5-1-1993

Copyright Law: D.C.I. Computer Systems, Inc. v. Bill Pardini, No. 91-15890, 1992 U.S. App. LEXIS 29951 (9th Cir. Nov. 5, 1992)

§1983 for any violation of his rights that may have been secured by these statutes. Plaintiff was able to bring an action under §1983 that may have otherwise been foreclosed, but he was not thereby provided a right to damages where none had existed before. *Affirmed.*

P.J.

ADMINISTRATIVE LAW

SCHURZ COMMUNICATIONS, INC. v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, Nos. 91-2350, 91-2597, 91-2598, 91-2684, 91-2855, 91-2883, 92-1117, 92-1120, 92-1484, 1992 U.S. App. LEXIS 28898 (7th Cir. Nov. 5, 1992).

Coalitions of producers and of independent television stations, in addition to the NBC, CBS, and ABC television networks, petitioned the court to invalidate new Federal Communications Commission (FCC) "financial interest and syndication" rules. Petitioners challenged FCC rules originally enacted in 1970 and revised in 1991 aimed at regulating the syndication of television programs. The rules were intended to prevent monopolistic competition among the networks and to ensure diversity in programming. Petitioners argued that the rules as promulgated were arbitrary and capricious, and prayed that they be repealed.

Held: The FCC's justification for establishing its rules fails the standard for judicial review of administrative action. That standard requires that the statement of the basis for a rule's enactment must demonstrate that in light of all the arguments presented for and against the rule, the rule was a reasonable response to the problem which confronted the agency. The FCC's articulation of its grounds for enacting its financial interest and syndication rules was unreasoned and unjustifiable. Important concepts were not explained, critical evidence was overlooked, key arguments were not addressed, and ambiguities were ignored. *Order Vacated.*

J.B.

COPYRIGHT LAW

D.C.I. COMPUTER SYSTEMS, INC. v. BILL PARDINI, No. 91-15890, 1992 U.S. App. LEXIS 29951 (9th Cir. Nov. 5, 1992).

Plaintiff, D.C.I. Computer Systems, Inc., appeals summary judgment granted in favor of the defendant, Bill Pardini, in plaintiff's copyright infringement action. D.C.I. argues that it may claim copyright protection for a computer software program which it licensed to automobile dealers for six years before the copyright was

registered. Plaintiff claims it is allowed statutory protection under the doctrine of limited publication D.C.I. also argues that its federal claim is not barred by the statute of limitations because it "relates back" to the original state complaint filed. Pardini cross-appealed, arguing that the trial court erred in denying attorney's fees.

Held: D.C.I.'s distribution was a general, rather than limited publication, and was therefore divested of statutory protection. The doctrine of limited publication applies only if two requirements are met: (1) the work may only be distributed to a select group of people; and (2) the work may only be distributed for a limited purpose. D.C.I. did not meet these requirements. Next, the court held that D.C.I.'s federal claim was barred by the statute of limitations as it did not arise out of the state claim and was a separate cause of action. Finally, the court stated that as D.C.I.'s action was not frivolous or brought in bad faith, Pardini should not receive attorney's fees. *Affirmed.*

J.H.

PATENT LAW

IN RE BRADLEY C. CARLSON, No. 92-1248, 1992 U.S. App. LEXIS 32675 (Fed. Cir. Dec. 16, 1992).

Bradley Carlson appeals a decision of the U.S. Patent and Trademark Office which affirmed the examiner's rejection of a reexamination of a claim holding Carlson's design as unpatentable. This case is based on a design protected by a German Geschmacksmuster, which may cause Carlson's design to be obvious. Carlson argues that the foreign patent, the German Geschmacksmuster, may only serve as a prior art if it discloses its invention in an accessible manner. Carlson further argues that even if the Geschmacksmuster is prior art, his design is not obvious as his design is symmetrical and the other is asymmetrical.

Held: The court held that since the Geschmacksmuster fully discloses the design upon which German law conferred exclusive rights, it constitutes prior art. As to the obviousness question, the court held that where products are designed asymmetrically, a symmetrical design would be obvious to one of ordinary skill, and therefore obvious and unpatentable. *Affirmed.*

J.H.

TRADEMARK LAW

VICTOR DECOSTA v. VIACOM INTERNATIONAL, INC., No. 91-2211,