

5 Copyright Protection and Enforcement

Copyright protection and enforcement has the ability to be a vexatious issue for a business. Businesses must note the creation of copyrightable matter, identify the author and ensure ownership of the copyright. With such information the business can register the copyright which, although not required for ownership, provides additional remedies and is necessary to bring suit.

A. Copyright Ownership

A copyright protects for a limited duration the original work of an author, artist, or composer fixed in a tangible media. The copyright owner has the exclusive right to reproduce, display, perform, sell or rent, or create derivatives of the original work.

1. Protectible Subject Matter

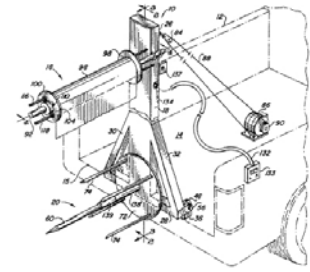
The subject matter protectible by U.S. copyright is statutorily defined and includes literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

2. Work for Hire

The "author" of the work for purposes of copyright law may not be the particular individual who created it, but the business which employed or commissioned the creator. This may be of critical importance if enforcement of the copyright is required.

a. Employees

Under the copyright laws, the business is the author of protectible subject matter created by an employee of the business in the course and scope of the employee's employment, absent some agreement between the employer and employee to the contrary. Such an issue may be addressed in an employment agreement regarding intellectual property.

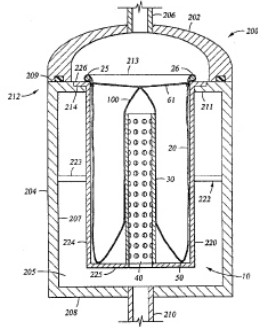


U.S. Pat. No. 5,352,080

*Bale Handling and
Wrapping Apparatus*

*Inventor:
Nayles G. Bakke*

*Patent Attorneys:
Keeling Patents & Trademarks, L.L.C.*



U.S. Pat. No. 5,910,247

Two Element Filter Bag

Inventor:

W. Mark Outterside

Patent Attorneys:

Keeling Patents & Trademarks, L.L.C.

b. Independent Contractors

Under the copyright laws, the independent contractor is the author of protectible subject matter created by the independent contractor in completing a commission for the business, absent a prior written agreement to the contrary which specifies the product will be a work for hire. Hence patent attorneys routinely contribute to contracts where an independent contractor is retained to produce protectible subject matter for the business.

3. Assignment

Even if a business does not take adequate steps prior to the creation of the copyrightable subject matter, the business may clearly acquire all copyright rights from the author through a written assignment.

B. Copyright Registration

The author of a copyrightable work, including the business itself, may file at any time for registration of its copyright with the Copyright Office at the Library of Congress. Such registration provides significant remedies in cases of infringement. Absent such a registration, or proof of compliance with the registration procedure, the author may not sue for copyright infringement. If the infringement commenced prior to registration, the copyright owner cannot recover attorneys fees or statutory damages, but is limited instead to recovery of the infringer's profits and the author's actual damages.

C. Copyright Infringement Issues

Participation in copyright infringement issues may begin long prior to any litigation with infringement opinions. Such work is typically performed on an hourly rate basis.

1. Copyright infringement opinions

Where a copyright-related action is possible, especially where the client may be the possible defendant, the patent attorney will provide an opinion letter regarding the potential exposure.

2. Copyright infringement actions

Patent attorneys regularly participate in copyright infringement actions, either as primary counsel or as co-counsel for other trial attorneys. Liability in copyright infringement actions is based on whether the purported infringement was created with access to the original work and is substantially similar to it.