

INTELLECTUAL PROPERTY

CASES AND MATERIALS

Second Edition

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Mary LaFrance
Gary Myers

American Casebook Series®

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Second Edition

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The authors dedicate this edition to

TO M BLACKWELL
1961 – 2002

Gladly wolde he lerne, and gladly teche

*

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*

Preface to the Second Edition

This casebook offers comprehensive coverage of all of the basic doctrinal areas of study and practice in the field now known as intellectual property. We begin with a Prologue that invites students to reflect on the presuppositions they may bring to their study. We move on through an introduction that sketches the broad outlines of the field in bold strokes. We turn next to unfair competition and trademarks, to publicity rights and the law of ideas, and to trade secrets; and from there we move on into patents and copyright in all of their extraordinary complexity, with coverage worthy of stand-alone texts in these fields. Teachers will find our book thorough and detailed, while remaining remarkably “teachable”; and students will find the materials accessible, yet truly rich in learning.

In most respects the Second Edition of our casebook continues to reflect the underlying editorial judgments and values that were the hallmark of the First. Our observations then remain true today:

In at least one sense this is a deliberately old-fashioned casebook—a book, that is to say, in which, where possible, cases take unabashed precedence over the notes and textual materials that support them. In our experience this is often the best way to introduce the subject of intellectual property to students for whom the foundational principles are new and the necessary habits of thinking still unfamiliar and complex. Nothing surpasses Learned Hand’s marvelous language in Nichols and Sheldon, for example, in explaining the fundamental theory of copyright infringement among derivative works; nor the opinions of Judge Rich laying out, in one carefully crafted paragraph after another, the precepts of patent law; nor yet again the opinion of Mr. Justice Miller in the Supreme Court’s Trademark Cases delineating what is expected of legislation under the Intellectual Property Clause. Good cases, plentiful in number, chosen with respect for tradition as well as an eye to the future, and edited with a light touch to preserve the voice of the original author—we think these make for good classroom discussion.

At the same time, however, there is no escaping the central role that statutes play in this field today, and our book also acknowledges that reality. In trademark law, and more particularly still in the fields of copyright and patent law, certain doctrines embodied in contemporary federal statutes require students to pay close attention to complex provisions of the United States Code. Here our approach reflects the primacy of the statutory provisions; readings are designed not to reiterate the statutes but to supplement them. Some note questions are meant to test students’ understanding when assigned statutory provisions have not been highlighted or otherwise interpreted for them in preceding materials.

Other note questions invite a critical look at existing statutes and judicial interpretations, and suggest the merit in alternative approaches. Students who do not have significant experience in interpreting and applying statutes will find this aspect of the course challenging—and no doubt sometimes frustrating as well; but in any case they ought to find these materials of lasting value.

We should add that the book has been fashioned with the advent of the print-cum-digital millennium no less fully in mind. The organization and contents of this text amply reflect the achievements and the controversies embodied in intellectual property at a moment in time when the field itself has become a force to be reckoned with around the globe. In acknowledgment of the rich diversity of opinion the discipline now entails, we have deliberately fashioned room for all within these pages. Low protectionists, high protectionists and others will find their perspectives reflected here; disciples of postmodernism as well as classicists, traditionalists, liberals, conservatives, libertarians and Luddites are invited to make themselves at home. What we have designed, in short, is a casebook traditional in coverage, and then again quite new—with materials sufficient for a two-, three- or even four-hour comprehensive course in fundamental IP doctrines, as well as “break-out” courses in individual subject areas, both basic and advanced.

We hope that these materials will provide some moments of genuine pleasure as well as comprehensive instruction. Indeed, in our experience, it is usual for students and instructors alike to enjoy the subject of intellectual property. The field is complex, fast-moving and important; but it is also often fun. We trust that you will find it so.¹

1. A word about editing: Cases and materials in the text have been edited not only as required in the author's judgment but also to conform to style approved by West

Group. In particular, citations and footnotes are sometimes omitted without specific indication.

Table of Cases

The principal cases are in bold type. Cases cited or discussed in the text are roman type. References are to pages. Cases cited in principal cases and within other quoted materials are not included.

- Abdul-Jabbar v. General Motors Corp., 85 F.3d 407 (9th Cir.1996), 238, 296
- Abend v. MCA, Inc., 863 F.2d 1465 (9th Cir.1988), 1134, 1135, 1136
- Abercrombie & Fitch Co. v. Hunting World, Inc.**, 537 F.2d 4 (2nd Cir.1976), 95
- ABKCO Music, Inc. v. LaVere, 217 F.3d 684 (9th Cir.2000), 788
- Academy of Motion Picture Arts and Sciences v. Creative House Promotions, Inc., 944 F.2d 1446 (9th Cir.1991), 786
- Adams v. Burke, 84 U.S. 453, 21 L.Ed. 700 (1873), 591
- Adams, United States v., 383 U.S. 39, 86 S.Ct. 708, 15 L.Ed.2d 572 (1966), 392
- Addison-Wesley Pub. Co. v. Brown, 223 F.Supp. 219 (E.D.N.Y.1963), 687
- Addison-Wesley Pub. Co., Inc. v. New York University, 1983 Copr.L.Dec. (CCH) ¶ 25,544 (S.D.N.Y.1983), 1009
- Advanced Computer Services of Michigan, Inc. v. MAI Systems Corp., 845 F.Supp. 356 (E.D.Va.1994), 836, 899
- Agee v. Paramount Communications, Inc., 59 F.3d 317 (2nd Cir.1995), 906
- Alappat, In re, 33 F.3d 1526 (Fed.Cir.1994), 370
- Alcatel USA, Inc. v. DGI Technologies, Inc., 166 F.3d 772 (5th Cir.1999), 1130
- Alexander Milburn Co. v. Davis-Bournonville Co.**, 270 U.S. 390, 46 S.Ct. 324, 70 L.Ed. 651 (1926), 393, 395, 413
- Alfred Bell & Co. v. Catalda Fine Arts**, 191 F.2d 99 (2nd Cir.1951), 7, 688, 700, 701, 839
- Allarcom Pay Television, Ltd. v. General Instrument Corp., 69 F.3d 381 (9th Cir. 1995), 871, 1144
- ALS Scan, Inc. v. RemarQ Communities, Inc.**, 239 F.3d 619 (4th Cir.2001), 1061
- Alva Studios, Inc. v. Winninger, 177 F.Supp. 265 (S.D.N.Y.1959), 700
- American Dental Ass'n v. Delta Dental Plans Ass'n, 126 F.3d 977 (7th Cir. 1997), 733
- American Exp. Co. v. CFK, Inc., 947 F.Supp. 310 (E.D.Mich.1996), 218
- American Geophysical Union v. Texaco Inc., 60 F.3d 913 (2nd Cir.1994), 960, 962
- American Medical Systems, Inc. v. Medical Engineering Corp., 6 F.3d 1523 (Fed.Cir. 1993), 611
- American Tobacco Co. v. Werckmeister, 207 U.S. 284, 28 S.Ct. 72, 52 L.Ed. 208 (1907), 786
- American Visuals Corp. v. Holland, 239 F.2d 740 (2nd Cir.1956), 786
- AmeriGas Propane, L.P. v. T-Bo Propane, Inc., 972 F.Supp. 685 (S.D.Ga.1997), 307
- Amerise, In re, 160 U.S.P.Q. 687 (Trademark Tr. & App. Bd.1969), 146
- AMF Inc. v. Sleafcraft Boats, 599 F.2d 341 (9th Cir.1979), 43, 50
- A & M Records, Inc. v. Napster, Inc.**, 239 F.3d 1004 (9th Cir.2001), 964, 974, 983, 1059, 1125, 1136
- A & M Records, Inc. v. Napster, Inc., 114 F.Supp.2d 896 (N.D.Cal.2000), 1059, 1136
- Amsinck v. Columbia Pictures Industries, Inc., 862 F.Supp. 1044 (S.D.N.Y.1994), 834, 835, 871, 961
- Anheuser-Busch Inc. v. Andy's Sportswear Inc., 40 U.S.P.Q.2d 1542 (N.D.Cal.1996), 217
- Anheuser-Busch, Inc. v. L. & L. Wings, Inc., 962 F.2d 316 (4th Cir.1992), 226
- Anti-Monopoly, Inc. v. General Mills Fun Group, Inc., 684 F.2d 1316 (9th Cir. 1982), 94
- Apple Computer, Inc. v. Formula Intern., Inc., 594 F.Supp. 617 (C.D.Cal.1984), 836
- Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240 (3rd Cir.1983), 702

- Apple Computer, Inc. v. Microsoft Corp.**, 35 F.3d 1435 (9th Cir.1994), 1040
- Applegate v. Scherer**, 51 C.C.P.A. 1416, 332 F.2d 571 (Cust. & Pat.App.1964), 396
- Application of (see name of party)**
- Archie Comic Publications, Inc. v. DeCarlo**, 141 F.Supp.2d 428 (S.D.N.Y.2001), 1191
- Arnstein v. Porter**, 154 F.2d 464 (2nd Cir.1946), 1027
- Aromatique, Inc. v. Gold Seal, Inc.**, 28 F.3d 863 (8th Cir.1994), 272
- Aro Mfg. Co. v. Convertible Top Replacement Co. (Aro II)**, 377 U.S. 476, 84 S.Ct. 1526, 12 L.Ed.2d 457 (1964), 569, 574
- Aro Mfg. Co. v. Convertible Top Replacement Co. (Aro I)**, 365 U.S. 336, 81 S.Ct. 599, 5 L.Ed.2d 592 (1961), 567, 569, 572
- Arrow Fastener Co., Inc. v. Stanley Works**, 59 F.3d 384 (2nd Cir.1995), 181
- Atari Games Corp. v. Nintendo of America Inc.**, 975 F.2d 832 (Fed.Cir.1992), 945
- Atlantic Thermoplastics Co., Inc. v. Faytex Corp.**, 970 F.2d 834 (Fed.Cir.1992), 529
- Atlas Powder Co. v. Ireco Chemicals**, 773 F.2d 1230 (Fed.Cir.1985), 613
- AT&T Corp. v. Excel Communications, Inc.**, 172 F.3d 1352 (Fed.Cir.1999), 371
- Autogiro Co. of America v. United States**, 181 Ct.Cl. 55, 384 F.2d 391 (Ct. Cl.1967), 525, 540, 541
- Automatic Radio Mfg. Co. v. Hazeltine Research**, 339 U.S. 827, 70 S.Ct. 894, 94 L.Ed. 1312 (1950), 596
- Automatic Weighing Mach. Co. v. Pneumatic Scale Corp.**, 166 F. 288 (1st Cir.1909), 403
- Autoskill Inc. v. National Educational Support Systems, Inc.**, 994 F.2d 1476 (10th Cir.1993), 718
- Avia Group Intern., Inc. v. L.A. Gear California, Inc.**, 853 F.2d 1557 (Fed. Cir.1988), 379, 384, 435
- Baker v. Selden**, 101 U.S. 99, 25 L.Ed. 841 (1879), 2, 7, 89, 659, 668, 716, 717, 718, 733, 748
- Baladevov, Inc. v. Abbott Laboratories, Inc.**, 871 F.Supp. 89 (D.Mass. 1994), 1221
- Ballas v. Tedesco**, 41 F.Supp.2d 531 (D.N.J. 1999), 767
- Baltimore Orioles, Inc. v. Major League Baseball Players Ass'n**, 805 F.2d 663 (7th Cir.1986), 296, 1181
- Banks v. Manchester**, 128 U.S. 244, 9 S.Ct. 36, 32 L.Ed. 425 (1888), 656
- Banks Law Pub. Co. v. Lawyers' Co-Operative Pub. Co.**, 169 F. 386 (2nd Cir.1909), 656
- Bartfeld, In re**, 925 F.2d 1450 (Fed.Cir. 1991), 413, 470
- Basic Books, Inc. v. Kinko's Graphics Corp.**, 758 F.Supp. 1522 (S.D.N.Y.1991), 1009
- Bass Buster, Inc. v. Gapen Mfg. Co., Inc.**, 420 F.Supp. 144 (W.D.Mo.1976), 103
- Bassett v. Mashantucket Pequot Tribe**, 204 F.3d 343 (2nd Cir.2000), 1133
- Bateman v. Mnemonics, Inc.**, 79 F.3d 1532 (11th Cir.1996), 716
- Baxter Intern., Inc. v. Cobe Laboratories, Inc.**, 88 F.3d 1054 (Fed.Cir.1996), 441, 442, 449
- Bear U.S.A., Inc. v. Kim**, 993 F.Supp. 894 (S.D.N.Y.1998), 237
- Bedford v. Hunt**, 3 F.Cas. 37 (C.C.D.Mass. 1817), 378
- beef & brew, inc. v. Beef & Brew, Inc.**, 389 F.Supp. 179 (D.Or.1974), 103
- BellSouth Advertising & Pub. Corp. v. Donnelley Information Pub., Inc.**, 999 F.2d 1436 (11th Cir.1993), 650
- Bendix Corp. v. Balax, Inc.**, 421 F.2d 809 (7th Cir.1970), 392
- Bentley v. Sunset House Distributing Corp.**, 359 F.2d 140 (9th Cir.1966), 384
- Berge, United States ex rel. v. Board of Trustees of the University of Alabama**, 104 F.3d 1453 (4th Cir.1997), 1187
- Bergy, Application of**, 563 F.2d 1031 (Cust. & Pat.App.1977), 354
- Bernstein v. J.C. Penney, Inc.**, 50 U.S.P.Q.2d 1063 (C.D.Cal.1998), 1069
- Bi-Rite Enterprises, Inc. v. Bruce Miner Co., Inc.**, 757 F.2d 440 (1st Cir.1985), 297
- Blaustein v. Burton**, 9 Cal.App.3d 161, 88 Cal.Rptr. 319 (Cal.App. 2 Dist.1970), 337
- Bleistein v. Donaldson Lithographing Co.**, 188 U.S. 239, 23 S.Ct. 298, 47 L.Ed. 460 (1903), 631, 633
- Blockbuster Entertainment Group v. Laylco, Inc.**, 869 F.Supp. 505 (E.D.Mich. 1994), 202
- Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation**, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971), 587
- Blue Bell, Inc. v. Farah Mfg. Co., Inc.**, 508 F.2d 1260 (5th Cir.1975), 165
- Board of Trustees of the University of Alabama, United States ex rel. Berge v.**, 104 F.3d 1453 (4th Cir.1997), 1187
- Bonito Boats, Inc. v. Thunder Craft Boats, Inc.**, 489 U.S. 141, 109 S.Ct. 971, 103 L.Ed.2d 118 (1989), 384, 744, 1212, 1220, 1230
- Borden, In re**, 90 F.3d 1570 (Fed.Cir.1996), 435
- Borst, Application of**, 52 C.C.P.A. 1398, 345 F.2d 851 (Cust. & Pat.App.1965), 388
- Bourne Co. v. Walt Disney Co.**, 31 U.S.P.Q.2d 1858 (S.D.N.Y.1994), 1148
- Brana, In re**, 51 F.3d 1560 (Fed.Cir.1995), 378

- Brandir Intern., Inc. v. Cascade Pacific Lumber Co.**, 834 F.2d 1142 (2nd Cir. 1987), **736**, **743**
- Brenner v. Manson**, 383 U.S. 519, 86 S.Ct. 1033, 16 L.Ed.2d 69 (1966), **375**, **378**
- Brimley v. Hardee's Food Systems, Inc.**, 1995 WL 51177 (S.D.N.Y.1995), 296
- Brittingham v. Jenkins**, 914 F.2d 447 (4th Cir.1990), 238
- Broadcast Music, Inc. v. Claire's Boutiques, Inc.**, 949 F.2d 1482 (7th Cir.1991), 889, 891
- Broadcast Music, Inc. v. United States Shoe Corp.**, 678 F.2d 816 (9th Cir.1982), 889
- Brookfield Communications, Inc. v. West Coast Entertainment Corp.**, 174 F.3d 1036 (9th Cir.1999), 165
- Brooktree Corp. v. Advanced Micro Devices, Inc.**, 977 F.2d 1555 (Fed.Cir.1992), 1150
- Brouwer, In re**, 77 F.3d 422 (Fed.Cir.1996), 435
- Brown Bag Software v. Symantec Corp.**, 960 F.2d 1465 (9th Cir.1992), 718
- Brunswick Corp. v. British Seagull Ltd.**, 35 F.3d 1527 (Fed.Cir.1994), 129
- Budge Mfg. Co., Inc., In re**, 857 F.2d 773 (Fed.Cir.1988), **142**
- Burger King of Fla., Inc. v. Hoots**, 403 F.2d 904 (7th Cir.1968), 176
- Burroughs Wellcome Co. v. Barr Laboratories, Inc.**, 40 F.3d 1223 (Fed.Cir. 1994), **474**
- Burrow-Giles Lithographic Co. v. Sarony**, 111 U.S. 53, 4 S.Ct. 279, 28 L.Ed. 349 (1884), **627**, **631**
- Callaghan v. Myers**, 128 U.S. 617, 9 S.Ct. 177, 32 L.Ed. 547 (1888), 656
- Calvin Klein Cosmetics Corp. v. Lenox Laboratories, Inc.**, 815 F.2d 500 (8th Cir. 1987), 243
- Campbell v. Acuff-Rose Music, Inc.**, 510 U.S. 569, 114 S.Ct. 1164, 127 L.Ed.2d 500 (1994), 226, **945**, 959, 960, 1008, 1136
- Cardservice Intern., Inc. v. McGee**, 950 F.Supp. 737 (E.D.Va.1997), 165
- Car Freshner Corp. v. Turtle Wax, Inc.**, 268 F.Supp. 162 (S.D.N.Y.1967), 116
- Carletti, Application of**, 51 C.C.P.A. 1094, 328 F.2d 1020 (Cust. & Pat.App. 1964), **382**
- Carlson, In re**, 983 F.2d 1032 (Fed.Cir. 1992), 392
- Carman Industries, Inc. v. Wahl**, 724 F.2d 932 (Fed.Cir.1983), **467**, **469**
- Carson v. Here's Johnny Portable Toilets, Inc.**, 698 F.2d 831 (6th Cir.1983), 296
- Carter v. Helmsley-Spear, Inc.**, 71 F.3d 77 (2nd Cir.1995), **910**
- Carter Products, Inc. v. Colgate-Palmolive Co.**, 130 F.Supp. 557 (D.Md.1955), 392
- Castrol, Inc. v. Quaker State Corp.**, 977 F.2d 57 (2nd Cir.1992), **284**
- CBS Inc. v. Liederman**, 866 F.Supp. 763 (S.D.N.Y.1994), **188**
- CCC Information Services, Inc. v. Maclean Hunter Market Reports, Inc.**, 44 F.3d 61 (2nd Cir.1994), 658, **676**, 685
- Champion Spark Plug Co. v. Sanders**, 331 U.S. 125, 67 S.Ct. 1136, 91 L.Ed. 1386 (1947), **243**
- Charles Garnier, Paris v. Andin Intern., Inc.**, 36 F.3d 1214 (1st Cir.1994), **769**
- Chicago Style Productions, Inc. v. Chicago Sun Times, Inc.**, 313 Ill.App.3d 45, 245 Ill.Dec. 847, 728 N.E.2d 1204 (Ill.App. 1 Dist.2000), 1191
- Childress v. Taylor**, 945 F.2d 500 (2nd Cir.1991), **751**, **757**
- Choe v. Fordham University School of Law**, 920 F.Supp. 44 (S.D.N.Y.1995), **263**
- Christianson v. Colt Industries Operating Corp.**, 870 F.2d 1292 (7th Cir. 1989), **458**
- Chrysler Motors Corp. v. Auto Body Panels of Ohio, Inc.**, 908 F.2d 951 (Fed.Cir. 1990), 612, 613
- Citibank, N.A. v. Citibanc Group, Inc.**, 724 F.2d 1540 (11th Cir.1984), 103
- City of (see name of city)**
- Clarke, In re**, 17 U.S.P.Q.2d 1238 (Trademark Tr. & App. Bd.1990), **130**
- Clorox Chemical Co. v. Chlorit Mfg. Corporation**, 25 F.Supp. 702 (E.D.N.Y.1938), 103
- Cobe Laboratories, Inc. v. Baxter Healthcare Corp.**, 34 U.S.P.Q.2d 1472 (D.Colo. 1994), 597
- Cohen v. United States**, 203 Ct.Cl. 57, 487 F.2d 525 (Ct.Cl.1973), 520
- College Sav. Bank v. Florida Prepaid Post-secondary Educ. Expense Bd.**, 527 U.S. 666, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999), 246
- Columbia Pictures Industries, Inc. v. Aveco, Inc.**, 800 F.2d 59 (3rd Cir.1986), 870
- Columbia Pictures Industries, Inc. v. Professional Real Estate Investors, Inc.**, 866 F.2d 278 (9th Cir.1989), 870
- Columbia Pictures Industries, Inc. v. Redd Horne, Inc.**, 749 F.2d 154 (3rd Cir.1984), **862**, **870**
- Community for Creative Non-Violence v. Reid**, 490 U.S. 730, 109 S.Ct. 2166, 104 L.Ed.2d 811 (1989), **759**
- Community for Creative Non-Violence v. Reid**, 846 F.2d 1485, 270 U.S.App.D.C. 26 (D.C.Cir.1988), 767
- Compco Corp. v. Day-Brite Lighting, Inc.**, 376 U.S. 234, 84 S.Ct. 779, 11 L.Ed.2d 669 (1964), 1194, 1195, 1213, 1230
- Comprehensive Technologies Intern., Inc. v. Software Artisans, Inc.**, 3 F.3d 730 (4th Cir.1993), **325**

- Computer Associates Intern., Inc. v. Altai, Inc.**, 982 F.2d 693 (2nd Cir.1992), **703**, 716, 718, 1148, **1161**
- Computer Care v. Service Systems Enterprises, Inc., 982 F.2d 1063 (7th Cir. 1992), 307
- Connecticut Valley Enterprises, Inc. v. United States**, 172 Ct.Cl. 468, 348 F.2d 949 (Ct.Cl.1965), **385**, 388
- Contessa Food Products, Inc. v. Conagra, Inc., 282 F.3d 1370 (Fed.Cir.2002), 581
- Contico Intern., Inc. v. Rubbermaid Commercial Products, Inc., 665 F.2d 820 (8th Cir.1981), 404
- Continental Can Co. USA, Inc. v. Monsanto Co., 948 F.2d 1264 (Fed.Cir.1991), 389
- Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U.S. 405, 28 S.Ct. 748, 52 L.Ed. 1122 (1908), 540
- Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001), 262
- Cordis Corp. v. Medtronic, Inc., 835 F.2d 859 (Fed.Cir.1987), 600
- Correge v. Murphy, 705 F.2d 1326 (Fed.Cir. 1983), 403
- Cosmetically Sealed Industries, Inc. v. Chesebrough-Pond's USA Co., 125 F.3d 28 (2nd Cir.1997), 236
- Costar Group Inc. v. LoopNet, Inc., 172 F.Supp.2d 747 (D.Md.2001), 1069
- County of (see name of county)**
- Cover v. Hydramatic Packing Co., Inc., 34 U.S.P.Q.2d 1128 (E.D.Pa.1994), 597
- Cullman Ventures, Inc. v. Columbian Art Works, Inc., 717 F.Supp. 96 (S.D.N.Y. 1989), 103
- Data General Corp. v. Grumman Systems Support Corp., 825 F.Supp. 340 (D.Mass. 1993), 1148
- David B. Findlay, Inc. v. Findlay**, 271 N.Y.S.2d 652, 218 N.E.2d 531 (N.Y. 1966), **116**
- Davis v. The Gap, Inc., 246 F.3d 152 (2nd Cir.2001), 1144
- Deere & Co. v. Farmhand, Inc., 560 F.Supp. 85 (S.D.Iowa 1982), 129
- Demetriades v. Kaufmann, 680 F.Supp. 658 (S.D.N.Y.1988), 748
- Design Art, Inc. v. National Football League Properties Inc., 2000 WL 33151646 (S.D.Cal.2000), 1191
- Desny v. Wilder, 46 Cal.2d 715, 299 P.2d 257 (Cal.1956), 339
- Diamond v. Chakrabarty**, 447 U.S. 303, 100 S.Ct. 2204, 65 L.Ed.2d 144 (1980), **354**, 359
- Diamond Scientific Co. v. Ambico, Inc., 848 F.2d 1220 (Fed.Cir.1988), 585, 586
- Dickinson v. Zurko, 527 U.S. 150, 119 S.Ct. 1816, 144 L.Ed.2d 143 (1999), 517, 518
- Dow Chemical Co. v. Exxon Corp., 139 F.3d 1470 (Fed.Cir.1998), 1230, 1233
- Dow Jones & Co., Inc. v. Board of Trade of City of Chicago, 546 F.Supp. 113 (S.D.N.Y.1982), 688
- Downey v. General Foods Corp.**, 334 N.Y.S.2d 874, 286 N.E.2d 257 (N.Y. 1972), **346**
- Dr Pepper Co., In re**, 836 F.2d 508 (Fed. Cir.1987), **147**
- Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc., 924 F.Supp. 1559 (S.D.Cal.1996), 218
- DSC Communications Corp. v. DGI Technologies, Inc., 81 F.3d 597 (5th Cir. 1996), 1130
- DSC Communications Corp. v. DGI Technologies, Inc., 898 F.Supp. 1183 (N.D.Tex.1995), 833
- DSC Communications Corp. v. Pulse Communications, Inc., 170 F.3d 1354 (Fed. Cir.1999), 899
- Dubilier Condenser Corporation, United States v.**, 289 U.S. 178, 53 S.Ct. 554, 77 L.Ed. 1114 (1933), **513**, 516
- Durden, In re, 763 F.2d 1406 (Fed.Cir. 1985), 435
- DVD Copy Control Ass'n v. Bunner, 113 Cal.Rptr.2d 338 (Cal.App. 6 Dist.2001), 1126
- Eastman Kodak Co. v. Bell & Howell Document Management Products Co.**, 994 F.2d 1569 (Fed.Cir.1993), **177**
- Eastman Kodak Co. v. Photaz Imports Ltd., Inc., 853 F.Supp. 667 (W.D.N.Y.1993), 246
- Eastman Kodak Co. v. Rakow, 739 F.Supp. 116 (W.D.N.Y.1989), 103
- Educational Testing Services v. Katzman, 793 F.2d 533 (3rd Cir.1986), 685
- Effects Associates, Inc. v. Cohen**, 908 F.2d 555 (9th Cir.1990), **804**
- E. I. duPont deNemours & Co. v. Christopher**, 431 F.2d 1012 (5th Cir.1970), **320**
- E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430 (Fed.Cir. 1988), 413
- E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280 (9th Cir.1992), 122
- Elcom Ltd., United States v., 203 F.Supp.2d 1111 (N.D.Cal.2002), 1125
- Eldred v. Ashcroft, 255 F.3d 849, 347 U.S.App.D.C. 121 (D.C.Cir.2001), 17, 626, 944, 961
- Eldred v. Reno, 239 F.3d 372, 345 U.S.App. D.C. 89 (D.C.Cir.2001), 1133
- Electric Storage Battery Co. v. Shimadzu, 307 U.S. 5, 307 U.S. 613, 307 U.S. 616, 59 S.Ct. 675, 83 L.Ed. 1071 (1939), 440
- Electro-Craft Corp. v. Controlled Motion, Inc.**, 332 N.W.2d 890 (Minn.1983), **312**, 324
- Eli Lilly and Co. v. Medtronic, Inc., 496 U.S. 661, 110 S.Ct. 2683, 110 L.Ed.2d 605 (1990), 596

- Eli Lilly & Co. v. Natural Answers, Inc., 233 F.3d 456 (7th Cir.2000), 218
- Elizabeth, City of v. American Nicholson Pavement Co., 97 U.S. 126, 24 L.Ed. 1000 (1877), 441, 449
- Ellison v. Robertson, 189 F.Supp.2d 1051 (C.D.Cal.2002), 1069
- Elmer Miller, Inc. v. Landis, 253 Ill.App.3d 129, 192 Ill.Dec. 378, 625 N.E.2d 338 (Ill.App. 1 Dist.1993), 307
- Elvis Presley Enterprises, Inc. v. Capece, 141 F.3d 188 (5th Cir.1998), 226
- Engelhardt v. Judd, 54 C.C.P.A. 865, 369 F.2d 408 (Cust. & Pat.App.1966), 403
- Enzo Biochem, Inc. v. Gen-Probe Inc., 296 F.3d 1316 (Fed.Cir.2002), 464
- Epstein, In re, 32 F.3d 1559 (Fed.Cir.1994), 449
- Erickson v. Trinity Theatre, Inc., 13 F.3d 1061 (7th Cir.1994), 757, 758
- Estate of (see name of party)**
- Ethicon, Inc. v. United States Surgical Corp.**, 135 F.3d 1456 (Fed.Cir.1998), 484, 501
- Ets-Hokin v. Skyy Spirits, Inc., 225 F.3d 1068 (9th Cir.2000), 701
- Ex parte (see name of party)**
- Exxon Corp. v. Oxxford Clothes, Inc., 109 F.3d 1070 (5th Cir.1997), 237
- Exxon Corp. v. Xoil Energy Resources, Inc., 552 F.Supp. 1008 (S.D.N.Y.1981), 103
- Fantasy, Inc. v. Fogerty, 984 F.2d 1524 (9th Cir.1993), 1146
- Feist Publications, Inc. v. Rural Telephone Service Co., Inc.**, 499 U.S. 340, 111 S.Ct. 1282, 113 L.Ed.2d 358 (1991), 13, 638, 650, 656, 657, 658, 700, 716, 718, 730, 731, 733
- Feltner v. Columbia Pictures Television, Inc., 523 U.S. 340, 118 S.Ct. 1279, 140 L.Ed.2d 438 (1998), 1145
- Ferris v. Frohman, 223 U.S. 424, 32 S.Ct. 263, 56 L.Ed. 492 (1912), 786
- Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.**, 535 U.S. 722, 122 S.Ct. 1831, 152 L.Ed.2d 944 (2002), 544, 554
- Financial Information, Inc. v. Moody's Investors Service, Inc., 751 F.2d 501 (2nd Cir.1984), 686
- Fleischmann Distilling Corp. v. Maier Brewing Co., 314 F.2d 149 (9th Cir. 1963), 103
- Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank, 527 U.S. 627, 119 S.Ct. 2199, 144 L.Ed.2d 575 (1999), 598, 1133
- Foad Consulting Group, Inc. v. Azzalino, 270 F.3d 821 (9th Cir.2001), 804
- Fogerty v. Fantasy, Inc., 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994), 1146, 1147
- Folsom v. Marsh, 9 F.Cas. 342 (C.C.D.Mass. 1841), 920
- Fong, Application of, 54 C.C.P.A. 1482, 378 F.2d 977 (Cust. & Pat.App.1967), 470
- Fonovisa, Inc. v. Cherry Auction, Inc.**, 76 F.3d 259 (9th Cir.1996), 1052, 1058, 1068
- Food Fair Stores, Inc. v. Lakeland Grocery Corp., 301 F.2d 156 (4th Cir.1962), 103
- Forest Laboratories, Inc. v. Abbott Laboratories, 239 F.3d 1305 (Fed.Cir.2001), 540
- Foster, Application of, 52 C.C.P.A. 1808, 343 F.2d 980 (Cust. & Pat.App.1965), 457
- Foxworthy v. Custom Tees, Inc.**, 879 F.Supp. 1200 (N.D.Ga.1995), 193
- Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.**, 772 F.2d 505 (9th Cir. 1985), 1137
- Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc., 155 F.3d 17 (2nd Cir. 1998), 820
- Freed v. Farag, 994 F.Supp. 887 (N.D.Ohio 1997), 237
- Frisch's Restaurants, Inc. v. Elby's Big Boy of Steubenville, Inc., 670 F.2d 642 (6th Cir.1982), 203
- Galt House, Inc. v. Home Supply Co.**, 483 S.W.2d 107 (Ky.1972), 160
- Gardner v. Nike, Inc., 279 F.3d 774 (9th Cir.2002), 803
- General Cigar Co., Inc. v. G.D.M. Inc., 988 F.Supp. 647 (S.D.N.Y.1997), 237
- Georgia, State of v. Harrison Co., 548 F.Supp. 110 (N.D.Ga.1982), 658
- Georgia-Pacific Corp. v. United States Plywood Corp., 258 F.2d 124 (2nd Cir. 1958), 462
- Gilliam v. American Broadcasting Companies, Inc.**, 538 F.2d 14 (2nd Cir. 1976), 852, 914
- Goldstein v. California**, 412 U.S. 546, 93 S.Ct. 2303, 37 L.Ed.2d 163 (1973), 620, 632, 1196
- Gorham Mfg. Co. v. White**, 81 U.S. 511, 20 L.Ed. 731 (1871), 372
- Gracen v. Bradford Exchange, 698 F.2d 300 (7th Cir.1983), 700, 701, 817, 839
- Graham v. John Deere Co. of Kansas City**, 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966), 7, 405, 412, 435, 632
- Graver Tank & Mfg. Co. v. Linde Air Products Co., 339 U.S. 605, 70 S.Ct. 854, 94 L.Ed. 1097 (1950), 539
- Gray v. Russell, 10 F.Cas. 1035 (C.C.D.Mass.1839), 920
- Greenberg v. National Geographic Soc., 244 F.3d 1267 (11th Cir.2001), 816
- Guardian Life Ins. Co. of America v. American Guardian Life Assur. Co., 943 F.Supp. 509 (E.D.Pa.1996), 238
- Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2nd Cir.1953), 36, 38

- Hamil America Inc. v. GFI, 193 F.3d 92 (2nd Cir.1999), 1144
- Hamilton, In re, 882 F.2d 1576 (Fed.Cir. 1989), 449
- Hard Rock Cafe Licensing Corp. v. Concession Services, Inc.**, 955 F.2d 1143 (7th Cir.1992), **252**
- Harjo v. Pro-Football Inc., 50 U.S.P.Q.2d 1705 (Trademark Tr. & App. Bd.1999), 140
- Harjo v. Pro Football Inc., 30 U.S.P.Q.2d 1828 (Trademark Tr. & App. Bd.1994), 140
- Harper & Row Publishers, Inc. v. Nation Enterprises**, 471 U.S. 539, 105 S.Ct. 2218, 85 L.Ed.2d 588 (1985), **926**, 944, 945, 959, 974, 1133
- Hasbro Bradley, Inc. v. Sparkle Toys, Inc., 780 F.2d 189 (2nd Cir.1985), 779
- Hasbro, Inc. v. Internet Entertainment Group, Ltd., 40 U.S.P.Q.2d 1479 (W.D.Wash.1996), 218
- Havana Club Holding, S.A. v. Galleon, 49 U.S.P.Q.2d 1296 (S.D.N.Y.1998), 238
- Hay, Application of, 534 F.2d 917 (Cust. & Pat.App.1976), 520
- Haynes Intern., Inc. v. Jessop Steel Co., 8 F.3d 1573 (Fed.Cir.1993), 542
- Hazeltine Research, Inc. v. Brenner, 382 U.S. 252, 86 S.Ct. 335, 15 L.Ed.2d 304 (1965), 413
- Heim v. Universal Pictures Co., 154 F.2d 480 (2nd Cir.1946), 1044
- Hendrickson v. Ebay, Inc., 165 F.Supp.2d 1082 (C.D.Cal.2001), 1068
- H.H. Robertson, Co. v. United Steel Deck, Inc., 820 F.2d 384 (Fed.Cir.1987), 612
- Hibberd, Ex parte, 227 U.S.P.Q. 443 (Bd. Pat.App & Interf.1985), 359
- Hilmer, Application of, 57 C.C.P.A. 985, 424 F.2d 1108 (Cust. & Pat.App.1970), 521
- Hilmer, Application of, 53 C.C.P.A. 1288, 359 F.2d 859 (Cust. & Pat.App.1966), 521
- Hines, In re, 32 U.S.P.Q.2d 1376 (Trademark Tr. & App. Bd.1994), 139
- Hirshon v. United Artists Corp., 243 F.2d 640, 100 U.S.App.D.C. 217 (D.C.Cir. 1957), 786
- Hobbs v. United States, 451 F.2d 849 (5th Cir.1971), 449
- Hoehling v. Universal City Studios, Inc.**, 618 F.2d 972 (2nd Cir.1980), **659**
- Holiday Inns, Inc. v. 800 Reservation, Inc., 86 F.3d 619 (6th Cir.1996), 164
- Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc., 535 U.S. 826, 122 S.Ct. 1889, 153 L.Ed.2d 13 (2002), 599
- Hoop v. Hoop**, 279 F.3d 1004 (Fed.Cir. 2002), **508**, 513, 516
- Horgan v. Macmillan, Inc.**, 789 F.2d 157 (2nd Cir.1986), **827**, 835
- House of Windsor, Inc., In re, 221 U.S.P.Q. 53 (Trademark Tr. & App. Bd.1983), 146
- Hruby, Application of, 54 C.C.P.A. 1196, 373 F.2d 997 (Cust. & Pat.App.1967), 374
- Hustler Magazine Inc. v. Moral Majority Inc., 796 F.2d 1148 (9th Cir.1986), 961
- I.C.E. Corp. v. Armco Steel Corp., 250 F.Supp. 738 (S.D.N.Y.1966), 389, 391
- Ideal Toy Corp. v. Tyco Industries, Inc., 478 F.Supp. 1191 (D.Del.1979), 518
- Imazio Nursery Inc. v. Dania Greenhouse, 29 U.S.P.Q.2d 1217 (N.D.Cal.1992), 583
- Imazio Nursery, Inc. v. Dania Greenhouses**, 69 F.3d 1560 (Fed.Cir.1995), **581**, 584
- Imperial Homes Corp. v. Lamont, 458 F.2d 895 (5th Cir.1972), 748
- Imperial Residential Design, Inc. v. Palms Development Group, Inc., 70 F.3d 96 (11th Cir.1995), 803
- Indecor, Inc. v. Fox-Wells & Co., Inc., 642 F.Supp. 1473 (S.D.N.Y.1986), 461
- Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club Ltd. Partnership, 34 F.3d 410 (7th Cir.1994), 238
- Information Handling Services, Inc. v. LRP Publications Inc., 2000 WL 1468535 (E.D.Pa.2000), 1191
- In re (see name of party)**
- Intel Corp. v. Terabyte Intern., Inc., 6 F.3d 614 (9th Cir.1993), 246
- Intermatic, Inc. v. Lamson & Sessions Co., 273 F.3d 1355 (Fed.Cir.2001), 554
- International Kennel Club of Chicago, Inc. v. Mighty Star, Inc.**, 846 F.2d 1079 (7th Cir.1988), **104**, 116
- International News Service v. Associated Press**, 248 U.S. 215, 39 S.Ct. 68, 63 L.Ed. 211 (1918), **17**, 38, 348
- Interpace Corp. v. Lapp, Inc., 574 F.Supp. 1072 (D.N.J.1982), 116
- Inwood Laboratories, Inc. v. Ives Laboratories, Inc.**, 456 U.S. 844, 102 S.Ct. 2182, 72 L.Ed.2d 606 (1982), **248**
- I.P. Lund Trading ApS v. Kohler Co., 163 F.3d 27 (1st Cir.1998), 284
- J.A. LaPorte, Inc. v. Norfolk Dredging Co., 787 F.2d 1577 (Fed.Cir.1986), 449
- James Burrough Ltd. v. Sign of Beefeater, Inc., 540 F.2d 266 (7th Cir.1976), 202
- Jamesbury Corp. v. Litton Indus. Products, Inc., 839 F.2d 1544 (Fed.Cir.1988), 597
- Jartech, Inc. v. Clancy, 666 F.2d 403 (9th Cir.1982), 961
- Johnson Controls, Inc. v. Phoenix Control Systems, Inc., 886 F.2d 1173 (9th Cir. 1989), 1137
- Joplin Enterprises v. Allen, 795 F.Supp. 349 (W.D.Wash.1992), 296
- Kathawala, In re**, 9 F.3d 942 (Fed.Cir. 1993), **453**

- Keeler v. Standard Folding Bed Co., 157 U.S. 659, 15 S.Ct. 738, 39 L.Ed. 848 (1895), 591
- Kelly v. Arriba Soft Corp.**, 280 F.3d 934 (9th Cir.2002), **872, 975**, 983, 1070
- Kelly v. Arriba Soft Corp., 77 F.Supp.2d 1116 (C.D.Cal.1999), 1070
- Kentucky Fried Chicken Corp. v. Diversified Packaging Corp., 549 F.2d 368 (5th Cir.1977), 237
- Kern River Gas Transmission Co. v. Coastal Corp., 899 F.2d 1458 (5th Cir.1990), 675, 676
- Keweenaw Oil Co. v. Bicron Corp.**, 416 U.S. 470, 94 S.Ct. 1879, 40 L.Ed.2d 315 (1974), 307, 308, **1200**
- KeyStone Retaining Wall Systems, Inc. v. Westrock, Inc., 997 F.2d 1444 (Fed.Cir.1993), 581
- Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2nd Cir.1980), 743
- Kimberly-Clark Corp. v. Procter & Gamble Distributing Co., Inc.**, 973 F.2d 911 (Fed.Cir.1992), 414, **471**
- King v. Mister Maestro, Inc., 224 F.Supp. 101 (S.D.N.Y.1963), 786
- King, Estate of v. CBS, Inc., 194 F.3d 1211 (11th Cir.1999), 786
- King, Estate of v. CBS, Inc., 13 F.Supp.2d 1347 (N.D.Ga.1998), 786
- King Instrument Corp. v. Otari Corp., 767 F.2d 853 (Fed.Cir.1985), 403
- King Instruments Corp. v. Perego, 65 F.3d 941 (Fed.Cir.1995), 608, 610
- King-Seeley Thermos Co. v. Aladdin Industries, Inc.**, 321 F.2d 577 (2nd Cir. 1963), **90**
- Kleier Advertising, Inc. v. Premier Pontiac, Inc., 921 F.2d 1036 (10th Cir.1990), 1148
- Kregos v. Associated Press, 937 F.2d 700 (2nd Cir.1991), 686
- Krimmel, Application of, 48 C.C.P.A. 1116, 292 F.2d 948 (Cust. & Pat.App.1961), 379
- K-T Zoe Furniture, Inc., In re, 16 F.3d 390 (Fed.Cir.1994), 94
- La Cienega Music Co. v. ZZ Top, 53 F.3d 950 (9th Cir.1995), 787
- Laitram Corp. v. King Crab, Inc., 244 F.Supp. 9 (D.Alaska 1965), 596
- LaMacchia, United States v., 871 F.Supp. 535 (D.Mass.1994), 1148, 1149
- Lamb v. Turbine Designs, Inc., 207 F.3d 1259 (11th Cir.2000), 312
- Lamb-Weston, Inc. v. McCain Foods, Ltd.**, 941 F.2d 970 (9th Cir.1991), **308**
- Landsberg v. Scrabble Crossword Game Players, Inc., 736 F.2d 485 (9th Cir. 1984), 687
- Lasercomb America, Inc. v. Reynolds**, 911 F.2d 970 (4th Cir.1990), **1126**, 1130
- L. Batlin & Son, Inc. v. Snyder**, 536 F.2d 486 (2nd Cir.1976), **691**, 700, 839
- Lear, Inc. v. Adkins, 395 U.S. 653, 89 S.Ct. 1902, 23 L.Ed.2d 610 (1969), 587
- Lee v. A.R.T. Co.**, 125 F.3d 580 (7th Cir. 1997), **847**
- Lee v. Deck The Walls, Inc., 925 F.Supp. 576 (N.D.Ill.1996), 851
- Leicester v. Warner Bros., 232 F.3d 1212 (9th Cir.2000), 748, 905
- Leigh v. Warner Bros., Inc.**, 212 F.3d 1210 (11th Cir.2000), **1035**
- Letter Edged in Black Press, Inc. v. Public Bldg. Commission of Chicago, 320 F.Supp. 1303 (N.D.Ill.1970), 787
- Levitt Corp. v. Levitt, 593 F.2d 463 (2nd Cir.1979), 122
- Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.**, 964 F.2d 965 (9th Cir. 1992), **842**, 846
- Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744 (Fed.Cir.1987), 385
- Lipscher v. LRP Publications, Inc., 266 F.3d 1305 (11th Cir.2001), 1191
- Litchfield v. Spielberg, 736 F.2d 1352 (9th Cir.1984), 1044
- Loctite Corp. v. Ultraseal Ltd., 781 F.2d 861 (Fed.Cir.1985), 541
- Lone Ranger Television, Inc. v. Program Radio Corp., 740 F.2d 718 (9th Cir. 1984), 851
- Longi, In re**, 759 F.2d 887 (Fed.Cir.1985), **464**
- Lorenz v. Colgate-Palmolive-Peet Co., 167 F.2d 423 (3rd Cir.1948), 440
- Los Angeles News Service v. Conus Communications Co. Ltd. Partnership, 969 F.Supp. 579 (C.D.Cal.1997), 871
- Los Angeles News Service v. Reuters Television Intern., Ltd., 149 F.3d 987 (9th Cir.1998), 1144
- Lotus Development Corp. v. Borland Intern., Inc., 49 F.3d 807 (1st Cir.1995), 716, 717, 718
- Louis Rich, Inc. v. Horace W. Longacre, Inc., 423 F.Supp. 1327 (E.D.Pa.1976), 103
- Lowell v. Lewis, 15 F.Cas. 1018 (C.C.D.Mass.1817), 378
- Lowry's Reports, Inc. v. Legg Mason, Inc., 186 F.Supp.2d 592 (D.Md.2002), 1191
- Lulirama Ltd., Inc. v. Axxess Broadcast Services, Inc., 128 F.3d 872 (5th Cir.1997), 767
- Lyons Partnership, L.P. v. Morris Costumes, Inc., 243 F.3d 789 (4th Cir.2001), 1045
- Mahurkar Patent Litigation, Matter of, 831 F.Supp. 1354 (N.D.Ill.1993), 612
- MAI Systems Corp. v. Peak Computer, Inc., 991 F.2d 511 (9th Cir.1993), 836, 837, 899
- Majorica, S.A. v. Majorca Intern., Ltd., 687 F.Supp. 92 (S.D.N.Y.1988), 158

- Major League Baseball Players Ass'n v. Dad's Kid Corp., 806 F.Supp. 458 (S.D.N.Y.1992), 852
- Major League Baseball Properties, Inc. v. Sed Non Olet Denarius, Ltd., 817 F.Supp. 1103 (S.D.N.Y.1993), 238
- Manville Sales Corp. v. Paramount Systems, Inc., 917 F.2d 544 (Fed.Cir.1990), 575
- Marascalco v. Fantasy, Inc., 953 F.2d 469 (9th Cir.1991), 799
- Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), 528
- Marshall Field & Co. v. Mrs. Field's Cookies, 25 U.S.P.Q.2d 1321 (Trademark Tr. & App. Bd.1992), 146
- Martin Luther King, Jr., Center for Social Change, Inc. v. American Heritage Products, Inc., 694 F.2d 674 (11th Cir.1983), 296
- Marvel Entertainment Group, Inc., In re, 254 B.R. 817 (D.Del.2000), 768
- Marvin Glass and Associates v. Sears, Roebuck & Co., 318 F.Supp. 1089 (S.D.Tex. 1970), 453
- Mason v. Montgomery Data, Inc.**, 967 F.2d 135 (5th Cir.1992), **669**, 674, 675, 676, 716, 1147
- Matarese v. Moore-McCormack Lines**, 158 F.2d 631 (2nd Cir.1946), **339**
- Matter of (see name of party)**
- Matthew Bender & Co., Inc. v. West Pub. Co., 158 F.3d 693 (2nd Cir.1998), 656, 657, 658
- Matthew Bender & Co., Inc. v. West Pub. Co., 158 F.3d 674 (2nd Cir.1998), 657
- Mavety Media Group Ltd., In re, 33 F.3d 1367 (Fed.Cir.1994), 139
- Maxwell v. J. Baker, Inc., 86 F.3d 1098 (Fed.Cir.1996), 611
- Mazer v. Stein**, 347 U.S. 201, 74 S.Ct. 460, 98 L.Ed. 630 (1954), **734**
- McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576 (Fed.Cir.1993), 516
- McFarland v. Miller, 14 F.3d 912 (3rd Cir. 1994), 296
- McGinley v. Franklin Sports, Inc.**, 262 F.3d 1339 (Fed.Cir.2001), **414**, 433, 434
- Mead Data Cent., Inc. v. Toyota Motor Sales, U.S.A., Inc.**, 875 F.2d 1026 (2nd Cir.1989), **203**, 211
- Mead Digital Systems, Inc. v. A.B. Dick Co., 723 F.2d 455 (6th Cir.1983), 540
- Mentor Graphics Corp. v. Quickturn Design Systems, Inc., 150 F.3d 1374 (Fed.Cir. 1998), 587
- Mentor H/S, Inc. v. Medical Device Alliance, Inc., 240 F.3d 1016 (Fed.Cir.2001), 600
- Merck & Co., Inc. v. Kessler, 80 F.3d 1543 (Fed.Cir.1996), 523
- Merrill v. Yeomans, 94 U.S. 568, 24 L.Ed. 235 (1876), 529
- Metallizing Engineering Co. v. Kenyon Bearing & Auto. Parts Co.**, 153 F.2d 516 (2nd Cir.1946), **438**, 440
- Met-Coil Systems Corp. v. Korners Unlimited, Inc.**, 803 F.2d 684 (Fed.Cir. 1986), **588**, 596
- Midler v. Ford Motor Co.**, 849 F.2d 460 (9th Cir.1988), **292**, 295, 296
- Midway Mfg. Co. v. Artic Intern., Inc.**, 704 F.2d 1009 (7th Cir.1983), **840**, 846
- Midway Mfg. Co. v. Artic Intern., Inc., 547 F.Supp. 999 (N.D.Ill.1982), 785
- Midwest Plastic Fabricators, Inc. v. Underwriters Laboratories Inc.**, 906 F.2d 1568 (Fed.Cir.1990), **153**
- Minuteman, Inc. v. Alexander**, 147 Wis.2d 842, 434 N.W.2d 773 (Wis.1989), **301**
- Mirage Editions, Inc. v. Albuquerque A.R.T. Co., 856 F.2d 1341 (9th Cir.1988), 850, 851
- Miramax Films Corp. v. Columbia Pictures Entertainment, Inc., 996 F.Supp. 294 (S.D.N.Y.1998), 267
- Mitel, Inc. v. Iqtel, Inc.**, 124 F.3d 1366 (10th Cir.1997), **719**, 730, 731
- Money Store v. Harris Corp Finance, Inc., 689 F.2d 666 (7th Cir.1982), 237
- Monks, Application of, 588 F.2d 308 (Cust. & Pat.App.1978), 392
- Moore v. Regents of University of California**, 271 Cal.Rptr. 146, 793 P.2d 479 (Cal.1990), **65**, 80
- Moore v. United States**, 194 U.S.P.Q. 423 (Ct.Cl. Trial Div.1977), **450**
- Morris v. Business Concepts, Inc., 259 F.3d 65 (2nd Cir.2001), 782
- Munoz v. Albuquerque A.R.T. Co., 38 F.3d 1218 (9th Cir.1994), 851
- Mura v. Columbia Broadcasting System, Inc., 245 F.Supp. 587 (S.D.N.Y.1965), 835
- Murray Hill Publications, Inc. v. ABC Communications, Inc., 264 F.3d 622 (6th Cir. 2001), 783
- Mustang Motels, Inc. v. Patel, 226 U.S.P.Q. 526 (C.D.Cal.1985), 103
- Mutual of Omaha Ins. Co. v. Novak**, 836 F.2d 397 (8th Cir.1987), **219**
- Nantucket, Inc., In re, 677 F.2d 95 (Cust. & Pat.App.1982), 116
- National Basketball Ass'n v. Motorola, Inc.**, 105 F.3d 841 (2nd Cir.1997), 349, **1166**
- National Football League v. Primetime 24 Joint Venture, 211 F.3d 10 (2nd Cir. 2000), 871
- National Football League v. TVRadioNow Corp., 53 U.S.P.Q.2d 1831 (W.D.Pa. 2000), 907
- Neles-Jamesbury, Inc. v. Valve Dynamics, Inc., 974 F.Supp. 964 (S.D.Tex.1997), 246

- New Era Publications Intern., *ApS v. Henry Holt and Co., Inc.*, 873 F.2d 576 (2nd Cir.1989), 944
- New Era Publications Intern., *APS v. Henry Holt, Co.*, 884 F.2d 659 (2nd Cir. 1989), 1135
- New York Times Co. v. Roxbury Data Interface, Inc., 434 F.Supp. 217 (D.N.J.1977), 687
- New York Times Co., Inc. v. Tasini**, 533 U.S. 483, 121 S.Ct. 2381, 150 L.Ed.2d 500 (2001), **806**, 817, 1136
- Nichols v. Universal Pictures Corporation**, 45 F.2d 119 (2nd Cir.1930), **1011**, 1026
- Niss v. Columbia Pictures Industries, Inc., 57 U.S.P.Q.2d 1346 (S.D.N.Y.2000), 768
- Nissen Trampoline Co. v. International Tram-Po-Line Mfrs., Inc., 190 F.Supp. 238 (E.D.N.Y.1960), 116
- NLFC, Inc. v. Devcom Mid-America, Inc., 45 F.3d 231 (7th Cir.1995), 836
- Noah v. Enesco Corp., 911 F.Supp. 299 (N.D.Ill.1995), 307
- Noll v. O. M. Scott & Sons Co., 467 F.2d 295 (6th Cir.1972), 540
- Nor-Am Chemical Co. v. O. M. Scott & Sons Co., 4 U.S.P.Q.2d 1316 (E.D.Pa. 1987), 129
- Oak Industries, Inc. v. Zenith Electronics Corp., 726 F.Supp. 1525 (N.D.Ill.1989), 388
- Oasis Pub. Co., Inc. v. West Pub. Co., 924 F.Supp. 918 (D.Minn.1996), 657, 658
- Ochiai, In re, 71 F.3d 1565 (Fed.Cir.1995), 435
- Oda, Application of, 58 C.C.P.A. 1353, 443 F.2d 1200 (Cust. & Pat.App.1971), 520
- Okajima v. Bourdeau, 261 F.3d 1350 (Fed. Cir.2001), 433, 434
- Old Glory Condom Corp., In re**, 26 U.S.P.Q.2d 1216 (Trademark Tr. & App. Bd.1993), **133**
- On Command Video Corp. v. Columbia Pictures Industries**, 777 F.Supp. 787 (N.D.Cal.1991), **866**, 870, 891
- Ortho Pharmaceutical Corp. v. Smith, 959 F.2d 936 (Fed.Cir.1992), 470
- Pacific and Southern Co., Inc. v. Duncan, 744 F.2d 1490 (11th Cir.1984), 961
- Panavision Intern., L.P. v. Toeppen, 141 F.3d 1316 (9th Cir.1998), 165
- Panavision Intern., L.P. v. Toeppen, 945 F.Supp. 1296 (C.D.Cal.1996), 217
- Panduit Corp. v. Stahl Bros. Fibre Works, Inc., 575 F.2d 1152 (6th Cir.1978), 610
- Pannu v. Iolab Corp.**, 155 F.3d 1344 (Fed.Cir.1998), **501**
- Paperless Accounting, Inc. v. Bay Area Rapid Transit System, 804 F.2d 659 (Fed. Cir.1986), 392
- Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.**, 469 U.S. 189, 105 S.Ct. 658, 83 L.Ed.2d 582 (1985), **182**
- Paulik v. Rizkalla**, 760 F.2d 1270 (Fed. Cir.1985), **398**
- Pebble Beach Co. v. Tour 18 I Ltd., 155 F.3d 526 (5th Cir.1998), 243
- Peker v. Masters Collection, 96 F.Supp.2d 216 (E.D.N.Y.2000), 851
- Pennock v. Dialogue, 27 U.S. 1, 7 L.Ed. 327 (1829), 453
- Perfect 10, Inc. v. Cybernet Ventures, Inc., 213 F.Supp.2d 1146 (C.D.Cal.2002), 1069
- Pfaff v. Wells Electronics, Inc.**, 525 U.S. 55, 119 S.Ct. 304, 142 L.Ed.2d 261 (1998), **442**
- Philips Electronic & Pharmaceutical Industries Corp. v. Thermal & Electronics Industries, Inc., 450 F.2d 1164 (3rd Cir. 1971), 389, 391
- Pirone v. MacMillan, Inc., 894 F.2d 579 (2nd Cir.1990), 296
- Plains Cotton Co-op. Ass'n of Lubbock, Texas v. Goodpasture Computer Service, Inc., 807 F.2d 1256 (5th Cir.1987), 712
- Playboy Enterprises, Inc. v. Frena, 839 F.Supp. 1552 (M.D.Fla.1993), 860
- Pleuddemann, In re, 910 F.2d 823 (Fed.Cir. 1990), 435
- Polaris Pool Systems, Inc. v. Letro Products, Inc., 886 F.Supp. 1513 (C.D.Cal. 1995), 130
- Portola Packaging, Inc., In re, 110 F.3d 786 (Fed.Cir.1997), 521
- Practice Management Information Corp. v. American Medical Ass'n, 121 F.3d 516 (9th Cir.1997), 1130
- Practice Management Information Corp. v. American Medical Ass'n, 877 F.Supp. 1386 (C.D.Cal.1994), 686
- Princeton University Press v. Michigan Document Services, Inc., 99 F.3d 1381 (6th Cir.1996), 1009
- Proctor & Gamble Co. v. Haugen, 222 F.3d 1262 (10th Cir.2000), 290
- Publications Intern., Ltd. v. Meredith Corp., 88 F.3d 473 (7th Cir.1996), 686
- Q-Co. Industries, Inc. v. Hoffman, 625 F.Supp. 608 (S.D.N.Y.1985), 712
- Q.G. Products, Inc. v. Shorty, Inc., 992 F.2d 1211 (Fed.Cir.1993), 587
- Qualitex Co. v. Jacobson Products Co., Inc.**, 514 U.S. 159, 115 S.Ct. 1300, 131 L.Ed.2d 248 (1995), **122**
- Quality King Distributors, Inc. v. L'anza Research Intern., Inc.**, 523 U.S. 135, 118 S.Ct. 1125, 140 L.Ed.2d 254 (1998), **877**
- Random House, Inc. v. Rosetta Books LLC, 283 F.3d 490 (2nd Cir.2002), 803
- Raquel v. Education Management Corp., 196 F.3d 171 (3rd Cir.1999), 782

- Recombinant DNA Technology Patent and Contract Litigation, In re**, 850 F.Supp. 769 (S.D.Ind.1994), **591**
- Recording Industry Ass'n of America v. Diamond Multimedia Systems, Inc., 180 F.3d 1072 (9th Cir.1999), 904
- Reeves v. United Artists Corp., 765 F.2d 79 (6th Cir.1985), 296
- Regents of the University of California v. Eli Lilly & Co., 119 F.3d 1559 (Fed.Cir. 1997), 463
- Religious Technology Center v. Netcom On-Line Communication Services, Inc.**, 907 F.Supp. 1361 (N.D.Cal. 1995), 836, **855**, 859, 860, 861, 960, 1058, 1068
- Religious Technology Center v. Netcom On-Line Communication Services, Inc., 923 F.Supp. 1231 (N.D.Cal.1995), 1069
- Reyher v. Children's Television Workshop, 533 F.2d 87 (2nd Cir.1976), 1044
- Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226 (Fed.Cir.1989), 612
- Ringgold v. Black Entertainment Television, Inc., 126 F.3d 70 (2nd Cir.1997), 835, 1044
- Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Utah Div. of Travel Development**, 170 F.3d 449 (4th Cir.1999), **212**
- Rite-Hite Corp. v. Kelley Co., Inc.**, 56 F.3d 1538 (Fed.Cir.1995), **601**, 608, 609, 610, 611
- RJR Foods, Inc. v. White Rock Corp., 603 F.2d 1058 (2nd Cir.1979), 202
- Roche Products, Inc. v. Bolar Pharmaceutical Co., Inc., 733 F.2d 858 (Fed.Cir. 1984), 596
- Rock and Roll Hall of Fame and Museum, Inc. v. Gentile Productions, 134 F.3d 749 (6th Cir.1998), 236
- Rodrigue v. Rodrigue, 218 F.3d 432 (5th Cir.2000), 1182
- Rogers v. Grimaldi, 875 F.2d 994 (2nd Cir. 1989), 226
- Rogers v. Koons, 960 F.2d 301 (2nd Cir. 1992), 961
- Roley v. New World Pictures, Ltd., 19 F.3d 479 (9th Cir.1994), 1131
- Romm Art Creations Ltd. v. Simcha Intern., Inc., 786 F.Supp. 1126 (E.D.N.Y.1992), 272
- Rose Art Industries, Inc. v. Swanson, 235 F.3d 165 (3rd Cir.2000), 272
- Rosette v. Rainbo Record Mfg. Corp., 354 F.Supp. 1183 (S.D.N.Y.1973), 787
- Roth v. Pritikin, 710 F.2d 934 (2nd Cir. 1983), 803
- Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957), 139
- Russell v. Price, 612 F.2d 1123 (9th Cir. 1979), 700
- Sailor Music v. Gap Stores, Inc., 668 F.2d 84 (2nd Cir.1981), 889
- Salinger v. Random House, Inc., 811 F.2d 90 (2nd Cir.1987), 944, 963, 964
- Sandoval v. New Line Cinema Corp., 147 F.3d 215 (2nd Cir.1998), 1044
- Sands, Taylor & Wood Co. v. Quaker Oats Co.**, 978 F.2d 947 (7th Cir.1992), **228**, **258**
- Sandvik Aktiebolag v. E.J. Co., 121 F.3d 669 (Fed.Cir.1997), 572
- Scholz Homes, Inc. v. Maddox, 379 F.2d 84 (6th Cir.1967), 748
- Scott v. Finney, 34 F.3d 1058 (Fed.Cir. 1994), 403
- Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565 (Fed.Cir. 1991), 529
- Sears, Roebuck & Co. v. Stiffel Co.**, 376 U.S. 225, 84 S.Ct. 784, 11 L.Ed.2d 661 (1964), **1192**, 1194, 1195, 1213, 1230
- Sebastian Intern., Inc. v. Longs Drug Stores Corp., 53 F.3d 1073 (9th Cir.1995), 158
- See v. Durang, 711 F.2d 141 (9th Cir.1983), 834
- Sega Enterprises Ltd. v. Accolade, Inc., 977 F.2d 1510 (9th Cir.1992), 833, 963
- Sega Enterprises Ltd. v. MAPHIA, 857 F.Supp. 679 (N.D.Cal.1994), 860
- Self-Realization Fellowship Church v. Ananda Church of Self-Realization, 59 F.3d 902 (9th Cir.1995), 94
- Sellers v. American Broadcasting Co.**, 668 F.2d 1207 (11th Cir.1982), **334**
- Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996), 598, 1132, 1133
- Seven-Up Bottling Co. v. Seven-Up Co., 561 F.2d 1275 (8th Cir.1977), 158
- Shakespeare Co. v. Silstar Corp. of America, Inc., 906 F.Supp. 997 (D.S.C.1995), 129
- Shaw v. Cooper, 32 U.S. 292, 8 L.Ed. 689 (1833), 453
- Shaw v. Lindheim**, 919 F.2d 1353 (9th Cir.1990), **1029**
- Sheldon v. Metro-Goldwyn Pictures Corp., 106 F.2d 45 (2nd Cir.1939), 1144
- Sheldon v. Metro-Goldwyn Pictures Corporation**, 81 F.2d 49 (2nd Cir. 1936), 1010, **1017**, 1026
- SHL Imaging, Inc. v. Artisan House, Inc., 117 F.Supp.2d 301 (S.D.N.Y.2000), 702
- Shoptalk, Ltd. v. Concorde-New Horizons Corp., 168 F.3d 586 (2nd Cir.1999), 780, 788
- Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp., 562 F.2d 1157 (9th Cir.1977), 1138
- Smith v. Ames Dept. Stores, Inc., 988 F.Supp. 827 (D.N.J.1997), 236
- Smith v. Chanel, Inc.**, 402 F.2d 562 (9th Cir.1968), **239**
- Smith v. Recrion Corp.**, 91 Nev. 666, 541 P.2d 663 (Nev.1975), **344**
- SmithKline Diagnostics, Inc. v. Helena Laboratories Corp., 859 F.2d 878 (Fed.Cir. 1988), 528