

Idea Rights

Idea Rights

A Guide to Intellectual Property

Howard C. Anawalt

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Table of Principal Legal Authorities

Note: The authorities listed below are *legal* authorities, the Constitution, statutes, and cases that bind judges and parties. Many of these sources are available on-line at little or no cost. One such database is the Legal Information Institute at Cornell University.

Patents

Constitution

U.S. Const. art. I §8, cl. 8 (Patent and copyright clause)

Statutes

35 United States Code (U.S.C.) §§ 33, 100–103, 111, 112, 116, 131, 151, 154–156 161, 271–287

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Arrhythmia Research Technology, Inc. v. Corazonix Corp., 958 F.2d 1053 (Fed.Cir.1992), 38

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Brenner v. Manson, 383 U. S. 519 (1966), 30

Brown v. Duchesne, 60 U.S. (19 How.) 183 (1856), 20

Diamond v. Chakrabarty, 447 U.S. 303 (1980), 22, 39

Diamond v. Diehr, 450 U.S. 175, 197 (1981), 43

Ebay Inc. v. MercExchange, LLC, 547 U.S. 388 (2006), 122, 186, 243

- Epcon Gas Systems, Inc. v. Bauer Compressors, Inc.* 279 F.3d 1022, C.A.Fed. (Mich. 2002), 56
- KSR International Co. v. Teleflex Inc.* 550 U.S. 398 (2007), 32, 35
- Gottschalk v. Benson*, 409 U.S. 63 (1972), 41
- Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966)15, 27, 30, 222
- In re Seagate*, 497 F.3d 1360 (Fed.Cir.2007), 29, 56
- Joyce v. General Motors Corp.*, 49 Ohio St.3d 93, 551 N.E.2d 172, 176 (1990), 20
- Juicy Whip, Inc. v. Orange Bang, Inc.*, 185 F. 3d 1364 (Fed.Cir.1999), 30
- Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), 55
- Newman v. Quigg*, 877 F.2d 1575 (Fed.Cir.1989), 29
- O'Reilly v. Morse*, 56 U.S. 62 (1854), 38, 39
- Parker v. Flook*, 437 U.S. 584 (1978), 43
- SCM Corporation v. Xerox Corporation*, 645 F.2d 1195 (2d Cir.1980), 18
- State Street Bank and Trust v. Signature Financial Group, Inc.*, 149 F. 3d 1368 (Fed.Cir.1998), *cert. denied*, 525 U.S. 1093 (1999), 44
- U.S. v. Dubilier Condenser Corporation*, 289 U.S. 178 (1933), 58
- Warner-Jenkinson Co. Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17 (1997), 54

Copyrights

Constitution

U.S. Const. art. I §8, cl. 8 (Patent and copyright clause)

Statutes

17 United States Code (U.S.C.) §§ 102–107, 201, 302–305, 180–182, 201, 302, 401, 408–412, 501–513

Cases

- Apple Computer, Inc. v. Formula Int'l Inc.*, 725 F.2d 521 (9th Cir.1984), 81
- Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240 (Third Cir. 1984), *cert. dismissed*, 464 U.S. 1033, 104 S.Ct. 690, 79 L.Ed.2d 158 (1984), 81
- Baker v. Selden*, 101 U.S. 99 (1880), 96
- Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884), 76
- Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1993), 83, 89, 90
- CDN Inc. v. Kapes*, 197 F. 3d 1256 (9th Cir.1999), 67

- Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), 64
- Computer Assoc. Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693 (2d Cir.1992), 82
- Davidson & Assocs. v. Jung*, 422 F.3d 630 (8th Cir.2005), 88
- Effects Associates, Inc. v. Cohen*, 908 F.2d 555 (9th Cir.1990), *cert. denied*, 498 U.S. 1103 (1991)178, 179
- Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991), 67, 78, 79
- Gener-Villar v. Adcom Group, Inc.*, 560 F. Supp. 2d 112 (D.P.R. 2008), 77
- Horgan v. Macmillan, Inc.*, 789 F.2d 157 (2d Cir. 1986), 77
- Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522 (6th Cir.2004), 82
- Lotus Development Corp. v. Borland Intern., Inc.*, 49 F.3d 807, (1st Cir.1995), judgment aff'd by an equally divided court without opinion, 516 U.S. 233 (1996), 82
- MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511 (9th Cir.1995), 67, 93, 248
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- Reed Elsevier, Inc. v. Muchnick*, 130 S.Ct. 1237 (2010), 68
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- Time, Inc. v. Bernard Geis Associates*, 293 F. Supp. 130, 143 (S.D.N.Y. 1968), 77
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- Williams Electronics, Inc. v. Artic International, Inc.*, 685 F.2d 870 (3d Cir.1982), 81
- Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124 (C.D.Cal.2007), 78

Trademarks

Constitution

U.S. Const. art. I §8, cl. 3 (Commerce clause regarding federal rules)

Statutes

15 United States Code (U.S.C.) § 1125 (The Lanham Act), 15 U.S.C. § 1052, 15 U.S.C. § 1111, Cal. Bus. & Prof. Code § 14245 (2009)

Note: Trademark law originates with state rather than federal regulation. Federal regulation of trademarks is based on the commerce clause, not the patent and copyright clause.

Cases

- Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir.1976), 112
- Avery Dennison Corp. v. Sumpton*, 189 F.3d 868 (9th Cir.1999), 137
- Castrol, Inc. v. Quaker State Corp.*, 977 F.2d 57 (2d Cir.1992), 127
- Coca Cola Co. v. Koke Co. of America*, 254 U.S. 143, 146 (1920), 117, 118
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- Dan-Foam A/S v. Brand Named Beds, LLC*, 500 F. Supp. 2d 296 (S.D.N.Y. 2007), 124
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- State v. Smith Chev.* 157, 1840 WL 2006 S.C .App. Law (1840), 100
- Traffix Devices, Inc. v. Marketing Displays, Inc.* 532 U.S. 23 (2001), 116
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- Utah Lighthouse Ministry v. Foundation for Apologetic Information and Research*, 527 F.3d 1045 (10th Cir.2008), 138, 139
- Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), 102
- Wal-Mart Stores, Inc. v. Samara Bros., Inc.* 529 U.S. 205, (2000), 115
- Warner Bros. Entm't Inc. v. RDR Books*, 575 F. Supp. 2d (S.D.N.Y.2008), 129

Trade Secrets

Constitution

U.S. Const. art. I §8, cl. 3 (Commerce clause regarding federal rules)

Statutes

18 United States Code (U.S.C.) §1832, the Uniform Trade Secrets Act (USTA) in the forty two states that have adopted it, Cal. Lab. Code 2860, 2870–2872

Cases

Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 107 F.R.D. 288 (D. Del.1985) 157

Desny v. Wilder, 46 Cal.2d 715 (1956), 8, 150

E.I. du Pont de Nemours & Co. v. Christopher, 431 F.2d 1012 (5th Cir.1970), 161

Jostens, Inc. v. National Computer Systems, Inc., 318 N.W.2d 691 (Minn.1982), 157

Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974), 155, 160

Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984), 153

U.S. v. Dubilier Condenser Corporation, 289 U.S. 178 (1933), 153

Influential Secondary Sources

Restatement (Third) of Unfair Competition §43 (1995) and the earlier Restatement of Torts (First) §757. Professor William Prosser described the latter as one of the most influential pieces of non-authoritative legal discussion in the United States.

Other Legal Theories and Remedies

Constitution

U.S. Const. art. I §8, cl. 3 (Commerce clause regarding federal rules)

Statutes

15 United States Code (U.S.C.) § 1 15 U.S.C. § 1064, 17 U.S.C. § 512, 17 U.S.C. § 503–505, 17 U.S.C. § 901 *et seq.* (1984), 17 U.S.C. § 1201 *et seq.* Cal. Civ. Code § 1670.5, Cal. Bus. and Prof. Code § 16600, Cal. Lab. Code §§ 2870–2872

Cases

Altera Corp. v. Clear Logic, Inc., 424 F.3d 1079 (9th Cir.2005), 174
Beghin-Say Intern. Inc. v. Ole-Bendy Rasmussen, 733 F. 2d 1568 (Fed.Cir.1984), 180
Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141 (1989), 175
eBay, Inc., v. MercExchange, LLC, 547 U.S. 388 (2006), 122, 186, 243
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Hadley v. Baxendale, 9 Exch. 341, 156 Eng. Rep. 145 (1854), 185
Jacobsen v. Katzer, 535 F.3d 1373 (Fed.Cir.2008), 182
Midler v. Ford Motor Co., 849 F.2d 460 (9 Cir. 1988), 173
Robertson v. Rochester Folding Box Company, 171 N. Y. 442 (1902), 173
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United States v. Microsoft, 253 F.3d 34, 63 (D.C.Cir.2001), 182, 183
Zacchini v. Scripps-Howard Broadcasting Co., 351 N.E.2d 454 (1976), *reversed by Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 578 (1977), 172

Influential Secondary Source

Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890)

Policy

Note: The authorities listed above are *legal* authorities, that is, they state law that will bind judges and parties. The inquiry dealing with policy asks: *what are good laws?* Thus, no references can bind our judgment. That judgment depends on history, human needs, desires, capacities, etc. The legal references below point directions for consideration. See the “References” at the end of Chapter Seven.

Statutes and Constitution

Magna Carta Paras. 25 and 30

The Statute on Monopolies (21, James I Ch. 3, 1623)

The Statute of Anne (8 Anne Ch. 19, 1710)

U.S. Const. Art. I §8, cl 8 (the patent and copyright clause)

Cases

A & M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir.2001)

Capitol Records v. Thomas-Rasset, 93 U.S.P.Q.2d 1989 (D.Minn.2010)

Citizens United v. Federal Election Commission, 130 S.Ct. 876, 899–900 (2010)

Dred Scott v. Sandford, 19 How. 393, 15 L.Ed. 691 (1857)

Graham v. John Deere Co. of Kansas City, 383 U.S. 1 (1966)

Santa Clara County v. Southern Pac. R. Co., 118 U.S. 394 (1886)

Warner Bros. Entm't v. RDR Books, 575 F. Supp. 2d 513, 539–40 (S.D.N.Y. 2008)

White v. Samsung Elecs. Am., Inc., 989 F.2d 1512 (9th Cir.1993) (Kozinski, J., dissenting)

Preface

I hope this short book on intellectual property is helpful for each reader, including students, attorneys, judges, scholars, and the interested general reader. I want to thank Liz Hanellin for editing and the editors and staff at Carolina Academic Press. I also wish to thank the many colleagues, attorneys, judges, students, tech workers, and friends who have shared their understanding of this field with me.