v. S. Lichtenberg & Co., Inc., 541
 Beatrice Foods Co., *In re*, 295
 Belcher v. Tarbox, 562
 Bennett v. Halahan, 417
 Benny v. Loew's Incorporated, 655, 661
 Berlin v. E. C. Publications, Inc., 656, 662
 Bernard Food Industries, Inc. v. Dietene Co., 354
 B. F. Goodrich Co. v. Wohlgemuth, 148
 Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co., 67, 75, 83
 Bissell, Inc. v. Easy Day Mfg. Co., 307
 Blaustein v. Burton, 41
 Bleistein v. *Donaldson Lithographing Co.*, 564, 569, 870
 Blisscraft of Hollywood v. United Plastics Co., 869, 870
 Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 526
 Blue Bell, Inc. v. *Farah Mfg. Co., Inc.*, 205, 213

TABLE OF CASES

- Blue Bell, Inc. v. Jaymar-Ruby, Inc., 214
Board of Trade of City of Chicago v. Dow Jones & Co., Inc., 86
Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 21, 21, 22, 110, 910, 919
 Bookbinder's Restaurant, Application of, 214
 Booth v. Haggard, 539
 Borden Ice Cream Co. v. Borden's Condensed Milk Co., 84
 Borden, Inc., 319
 Borden, Inc., v. Federal Trade Commission, 319
Borst, Application of, 377, 397
 Boutell v. Volk, 527
 Bouvé v. Twentieth Century-Fox Film Corp., 551
 Brandir Intern., Inc. v. Cascade Pacific Lumber Co., 893
Brenner v. Manson, 411, 418
 Brief English Systems v. Owen, 594
 Broadview Chemical Corp. v. Loctite Corp., 505
Broderbund Software, Inc. v. Unison World, Inc., 799, 808, 809
 Brose v. Sears, Roebuck & Co., 506
 Brown Chemical Co. v. Meyer, 99, 100
 Brown Sheet Iron & Steel Co. v. Brown Steel Tank Co., 99
 Brulotte v. Thys Co., 21, 54, 486, 487
 Brunner v. Stix, Baer & Fuller Co., 45
 Brunswick Corp. v. Spinnet Reel Co., 907
Budge Mfg. Co., Inc., In re, 233, 249
 Burmel Handkerchief Corp. v. Cluett, Peabody & Co., Inc., 278
- Calmar, Inc. v. Cook Chem. Co.*, 450, 461, 462
 Callaghan v. Myers, 584, 585
Can-Am Engineering Co. v. Henderson Glass, Inc., 343
Carol Barnhart Inc. v. Economy Cover Corp., 878, 892, 894
Carson, In re, 251
Carson v. Here's Johnny Portable Toilets, Inc., 170, 185
 Carter Products, Inc. v. Colgate-Palmolive Co., 399
 Chamber of Commerce of Missoula, 69
 Champion Spark Plug Co. v. Sanders, 309
 Charcoal Steak House of Charlotte, Inc. v. Staley, 59
 Chicago Lock Co. v. Fanberg, 133
 Christianson v. Colt Industries Operating Corp., 196
 Chrysler Corp. v. Brown, 134, 135
 Clairol, Inc. v. Cody's Cosmetics, Inc., 85
 Clairol, Inc. v. Peekskill Thrift Drug Corp., 85
 Clairol, Inc. v. Sarann Co., 85
 Cloth v. Hyman, 708
 Coca-Cola Co. v. Gemini Rising, Inc., 310
 Coca-Cola Co. v. Koke Co. of America, 248
- Coca-Cola Company v. Victor Syrup Corporation, 318
 Coffee v. Guerrant, 418
 Cole v. Phillips H. Lord, Inc., 41
 Colligan v. Activities Club of New York, Limited, 356
 Columbia Broadcasting System, Inc. v. DeCosta, 560
 Columbia Broadcasting System, Inc. v. Documentaries Unlimited, Inc., 770
 Columbia Broadcasting System, Inc. v. Zenith Radio Corp., 527
 Columbia Pictures Corp. v. National Broadcasting Co., 662
 Columbia Pictures Industries, Inc. v. Professional Real Estate Investors, Inc., 620
Columbia Pictures Industries, Inc. v. Redd Horne, Inc., 604
Community for Creative Non-Violence v. Reid, 675, 688
Compco Corp. v. Day-Brite Lighting, Inc., 21, 22, 54, 107, 109, 110, 111, 112, 165, 560, 770, 907, 919
 Conmar Products Corp. v. Universal Slide Fastener Co., 125, 166
 Consumers Union of United States, Inc. v. New Regina Corp., 658
 Consumers Union of United States, Inc. v. Theodore Hamm Brewing Co., 353
 Contico Intern., Inc. v. Rubbermaid Commercial Products, Inc., 870
Cream Records, Inc. v. Jos. Schlitz Brewing Co., 703
Crescent Tool Co. v. Kilborn & Bishop Co., 101, 110
 Crocker National Bank v. Canadian Imperial Bank of Commerce, 215
 Crossbow, Inc. v. Dan-Dee Imports, Inc., 353
- Dale Electronics, Inc. v. R. C. L. Electronics, Inc., 409
 Daly v. Palmer, 715
 Dan Kasoff, Inc. v. Novelty Jewelry Co., 538
 Dan River Mills, Inc. v. Danfra Ltd., 308
David B. Findlay, Inc. v. Findlay, 93, 99, 100
 Davies v. Carnation Co., 47
 Davies v. Krasna, 43
 Davis v. General Foods Corporation, 47
Dawn Donut Company v. Hart's Food Stores, Inc., 218, 218, 287, 296, 297, 305, 306, 317
 Dawson Chemical Co. v. Rohm and Haas Co., 485
 DC Comics, Inc., *In re*, 279
 De Acosta v. Brown, 716
 DeCosta v. Columbia Broadcasting System, Inc., 560
 Deepsouth Packing Co. v. Laitram Corp., 481, 483
 Dejonge & Co. v. Breuker & Kessler Co., 540

TABLE OF CASES

- Delaware & Hudson Canal Co. v. Clark*, 219, 223
Denys Fisher (Spirograph) Limited v. Louis Marx & Co. of W.Va. Inc., 197
Desny v. Wilder, 41, 43
De Sylva v. Ballentine, 691
Diamond v. Chakrabarty, 426, 436, 450
Diamond v. Diehr, 827, 843, 844
Diamond Scientific Co. v. Ambico, Inc., 488
Donald v. Zack Meyer's T.V. Sales and Service, 578
Donald Frederick Evans and Associates, Inc. v. Continental Homes, Inc., 769
Downey v. General Foods Corp., 38
Dubilier Condenser Corp., United States v., 147
Dun v. Lumbermen's Credit Ass'n, 710
Duo-Tint Bulb & Battery Co., Inc. v. Moline Supply Co., 110
- Eckes v. Card Prices Update*, 583, 584
Edison v. Thomas A. Edison, Jr., Chemical Co., 99, 100
E.F. Johnson Co. v. Uniden Corp. of America, 823
Egbert v. Lippmann, 399
Eibel Process Co. v. Minnesota & Ontario Paper Co., 507
E. I. duPont de Nemours & Co. v. Christopher, 127, 132
Electric Smelting & Aluminum Co. v. Carborundum Co., 504
Eli Lilly and Co. v. Medtronic, Inc., 483
Elsmere Music, Inc. v. National Broadcasting Co., Inc., 659, 662
Erie R. Co. v. Tompkins, 198
Esquire, Inc. v. Ringer, 892, 893
Ex parte (see name of party)
- Farnum v. G.D. Searle & Co.*, 134
Federal-Mogul-Bower Bearings, Inc. v. Azoff, 353
Financial Information, Inc. v. Moody's Investors Service, Inc., 583
First Nat. Bank of Lander v. First Wyoming Sav. and Loan Ass'n, 112
Fleischmann Distilling Corp. v. Maier Brewing Co., 318
Flintkote Co. v. Tizer, 340
Florida Citrus Comm'n, In re, 256
FMC Corp. v. Manitowoc Co., Inc., 468
Food Center, Inc. v. Food Fair Stores, Inc., 74
Forest Laboratories, Inc. v. Formulations, Inc., 299 F.Supp. 202, pp. 113, 121, 122, 124, 125
Forest Laboratories, Inc. v. Pillsbury Co., 121, 126
Foster, Application of, 408
Foster, Ex parte, 448
Fotomat Corp. v. Cochran, 279
Fotomat Corp. v. Photo Drive-Thru, Inc., 279
- Fox-Stanley Photo Products, Inc. v. Otaguro*, 317
Franklin Mint Corp. v. National Wildlife Art Exchange, Inc., 742
Frederick Warne & Co., Inc. v. Book Sales Inc., 560
Fred Fisher Music Co. v. M. Witmark & Sons, 691, 692
Friend v. H. A. Friend & Co., 100
Frito Co. v. Buckeye Foods, Inc., 307
F.T.C. v. Formica Corp., 231
Fuddrucker, Inc. v. Doc's B.R. Others, Inc., 354
- Galt House, Inc. v. Home Supply Co.*, 60, 67
Gastown, Inc., Application of, 214
Gay Toys, Inc. v. Buddy L Corp., 894
General Drafting Co. v. Andrews, 715
General Electric Co. v. Alumpa Coal Co., 310
General Foods Corp. v. Struthers Scientific & Intern. Corp., 197
General Instrument Corp. v. Hughes Aircraft Co., 525
General Motors Corp. v. Toyota Motor Co., Ltd., 420
Gershwin Pub. Corp. v. Columbia Artists Management, Inc., 625
Gilliam v. American Broadcasting Companies, Inc., 743, 756
Girl Scouts of the United States of America v. Personality Posters Mfg. Co., 356
Golding v. R. K. O. Pictures, 41
Gold Seal Co. v. Weeks, 249
Goldstein v. California, 21, 22, 54, 110, 770, 919
Gottschalk v. Benson, 843
Graham v. John Deere Co., 360, 372, 373, 375, 376, 462
Graver Tank & Mfg. Co., Inc. v. Linde Air Products Co., 508, 523, 524
Great American Ins. Co., Ex parte, 277
Gross v. Seligman, 740, 742
- Haig & Haig Ltd., Ex parte*, 278
Hall, In re, 398
Hamilton, United States v., 583
Hamilton Nat. Bank v. Belt, 45
Handmacher-Vogel, Inc., Ex parte, 253
Hanover Star Milling Co. v. Metcalf, 75
Hanson v. Alpine Valley Ski Area, Inc., 495, 506
Harper & Row Publishers, Inc. v. Nation Enterprises, 636, 653, 659, 660, 664
Harris-Intertype Corp., Application of, 247
Hartford House, Ltd. v. Hallmark Cards, Inc., 354, 355
Hartop, In re, 418, 419
Hasbro Bradley, Inc. v. Sparkle Toys, Inc., 531, 541
Hassenfeld Bros., Inc. v. Mego Corp., 715
Hazeltine Research, Inc. v. Brenner, 403, 408

TABLE OF CASES

- Head Ski Co. v. Kam Ski Co., 125, 146
 Henri's Food Products Co., Inc. v. Kraft, Inc., 341
 Herbert Rosenthal Jewelry Corp. v. Grossbardt, 538
 Herbert Rosenthal Jewelry Corp. v. Kalpakian, 571
 Hibberd, *In re*, 450
 Higgins v. Keuffel, 561
 High v. Trade Union Courier Pub. Corp., 42
 Hildreth v. Mastoras, 418
 H. M. Kolbe Co. v. Armigus Textile Co., 540
 Hollywood Jewelry Mfg. Co. v. Dushkin, 570
 Honeywell, Inc., Application of, 908
 How J. Ryan & Associates v. Century Brewing Ass'n, 28
 Hurn v. Oursler, 197, 198
 Hustler Magazine, Inc. v. Moral Majority, Inc., 663
 Hybritech Inc. v. Monoclonal Antibodies, Inc., 425
- Imperial Homes Corp. v. Lamont*, 593
***In re* (see name of party)**
 International Carrier-Call & Television Corp. v. Radio Corp. of America, 419
 International News Service v. Associated Press, 767
 Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 110, 342, 906
 Iowa State University Research Foundation, Inc. v. American Broadcasting Companies, Inc., 659
 Irons & Sears v. Dann, 167
 Isenstead v. Watson, 418
 Iwahashi, *In re*, 844
- Jet Spray Cooler, Inc. v. Crampton, 126
 John Morrell & Co. v. Reliable Packing Co., 285
Johnson & Johnson v. Carter-Wallace, Inc., 347
 Joshua Meier Company v. Albany Novelty Mfg. Co., 353
Jostens, Inc. v. National Computer Systems, Inc., 844
 J. T. Healy & Son, Inc. v. James A. Murphy & Son, Inc., 124
- Kahan & Weisz Jewelry Mfg. Corp., Application of, 247
Keene Corp. v. Paraflex Industries, Inc., 899, 907
 Kellogg Co. v. National Biscuit Co., 60, 230, 232
 Kepner-Tregoe, Inc. v. Carabio, 723
Kewanee Oil Co. v. Bicron Corp., 21, 22, 54, 110, 152, 165, 166
 Kieselstein-Cord v. Accessories by Pearl, Inc., 894
 King v. Mister Maestro, Inc., 543
- Kingsdown Medical Consultants, Ltd. v. Hollister Inc., 468
King-Seeley Thermos Co. v. Aladdin Industries, Inc., 218, 219, 224, 228
 Kinkade v. New York Shipbuilding Corp., 147
 Kleinman v. Kobler, 373
 Kori Corp. v. Wilco Marsh Buggies & Draglines, Inc., 505
 Kotzin, *In re*, 275
 Krimmel, *In re*, 418, 419
 K-2 Ski Co. v. Head Ski Co., Inc., 125
 Kurlan v. Columbia Broadcasting System, 41
- Lahr v. Adell Chemical Co., 184
 L' Aiglon Apparel v. Lana Lobell, Inc., 353
 Lamothe v. Atlantic Recording Corp., 353, 756
 L. Batlin & Son, Inc. v. Snyder, 569, 570
 Lear, Inc. v. Adkins, 21, 487
 Lee v. Runge, 570
 LeGrice, Application of, 449
 Leon v. Pacific Telephone & Telegraph Co., 662
 Levi Strauss & Co., *In re*, 275
 Levi Strauss & Co. v. Blue Bell, Inc., 276
 Levitt Corp. v. Levitt, 100, 101
 Lincoln Park Van Lines, 277
 L.L. Bean, Inc. v. Drake Publishers, Inc., 84
 Loctite Corp. v. Ultraseal Ltd., 375
 Loew's, Inc. v. Columbia Broadcasting System, 661
Loew's Theatres, Inc., In re, 242, 249
 Lowell v. Lewis, 410, 416
Lueddecke v. Chevrolet Motor Co., 30, 47
 Lugosi v. Universal Pictures, 184
 Lyon v. Lyon, 100
- Maltina Corp. v. Cawby Bottling Co., Inc.*, 311, 317
Manhattan Industries, Inc. v. Sweater Bee by Banff, Ltd., 211, 217, 218
 Manufacturers Technologies, Inc. v. Cams, Inc., 810
 Marcus Advertising, Inc. v. M. M. Fisher Associates, Inc., 28
 Masline v. New York, N. H. & H. R. Co., 37, 42, 43
 Mastro Plastics Corp. v. Emenee Industries, Inc., 69
 Matarese v. Moore-McCormack Lines, 44
 Maternally Yours v. Your Maternity Shop, 198
Mazer v. Stein, 556, 557, 870, 892
 MCA, Inc. v. Wilson, 662
 McGinley, *In re*, 250
McGregor-Doniger, Inc. v. Drizzle, Inc., 326
 McKenzie v. Cummings, 418
Mead Data Cent., Inc. v. Toyota Motor Sales, U.S.A., Inc., 76, 83
 Mead Digital Systems, Inc. v. A.B. Dick Co., 524

TABLE OF CASES

Meredith Corp. v. Harper & Row, Publishers, Inc., 660
 Metric & Multistandard Components Corp. v. Metric's, Inc., 357
 Midler v. Ford Motor Co., 185
 Midway Mfg. Co. v. Strohon, 797
Miller v. Universal City Studios, Inc., 572, 582
 Miller Brewing Co. v. G. Heileman Brewing Co., Inc., 223
 Miller Music Corp. v. Charles N. Daniels, Inc., 691
 Mills Music, Inc. v. Snyder, 693
 Milprint, Inc. v. Curwood, Inc., 196
 Minnesota Mining & Mfg. Co., Ex parte, 278
Mirage Editions, Inc. v. Albuquerque A.R.T. Co., 617
 Mitchell Bros. Film Group v. Cinema Adult Theater, 547, 561, 562
 Mobil Oil Corp. v. Pegasus Petroleum Corp., 342
 Mogen David Wine Corp., Application of, 907
 Monolith Portland Midwest Co. v. Kaiser Aluminum & Chemical Corp., 126
 Morrissey v. Procter & Gamble Co., 585
 Morse v. Fields, 715
 Morton v. New York Eye Infirmary, 437
Morton-Norwich Products, Inc., In re, 895, 906
 Mosler Safe Co. v. Ely-Norris Safe Co., 68
 Mueller Brass Co. v. Reading Industries, Inc., 421
 Muller, Ex parte, 437
 Muller v. Triborough Bridge Authority, 593
 Musher Foundation v. Alba Trading Co., 198
 Musto v. Meyer, 724
 Mutation Mink Breeders Ass'n v. Lou Nierenberg Corp., 353
 Mutual of Omaha Ins. Co. v. Novak, 310

N.A.D. Inc., In re, 236
Nalbandian, In re, 857, 869
 Nantucket, Inc., In re, 223
 National Biscuit Co. v. Princeton Min. Co., 338
 National Business Lists, Inc. v. Dun & Bradstreet, Inc., 798
 National Comics Publications v. Fawcett Publications, 541
 National Conference of Bar Examiners v. Multistate Legal Studies, Inc., 551
 National Football League Properties, Inc. v. Consumer Enterprises, Inc., 109
 NEC Corp. v. Intel Corp., 798
 Nerney v. New York, N. H. & H. R. Co., 504
 New York Times Co. v. Roxbury Data Interface, Inc., 664
Nichols v. Universal Pictures Corp., 560, 718

Ocuppaugh v. Norton, 401
Oddo v. Ries, 686
 Official Airlines Schedule Information Service, Inc. v. Eastern Air Lines, Inc., 45
 Onassis v. Christian Dior-New York, Inc., 185, 186
Original Appalachian Artworks, Inc. v. Toy Loft, Inc., 546
Owens-Corning Fiberglas Corp., In re, 266, 274

 Pagliero v. Wallace China Co., 907
 Panduit Corp. v. Dennison Mfg. Co., 375
Paper Converting Machine Co. v. Magna-Graphics Corp., 469, 481, 483, 490
 Parker v. Flook, 843
 Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 285
Paulik v. Rizkalla, 391
 Pennwalt Corp. v. Durand-Wayland, Inc., 523
 Pentec, Inc. v. Graphic Controls Corp., 373
 Perfect Fit Industries, Inc. v. Acme Quilting Co., Inc., 66
 Peter Starr Production Co. v. Twin Continental Films, Inc., 936
 Picard v. United Aircraft Corp, 20
Pikle-Rite Co. v. Chicago Pickle Co., 320, 340
 Pioneer First Federal Sav. and Loan Ass'n v. Pioneer Nat. Bank, 112
Plains Cotton Co-op. Ass'n of Lubbock, Texas v. Goodpasture Computer Service, Inc., 790, 797
 Power Controls Corp. v. Hybrinetics, Inc., 908
 Prestonettes, Inc. v. Coty, 308, 309
 Puddu v. Buonamici Statuary, Inc., 538
 Pushman v. New York Graphic Soc., 670

 Raxton Corp. v. Anania Associates, Inc., 76
 Raytheon Co. v. Roper Corp., 418
 Reddy Communications, Inc. v. Environmental Action Foundation, 309
Reed, Roberts Associates, Inc. v. Strauman, 142, 166
 Reeves Bros., Inc. v. United States Laminating Corp., 376
 Republic Pictures Corp. v. Security-First Nat. Bank, 195, 196
 Richter v. Westab, Inc., 27
 Rickard v. Du Bon, 417
 Rivera Watch Corp., Ex parte, 247
 Robbins v. Frank Cooper Assoc., 45
 Robert R. Jones Assoc., Inc. v. Nino Homes, 894
 Roberts v. Sears, Roebuck & Co., 376
 Roche Products, Inc. v. Bolar Pharmaceutical Co., Inc., 482, 483
 Rohauer v. Killiam Shows, Inc., 692
 Rohm & Haas Co. v. Crystal Chemical Co., 505
 Rosette v. Rainbo Record Mfg. Corp., 544

TABLE OF CASES

- Ross Products, Inc. v. New York Merchandise Co., 547
- Roth v. Pritikin, 689
- Roth Greeting Cards v. United Card Co., 656
- Ruckelshaus v. Monsanto Co., 135
- Ruesch v. Ruesch Intern. Monetary Services, Inc., 147
- Rushton v. Vitale, 709
- Russ Berrie & Co., Inc. v. Jerry Elsner Co., Inc., 546
- Russell v. Northeastern Pub. Co., 594
- Russell v. Price*, 589, 593
- Sakraida v. Ag Pro, Inc., 374
- Salinger v. Random House, Inc., 659
- Sample, Inc., The v. Porraath*, 70, 74, 75, 85
- Samson Cordage Works v. Puritan Cordage Mills, 111
- San Francisco Arts & Athletics, Inc. v. United States Olympic Committee, 306
- Sarkar, Application of, 167
- Sarkes Tarzian, Inc. v. Audio Devices, Inc., 124, 125
- Sawin v. Guild, 482
- Scarves by Vera, Inc. v. Todo Imports Ltd.*, 297, 305, 306
- Scholz Homes, Inc. v. Maddox, 592
- Schonwald v. F. Burkart Mfg. Co., 37
- SCM Corp. v. Langis Foods Ltd., 215
- Screen Gems-Columbia Music, Inc. v. Mark-Fi Records, Inc., 625
- Sears, Roebuck & Co. v. Allstate Driving School, Inc.*, 336, 338, 355
- Sears, Roebuck & Co. v. Stiffel Co.*, 21, 22, 54, 103, 109, 110, 111, 112, 165, 560, 770, 907, 919
- Secure Services Technology, Inc. v. Time and Space Processing, Inc., 798
- See v. Durang*, 712
- Selchow & Righter Co. v. McGraw-Hill Book Co., 231
- Selle v. Gibb*, 724
- Sellers v. American Broadcasting Co.*, 23, 28
- Senza-Gel Corp. v. Seiffhart, 486
- Servo Corporation of America v. Kelsey-Hayes Company, 307
- Servo Corporation of America v. Servo-Tek Products Co., 307
- Shapiro, Bernstein & Co. v. H. L. Green Co., 626
- Shapiro, Bernstein & Co. v. Miracle Record Co., 544
- Sheldon v. Metro-Goldwyn Pictures Corporation*, 81 F.2d 49, pp. 564, 569, 707
- Shellmar Products Co. v. Allen-Qualley Co., 125
- Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp., 707, 714
- Silenus Wines, Inc., Application of, 214, 215
- Silverman v. CBS, Inc., 217, 218
- Sinatra v. Goodyear Tire & Rubber Co., 185
- Singer Mfg. Co. v. June Mfg. Co., 232
- Singer Mfg. Co. v. Redlich, 233
- Skil Corp. v. Rockwell Intern. Corp., 354
- Smith, In re, 400
- Smith v. BIC Corp., 134
- Smith v. Chanel, Inc., 65, 66
- Smith v. Montoro, 353, 756
- Smith v. Recrion Corp., 43
- Smith Intern., Inc. v. Hughes Tool Co., 504
- Societe Comptoir De L'Industrie Cotonniere Etablissements Boussac v. Alexander's Dept. Stores, Inc., 355
- Solomons v. United States, 147
- Sony Corp. of America v. Universal City Studios, Inc.*, 625, 628, 629, 710
- South Corp. v. United States, 199
- Special Equipment Co. v. Coe, 489
- Springs Mills, Inc. v. Ultracashmere House, Ltd., 318
- Springsteen v. Plaza Roller Dome, Inc.*, 610
- Standard Oil Co. v. American Cyanamid Co., 376
- Standard & Poor's Corp., Inc. v. Commodity Exchange, Inc., 92
- Standard Pressed Steel Co. v. Midwest Chrome Process Co., 213
- Stanley v. Columbia Broadcasting System, 36, 41
- Steinberg v. Columbia Pictures Industries, Inc.*, 732, 742
- Stephano v. News Group Publications, Inc., 193
- Sterling Brewing, Inc. v. Cold Spring Brewing Corp., 296
- Stern Electronics, Inc. v. Kaufman, 809
- Stevens v. National Broadcasting Co., 70
- Stevens Linen Associates, Inc. v. Mastercraft Corp.*, 699
- Stratoflex, Inc. v. Aeroquip Corp., 374
- Straus v. Notaseme Hosiery Co., 318
- Structural Rubber Products Co. v. Park Rubber Co., 397
- Suid v. Newsweek Magazine, 689
- Sullivan v. Ed Sullivan Radio & T.V., Inc.*, 97, 100
- Sun Oil Co., Application of*, 239
- Sutter Products Co. v. Pettibone Mulliken Corp., 409
- Synercom Technology, Inc. v. University Computing Co., 795
- Syntex Laboratories, Inc. v. Norwich Pharmacal Co., 340, 341
- Tabor v. Hoffman*, 149
- Taylor v. Meirick, 708
- T. B. Harms Co. v. Eliscu, 195
- Ted Arnold Limited v. Silvercraft Co., 893
- Telephone Cases, The, 401
- Telex Corp. v. International Business Machines Corp., 127
- Tenney, Application of, 398

TABLE OF CASES

- Thomas Wilson & Co. v. Irving J. Dorfman Co., 707
- Thorn v. Reliance Van Co., Inc., 356
- Tiffany & Co. v. Tiffany Productions, Inc., 84
- Tilghman v. Proctor, 397
- Tillamook County Creamery Ass'n v. Tillamook Cheese and Dairy Ass'n, 285
- Timely Products Corp. v. Arron, 484
- T.J. Hooker v. Columbia Pictures Industries, Inc., 185
- Townsend Engineering Co. v. Hitec Co., Ltd.*, 514, 524
- Trade-Mark Cases, In re, 20, 201
- Transgo, Inc. v. Ajac Transmission Parts Corp., 708
- Triangle Publications, Inc. v. Knight-Ridder Newspapers, Inc., 658, 664
- Triplett v. Lowell, 526
- Truck Equipment Service Co. v. Fruehauf Corp., 111
- UMC Electronics Co. v. United States*, 383
- Uncas Mfg. Co. v. Clark & Coombs Co., 218
- Underwater Devices Inc. v. Morrison-Knudsen Co., Inc., 505
- Unette Corp. v. Unit Pack Co., Inc., 908
- Union Carbide & Carbon Corp. v. Graver Tank & Mfg. Co., 525
- Union Carbide Corp. v. Graver Tank & Mfg. Co., 506
- Uniroyal, Inc. v. Rudkin-Wiley Corp., 373
- United Drug Co. v. Theodore Rectanus Co.*, 286
- United States v. ——— (see opposing party)**
- United States Golf Ass'n v. St. Andrews Systems, Data-Max, Inc., 92
- University of Illinois Foundation v. Blonder-Tongue Laboratories, Inc., 398
- Upton v. Ladd, 418
- USM Corp. v. Marson Fastener Corp., 123, 124
- USM Corp. v. SPS Technologies, Inc., 486
- Vacheron & Constantin-Le Coultre Watches, Inc. v. Benrus Watch Co., 552
- Valco Cincinnati, Inc. v. N & D Machining Service, Inc., 125
- Van Products Co. v. General Welding & Fabricating Co., 165
- Vault Corp. v. Quaid Software Ltd.*, 810
- Verdegaal Bros., Inc. v. Union Oil Co. of California, 197
- Videotronics, Inc. v. Bend Electronics, 541
- Vocational Personnel Services, Inc. v. Statistical Tabulating Corp., 66
- Vogue Ring Creations, Inc. v. Hardman, 546
- Wainwright Securities, Inc. v. Wall St. Transcript Corp., 664
- Walker Process Equipment, Inc., In re, 277
- Wall v. Rolls-Royce of America, 84
- Walt Disney Productions v. Air Pirates*, 654, 661, 662, 664
- Walt Disney Productions v. Mature Pictures Corp., 657
- Walters v. Shari Music Pub. Corp., 197
- Warner Bros. Inc. v. American Broadcasting Companies, Inc., 718
- Warner-Lambert Pharmaceutical Co. v. John J. Reynolds, Inc., 165, 166
- Watsco, Inc. v. Henry Valve Co., 484
- Weil Ceramics and Glass, Inc. v. Dash*, 961
- Weiner King, Inc. v. Wiener King Corp., 295
- Weitzenkorn v. Lesser, 41
- Werlin v. Reader's Digest Ass'n, Inc., 44
- West Des Moines State Bank v. Hawkeye Bancorporation, 67
- West Pub. Co. v. Mead Data Cent., Inc., 584
- Wexler v. Greenberg*, 137, 147
- Whelan Associates, Inc. v. Jaslow Dental Laboratory, Inc.*, 773, 797, 798
- Whetzel, United States v., 710
- White v. Kimmell, 543
- White-Smith Music Pub. Co. v. Apollo Co., 554
- Whitfield v. Lear, 42
- Whittemore v. Cutter, 482
- Wilbur-Ellis Co. v. Kuther*, 479, 481
- William R. Warner & Co. v. Eli Lilly & Co.*, 56
- William Skinner & Sons, Ex parte, 277
- Williams & Wilkins Co. v. United States, 661
- Winans v. Denmead, 522
- Windsurfing Intern. Inc. v. AMF, Inc., 374
- Winston Research Corp. v. Minnesota Min. & Mfg. Co., 126
- Winthrop-Stearns, Inc. v. Milner Products Co., 276
- W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 421
- Worden v. California Fig Syrup Co., 248
- Worden v. Fisher, 420
- W.T. Rogers Co., Inc. v. Keene*, 905
- Yadkoe v. Fields, 47
- Yardley, In re, 908
- Yoder Bros., Inc. v. California-Florida Plant Corp.*, 437, 448
- Zacchini v. Scripps-Howard Broadcasting Company*, 186, 193, 769
- Zatarains, Inc. v. Oak Grove Smokehouse, Inc., 308
- Zippo Mfg. Co. v. Rogers Imports, Inc., 110

*

SUMMARY OF CONTENTS

	Page
PREFACE.....	xxi
TABLE OF CASES.....	xxix

PART ONE. INTELLECTUAL PROPERTY IN CONTEXT

I. The Nature and Functions of Intellectual Property Law	1
A. Copyright.....	2
B. Patent	10
C. Trademark.....	16
II. The Sources and Limits of Intellectual Property Law	20

PART TWO. STATE LAW OF INTELLECTUAL PROPERTY

I. Rights in Undeveloped Ideas.....	23
A. Theories of Protection	30
B. Limits of Protection: The Place of Ideas in the Competi- tive Plan	48
II. Unfair Competition	55
A. Theory of Protection	56
B. Limits of Protection	93
III. Trade Secrets	113
A. Theory of Protection	113
B. Limits of Protection	137
IV. Common Law Copyright.....	168
V. Right of Publicity	170
A. Theory of Protection	170
B. Limits of Protection	186

PART THREE. FEDERAL LAW OF INTELLECTUAL PROPERTY

I. Trademark Law	200
A. Requirements for Protection	203
B. Administrative Procedures	280
C. Rights and Remedies.....	286
D. Infringement.....	320
E. Federal Unfair Competition Law: Lanham Act § 43(a)	343

SUMMARY OF CONTENTS

	Page
II. Patent Law	358
A. Requirements for Protection	359
B. Administrative Procedures	450
C. Rights and Remedies	469
D. Infringement	506
III. Copyright Law	528
A. Requirements for Protection	530
B. Rights and Remedies	585
C. Infringement	711
D. Rights Beyond Copyright: Moral Right	742
E. Preemption of State Law	759

PART FOUR. INTELLECTUAL PROPERTIES IN CONCERT: COMPUTER PROGRAMS AND INDUSTRIAL DESIGN

I. Computer Programs	773
A. Copyright	773
B. Patent Law	827
C. Trade Secret	844
II. Industrial Design	857
A. Design Patent Law	857
B. Copyright Law	870
C. Trademark and Unfair Competition Law	895
D. Federal Preemption	910

PART FIVE. INTERNATIONAL PROTECTION: THE CONVENTIONS

I. Copyright	922
II. Patent	939
III. Trademark	949
Index	975

TABLE OF CONTENTS

	Page
PREFACE.....	xxi
TABLE OF CASES.....	xxix

PART ONE. INTELLECTUAL PROPERTY IN CONTEXT

I. The Nature and Functions of Intellectual Property Law.....	1
A. Copyright.....	2
B. Patent.....	10
C. Trademark.....	16
II. The Sources and Limits of Intellectual Property Law.....	20

PART TWO. STATE LAW OF INTELLECTUAL PROPERTY

I. Rights in Undeveloped Ideas.....	23
A. Theories of Protection.....	30
B. Limits of Protection: The Place of Ideas in the Competitive Plan.....	48
II. Unfair Competition.....	55
A. Theory of Protection.....	56
1. Passing Off and Secondary Meaning.....	56
2. Zone of Expansion.....	70
3. Dilution.....	76
4. Misappropriation.....	86
B. Limits of Protection.....	93
1. Personal Interests: Rights in Names.....	93
2. Economic Interests: The Place of Unfair Competition in the Competitive Plan.....	101
III. Trade Secrets.....	113
A. Theory of Protection.....	113
B. Limits of Protection.....	137
1. Personal Interests: Restraints on Post-Employment Competition.....	137
2. Economic Interests: The Place of Trade Secrets in the Competitive Plan.....	149
IV. Common Law Copyright.....	168

TABLE OF CONTENTS

		Page
V.	Right of Publicity	170
	A. Theory of Protection	170
	B. Limits of Protection	186

PART THREE. FEDERAL LAW OF INTELLECTUAL PROPERTY

I.	Trademark Law	200
	A. Requirements for Protection	203
	1. Use and Use in Commerce	203
	2. Distinctiveness	219
	a. Common Law Theory	219
	b. Statutory Variations on the Common Law Theme	224
	i. "Trademark By Which the Goods of the Applicant May be Distinguished from the Goods of Others"	224
	ii. "Deceptive . . . Matter"	233
	iii. Confusing Similarity to Prior Marks	236
	iv. "Merely Descriptive or Deceptively Misde- scriptive"	239
	v. "Primarily Geographically Descriptive or Deceptively Misdescriptive"	242
	3. Statutory Subject Matter	251
	a. Types of Marks	251
	i. Trademarks and Service Marks	251
	ii. Certification Marks and Collective Marks	256
	b. Content	266
	B. Administrative Procedures	280
	C. Rights and Remedies	286
	1. Rights	286
	a. Geographic Boundaries	286
	b. Product Boundaries: Dilution	297
	2. Remedies	311
	D. Infringement	320
	E. Federal Unfair Competition Law: Lanham Act § 43(a)	343
II.	Patent Law	358
	A. Requirements for Protection	359
	1. Statutory Standards	359
	a. Section 103: Nonobviousness	360
	b. Section 102: Novelty and the Statutory Bars	377
	c. Sections 102 and 103 in Concert: What is Prior Art?	403
	d. Utility	410
	e. Inventorship	419
	f. Enabling Disclosure	421

TABLE OF CONTENTS

	Page
II. Patent Law—Continued	
2. Statutory Subject Matter	426
a. Utility Patents	426
b. Plant Patents	437
B. Administrative Procedures	450
C. Rights and Remedies	469
1. Rights	469
2. Remedies	490
D. Infringement	506
III. Copyright Law	528
A. Requirements for Protection	530
1. Formalities	530
a. Notice	530
b. Registration and Deposit	544
2. Statutory Subject Matter	552
3. Original Expression	564
a. The Originality Standard	564
b. The Originality Standard Applied	571
B. Rights and Remedies	585
1. Rights	585
a. The Nature of Copyright	585
b. Statutory Rights	594
c. Fair Use	628
d. Duration, Ownership and Transfer	665
2. Remedies	694
C. Infringement	711
1. Literature	718
2. Music	724
3. Visual Arts	732
D. Rights Beyond Copyright: Moral Right	742
E. Preemption of State Law	759

PART FOUR. INTELLECTUAL PROPERTIES IN CONCERT: COMPUTER PROGRAMS AND INDUSTRIAL DESIGN

I. Computer Programs	773
A. Copyright	773
1. Scope of Protection	773
a. Operating Systems and Application Programs	773
b. Pictorial, Graphic and Audiovisual Works	799
2. Limits of Protection	810
B. Patent Law	827
C. Trade Secret Law	844