

ARE STORYLINES PATENTABLE? TESTING THE BOUNDARIES OF PATENTABLE SUBJECT MATTER

*Anu R. Sawkar**

This Note examines doctrinal issues relating to the patentability of nonphysical inventions by assessing a proposal to patent storylines for use in books and movies. Analyzing recent and historical case law regarding the limits of patentable subject matter, this Note identifies four points of doctrinal tension whose resolution will determine the extent to which nonphysical inventions, such as the storyline proposal, are patentable. This Note suggests how the U.S. Court of Appeals for the Federal Circuit should resolve these tensions in upcoming cases and proposes boundaries for the patentability of nonphysical inventions.

INTRODUCTION

Copyright law is failing writers. At least that is how novelist Leon Arden felt after losing a legal battle with Columbia Pictures over a plotline he created.¹ Arden alleges that the movie studio copied his story to produce the blockbuster film *Groundhog Day*² without giving him credit.³ Arden is not the only writer who has used the courts to try to protect the products of his creativity against theft by Hollywood. Indeed, federal courts regularly entertain claims by the authors of screenplays or novels that popular movies have infringed their copyrights⁴—with mixed results.⁵

* J.D. Candidate, 2009, Fordham University School of Law; Ph.D., 2005, The Scripps Institute; B.A., 2000, Northwestern University. I would like to thank Professor Jeanne C. Fromer and Raymond C. Woodring for their invaluable support and comments.

1. See Sathnam Sanghera, *A Gnawing Kind of Pain*, FT.com, June 18, 2004, http://search.ft.com/ftArticle?queryText=%22A+gnawing+kind+of+pain%22+&y=0&aje=false&x=0&id=040618004725&ct=0&nclick_check=1 (interviewing Leon Arden).

2. *Groundhog Day* (Columbia Pictures 1993).

3. See Sanghera, *supra* note 1.

4. See, e.g., *Herzog v. Castle Rock Entm't*, 193 F.3d 1241 (11th Cir. 1999) (the movie *Lone Star*); *Williams v. Crichton*, 84 F.3d 581 (2d Cir. 1996) (the movie *Jurassic Park*); *Towler v. Sayles*, 76 F.3d 579 (4th Cir. 1996) (the movie *Passion Fish*); *Beal v. Paramount Pictures Corp.*, 20 F.3d 454 (11th Cir. 1994) (the movie *Coming to America*); *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042 (9th Cir. 1994) (the movie *Honey, I Shrunk the Kids*); *Litchfield v. Spielberg*, 736 F.2d 1352 (9th Cir. 1984) (the movie *E.T.*); *Chase-Riboud v. Dreamworks*, 987 F. Supp. 1222 (C.D. Cal. 1997) (the movie *Amistad*); *Arden v. Columbia Pictures Indus., Inc.*, 908 F. Supp. 1248 (S.D.N.Y. 1995) (the movie *Groundhog Day*); *Zambito v. Paramount Pictures Corp.*, 613 F. Supp. 1107 (E.D.N.Y. 1985) (the movie *Raiders of the Lost Ark*).