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Strange, Louise,

Note, Just a Generative AI User, Standing in Front of a Copyright Troll, Asking it to Love Her: Generative AI, Copyright Trolls, and the Statutory Damages Regime

Copyright trolls have been on the rise for the last few decades, capitalizing on the statutory damages scheme offered in the Copyright Act. While the main arena for copyright trolls has generally been within peer-to-peer file sharing, the inception and popularization of generative artificial intelligence ("Generative AI") may present a new frontier for copyright trolls. With the massive amounts of data contained in training sets for Generative AI models, some degree of copyright infringement in both the input and output of these engines is all but assured. Endusers may not know it, but their actions in using Generative AI may open them up to the predatory litigation tactics of these trolls. The solution can be found in taking away the monetary incentive for copyright trolls to behave as they do; by applying a presumption of innocent infringement, end-users of generative artificial intelligence may be better shielded from forced settlements, while willful infringers can still be held accountable.

Copyright - Choreography

53

1 179

2025

Peraza, Danielle,

Note, Boureé-ing Between Copyrighted Choreography and Uncopyrighted Dance: Where Do We Draw the Line?

While copyright law purports to protect choreography, choreographers and legal scholars face problems. Choreographers have rights pertinent to public performance and the public display of their work, but the law provides no helpful guidance when distinguishing between mere inspiration and outright copying. Choreography in copyright law has remained a largely undefined area. Very few courts have considered the scope of copyright protections for choreographic work. This Note proposes rethinking how we define "choreographic work" and moving towards a broader definition of choreography so that courts and parties may better distinguish protected elements and expression, such that

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alleged defendants cannot hide behind the excuse that their copying was mere "inspiration."

Copyright – Digital Millennium 53 4 529 2025 Copyright Act, Artificial Intelligence

Witcher, Wade,

DMC-AI: An AntIvenom

The Digital Millennium Copyright Act (DMCA) emerged as a cornerstone of early Internet policy, designed to foster electronic commerce through safe harbor provisions for online platforms. However, after nearly three decades, the Internet landscape has transformed dramatically-now dominated by sophisticated AI algorithms that automatically curate, promote, and moderate user content across social media platforms. Although AI has generated unprecedented user engagement and revenue streams, it has also intensified copyright infringement challenges, leaving copyright holders overburdened with enforcement efforts. Today's AI-driven Internet environment has rendered the original justifications for the DMCA's safe harbor provisions obsolete. A balanced approach to copyright protection and electronic commerce demands affirmative obligations from social media platforms that deploy AI-driven personalization algorithms. Just as these platforms harness sophisticated technologies to maximize engagement and profits, they must proactively leverage these same capabilities to detect and prevent copyright infringement.

Copyright & Patents – Recording 53 1 1 2025 Statutes

Mann, Ronald,

As Rare As Hen's Teeth?: The Pervasive Dysfunctionality of IP Recording Systems

This Article considers the dysfunctional nature of the existing systems for recording notice of security interests in patents and copyrights. It starts by discussing how the relevant recording statutes came into being, deriving in the 19th century from real-property recording statutes, but frozen at that stage. It then considers the leading cases for assessing priority of security interests in copyrights and patents, and then discusses practical and interpretive problems with those systems as those cases leave them. The Article closes by suggesting reforms that could be implemented by the courts in some cases, but by Congress in most.

Copyright – Small Claims Court 53 3 385 2025 Web, K.C.,

Small Claims, Big Problems: A Critical Look at the Copyright "Small Claims Court"

Copyright has a "small claims" problem. The cost of formal legal action often exceeds potential damages amounts. Copyright owners are deprived of any meaningful remedy, and infringement goes undeterred. To address this, the United States created a voluntary, low-cost quasi-court (the Copyright Claims Board, "CCB") within the Copyright Office to adjudicate claims involving damages up to \$30,000. However, after looking over the first 250 cases filed, it seems the problem is far from fixed. Perhaps with some legislative tweaking, it may improve enough to justify the cost imposed on taxpayers. This paper takes a critical look at the CCB's first 250 cases to determine whether it is living up to the policy goals, and what may be done to improve, taking lessons from other copyright small-claims projects abroad.

Copyright – Takings Clause, 53 1 149 2025 Music

Greenberg, Hunter,

Note, The Eminem Show(Down): Legal Face-Off Among Music Publishers, Streaming Services, and the Fifth Amendment

Vested in copyright owners is the right to file an infringement suit when an unlicensed party infringes on the copyright owner's original work of authorship. However, an amendment to the Copyright Act of 1976 removes this right from copyright owners of musical works (predominantly songwriters and music publishers) when a streaming service infringes upon their music. The problem with this amended provision is that it possesses characteristics suggesting it may be a regulatory taking under the Fifth Amendment. By applying the ad hoc takings analysis to this Limitation on Liability provision, this Note concludes that the provision in question can constitute a regulatory taking. Then, several recommendations are suggested to remedy this finding.

Patents – Artificial Intelligence 53 2 247 2025
Bargmann, Brendan; Bohrer,
Robert A.,

AlphaFold 3, AI, Antibody Patents, The Future of Broad Pharmaceutical Patent Claims, and Drug Development

Artificial intelligence (AI) will have an enormous impact both on pharmaceutical development and patent protection, particularly for antibody therapeutics. In Amgen Inc. v. Sanofi, the U.S. Supreme Court limited the scope of Amgen's therapeutic antibody patent to only those antibodies that were specifically described in Amgen's patent application and that had been shown to bind to a particular region of the target antigen, blocking the activity of the antigen that caused disease. The reason for this limitation was the patent requirement of enablement: that potentially millions of antibodies could be generated to the target antigen, but not all would bind in a way that produced the therapeutic effect. The Court concluded that Amgen's patent had not enabled other scientists to produce antibodies with the desired activity without "undue" experimentation, concluding a decades-long shift in their caselaw limiting the permissible scope of monoclonal antibody patents. This article concludes that artificial intelligence has the power to overcome the problem of enablement that currently limits the scope of antibody patents.

Patents – Double Patenting Pedersen, Brad. D.,

53 1 33 2025

How to Resolve Double Patenting: Recognize It Is An Archaic Legal Doctrine That Was Effectively Eliminated for AIA Patents

The U.S. Patent and Trademark Office (USPTO) improperly attempted to expand the judicially created doctrine of double patenting through proposed rule changes in May 2024. These changes sought to simplify challenges to drug-related patent thickets by requiring broad concessions in terminal disclaimers, potentially invalidating entire patent families if a single claim was deemed invalid. Fortunately, the proposed rule changes were withdrawn. This article revisits the legal and policy reasons for why the proposed rules were improper for pre-AIA patents and statutorily unauthorized for AIA patents. It advocates for alternative approaches that eliminate doubling patenting for AIA patents and encourage enhanced examination and procedural reforms for all continuation applications, which would better serve the patent system.

Patents – International, China, 53 2 345 2025 Utility Model System

Tu, Xiongying,

China's Utility Model System: A Framework Tailored to the Country's Specific Economic and Developmental Contexts and Objectives

China's utility model system, which, intentionally aligned with national economic goals, incorporates considerations of inventor profiles and technological landscapes to drive both innovation and economic advancement strategically. In the face of rapidly evolving industrial landscapes, China's utility model system stands out for its ability to adapt, thereby propelling technological progress and significantly contributing to the overall economic growth of the nation. Particularly noteworthy is its role in fostering innovation within Micro and Small Enterprises (MSEs) and individual inventors. However, the effectiveness of China's utility model system hinges on continuous efforts to address challenges and enhance the caliber and authenticity of utility model patents. A persistent commitment to refinement is imperative in maintaining a balanced and effective intellectual property framework.

Patents – International Trade 53 4 619 2025 Commission, Domestic Industry

Stein, Hank,

Note, Domestic Industry: Why the Analysis Should Change with the Times

The modern American industrial landscape is vastly different from when the Smoot-Hawley Tariff Act of 1930 first established Section 337 investigations. In the years since 1930, ITC Commissioners have disagreed over whether the economic prong of the domestic industry analysis should adapt to the modern economic landscape. Recent cases at the ITC and the Federal Circuit have shown that it is time for the Commission to once again reckon with this question. This note suggests that the ITC should fully adopt the Federal Circuit's recent ruling in Lashify, Inc. and implement the holistic "as-a-whole" analysis for domestic industry.

Patents – Obviousness, Artificial 53 1 209 2025 Intelligence

Sung, Jaemin,

Note, Rethinking the Obviousness Inquiry In the Age of Generative AI

Human inventors are increasingly employing artificial intelligence in the inventive process. With the availability of generative AI, which can create new content in a manner that exceeds human capabilities, inventors have the best tools at their disposal. However, in evaluating the patentability of AI-assisted inventions, the traditional obviousness inquiry under Graham does not adequately capture the extent to which a skilled person in the art can judge the obviousness of such inventions. This Note thus addresses the impact of generative AI on the level of ordinary skill in the art and the person having such skill in the art. It also discusses the need for a separate disclosure requirement for patent applications that claim AI-assisted inventions. Next, it proposes a set of criteria that augments the obviousness inquiry into AI-assisted inventions. Finally, it applies the proposed criteria to evaluating the obviousness of a controversial AI-assisted invention that was once rejected by the USPTO for listing AI as its sole inventor.

Patents – Prior Art, Novelty

53 2 277 2025

Ball, Haley; Goldstein, Jorge,

Prima Facie Lack of Novelty: When Prior Art Ranges Give Rise to Rebuttable Anticipation

The Court of Appeals for the Federal Circuit has long- and well-established standards for determining whether a claimed numerical range is prima facie obvious over a prior art reference disclosing a similar range, or whether the claimed range is conclusively anticipated by a narrower range or a point. It is fair to say that this area of the law is stable. However, until relatively recently, such has not been the case with the doctrine of rebuttable anticipation. This article provides a contextual and historical survey of decisions in the area of claimed and prior art ranges. It then focuses in detail on the younger doctrine of prima facie anticipation and reaches conclusions as to its application and scope.

Patents – Prior Art, Prior Users 53 2 325 2025 Lemley, Mark A.,

Where are all the Prior Users in Patent Cases?

The adoption of prior user rights in U.S. patent law was a big deal, largely aligning the U.S. with the rule in other countries. Simultaneous or near-simultaneous invention is extremely common, so prior use should be as well. But a surprising thing has happened in the last thirteen years: virtually nothing. Only three decisions in those thirteen years involve substantive claims of prior use. All are by district courts, and two of those decisions were made on largely procedural grounds. Only a single case actually finds prior use by another under the statute. I document the surprising absence of prior user right litigation. I consider a number of reasons for the missing caselaw, none entirely satisfactory. I consider and (mostly) reject explanations that are a function of when and how cases are litigated, the difficulty of detecting

non-public uses, and the existence of prior art as an alternative to the defense. Nor does the explanation seem to be that simultaneous use without publication is no longer as important as it once was. Instead, the real reason no one uses the prior user right is likely a function of the significant limits Congress put on the exercise of the right. It may be time to revisit those limits.

Trademark – Compounded 53 4 585 2025 Drugs

Bittar, Vanessa Sabrina,

Note, Compounded Drugs: An Uprise of Trademark Infringement Lawsuits Calling for More FDA Regulation

Demand for GLP-1 medications has surged, driven by their use in diabetes treatment and off-label weight loss. With increasing demand, manufacturers of the Food and Drug Administration ("FDA") approved drugs Ozempic, Wegovy, Mounjaro, and Zepbound have had a hard time producing enough medicine to meet consumer demand. Supply shortages prompted the FDA to allow compounding pharmacies to produce copies of these drugs, which are not FDA-approved, meaning they lack safety, quality, and efficacy testing. The rise in compounded drugs has sparked trademark infringement and false advertising claims by original manufacturers, like Novo Nordisk and Eli Lilly, who allege that affiliation with the compounded drugs harm their brands. This Note discusses the need for enhanced regulatory measures to better control the advertising and labeling of compounded drugs, proposing that the FDA be given more authority to expand on its current regulation and require clear disclaimers to protect consumers and trademark rights.

Trademark – Fair Use, First 53 3 445 2025 Amendment, Freedom of Religion

Todd, Summer Basham,

Note, Marked by Faith: A Justification for Religious Fair Use in Trademark Infringement Disputes

At the heartbeat of American jurisprudence is the freedom of religion. Under the First Amendment, religious works and symbols, taking shape as religious expression, are fiercely guarded and held sacred. Yet, trademark law may compete with First Amendment protections when religious expression is brought within its ambit. Accordingly, trademark law must be applied in a manner that respects and accommodates religious expression. However, as this Note explores,

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trademark law often operates to preference certain religious groups at the expense of others and to burden the free exercise of religion when one group sues another to protect the exclusive use of a religious mark in a trademark infringement dispute. Accordingly, this Note proposes a novel fair use defense—religious fair use—to trademark infringement claims in an effort to achieve a better balance in the public interest in protecting trademark rights against the public interest in protecting religious freedoms.

Trademark – Supreme Court 53 3 483 2025 Precedent

Juliano Jr., Louis T.

Note, The Dewberry Dilemma: How the Supreme Court has Created a Freeway for Infringement Under the Lanham

Trademark law is the fundamental protection for a commercial businesses' brand. By creating a trademark for goods and services, consumers can identify the brand, which discourages confusion of the source of the mark while simultaneously protecting the reputation of the company. When a second company violates the trademark of the first, the second company is not only confusing the consumer, but also unjustly takes potential profits from the registered trademark owner. The consequences of violating another brand's trademark typically include monetary damages, as well as injunctive relief. But can injunctive relief accurately remedy missed sales due to trademark infringement for a company that claims no profits? This Note focuses on the Supreme Court's decision in Dewberry Group v. Dewberry Engineers; a long-standing trademark dispute, resulting in Dewberry Group being found liable for trademark infringement, before the Supreme Court vacated the decision for remand. Finding that a company's affiliates, when unnamed as a party, do not constitute "defendant's profits", the Supreme Court has essentially created a pathway for infringers to avoid monetary liability. This Note discusses the issues with the case, the problems with the Supreme Court's ruling, and possible negative outcomes stemming from this decision.