

modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department Labor, Employment Standards Administration, Wage and Hour Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

#### **New General Wage Determination Decisions**

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

##### *Volume V*

Oklahoma  
OK950037 (Mar. 24, 1995)

#### **Modification to General Wage Determination Decisions**

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

##### *Volume I*

New Jersey  
NJ950003 (Feb. 10, 1995)  
NJ950004 (Feb. 10, 1995)  
Massachusetts  
MA950007 (Feb. 10, 1995)  
Rhode Island  
RI950002 (Feb. 10, 1995)

##### *Volume II*

None

##### *Volume III*

Florida  
FL950002 (Feb. 10, 1995)

FL950014 (Feb. 10, 1995)  
FL950017 (Feb. 10, 1995)  
FL950069 (Feb. 10, 1995)  
Georgia  
GA950050 (Feb. 10, 1995)

##### *Volume IV*

Illinois  
IL950001 (Feb. 10, 1995)  
IL950002 (Feb. 10, 1995)  
IL950015 (Feb. 10, 1995)  
Michigan  
MI950001 (Feb. 10, 1995)  
MI950002 (Feb. 10, 1995)  
MI950003 (Feb. 10, 1995)  
MI950004 (Feb. 10, 1995)  
MI950005 (Feb. 10, 1995)  
MI950007 (Feb. 10, 1995)  
MI950012 (Feb. 10, 1995)  
MI950017 (Feb. 10, 1995)  
MI950031 (Feb. 10, 1995)  
MI950046 (Feb. 10, 1995)  
MI950047 (Feb. 10, 1995)

##### *Volume V*

Kansas  
KS950011 (Feb. 10, 1995)  
KS950012 (Feb. 10, 1995)  
KS950013 (Feb. 10, 1995)  
KS950015 (Feb. 10, 1995)  
KS950018 (Feb. 10, 1995)  
KS950019 (Feb. 10, 1995)  
KS950020 (Feb. 10, 1995)  
KS950021 (Feb. 10, 1995)  
KS950022 (Feb. 10, 1995)  
KS950023 (Feb. 10, 1995)  
KS950028 (Feb. 10, 1995)

##### *Oklahoma*

OK950013 (Feb. 10, 1995)

##### *Texas*

TX950034 (Feb. 10, 1995)  
TX950063 (Feb. 10, 1995)

##### *Volume VI*

Alaska  
AK950001 (Feb. 10, 1995)  
Nevada  
NV950002 (Feb. 10, 1995)

#### **General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (MTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing

Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 17th day of March 1995.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 95-7080 Filed 3-23-95; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 95-3]

#### **Registrability of Pictorial, Graphic, or Sculptural Works Where a Design Patent Has Been Issued**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Policy decision and amendment of regulations.

**SUMMARY:** The Copyright Office of the Library of Congress issues this policy decision to clarify its practices and to amend the regulations regarding the registrability of claims to copyright in pictorial, graphic, and sculptural works for which a design patent has been issued. Under the current regulations, a copyright claim in a patented design, or in a scientific or technical drawing in an application of an issued patent is refused registration under the so-called "election doctrine." We believe there is no longer any legal justification for the continuation of this practice.

**EFFECTIVE DATE:** April 24, 1995.

#### **FOR FURTHER INFORMATION CONTACT:**

Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Under the current Copyright Act, copyright is secured at the time of creation of the work without the necessity of any formalities, such as registration of an eligible unpublished work or publication with copyright notice, required under the 1909 Act. A patent, on the other hand, must be pursued through the process of examination in

the Patent Office. The Commissioner of Patents actually determines the patentability of an invention or design and grants the patent.

The current regulations, 37 CFR 202.10(a) and (b), reflect the Copyright Office's policy of accepting the doctrine of "election of protection." For many years, the Copyright Office required claimants to elect between patent or copyright protection of useful pictorial, graphic, or sculptural expressions. The origin of this policy can be traced to a 1910 decision, *Louis de Jonge & Co. v. Breuker & Kessler Co.*, 182 F. 150 (C.C.S.E.D. Pa. 1910), *aff'd*, 191 F. 35 (3d Cir. 1911), *aff'd*, 235 U.S. 33 (1914), wherein the court held that a claimant could elect to secure protection under either patent or copyright but could not secure both. Similarly, in 1927, the D.C. Court of Appeals, in *In re Blood*, 23 F.2d 772 (D.C. Cir.1927) embraced the election doctrine.

The primary basis for the existing Copyright Office policy was the Second Circuit's decision in *Korzybski v. Underwood & Underwood, Inc.*, 36 F.2d 727 (2d Cir. 1929). The court ruled that "[a]n inventor who has applied for and obtained a patent cannot extend his monopoly by taking out a copyright." "The filing of the application for the patent \* \* \* was a publication [and full disclosure of the invention] that entitled anyone to copy the drawings [representing the invention]." *Id.* at 729 (parenthetical added). However, in a landmark decision, *Mazer v. Stein*, 347 U.S. 201 (1954), the Supreme Court ruled that the same disclosure or publication might support a design patent and a copyright. "Neither the Copyright statute nor any other says that because a thing is patentable it may not be copyrighted." *Id.* at 217. The Court, however, expressly refused to entertain the issue of whether the grant of either monopoly precluded that of the other. A few years later, in *Vacheron & Constantin-LeCoultre Watches, Inc. v. Benrus Watch Co. Inc.*, 155 F. Supp. 932 (S.D.N.Y. 1957), *modified*, 260 F.2d 637 (2d Cir. 1958), the district court rejected arguments that seeking copyright protection precluded securing design patent protection. Indeed, the overlapping protection concerns two distinct statutory monopolies; and the doctrine of *Korzybski* "must rest upon the assumption that the owner of the statutory monopoly has some power to protect his 'work,' for otherwise any dedication would be without consideration." 260 F.2d at 642.

In 1968, the Copyright Office reviewed the election policy and reaffirmed its position on two grounds—public policy considerations and the

publication with notice requirement. The public policy ground was based on the theory that it is an undue extension of the patent monopoly to allow, after the patent has expired, a copyright for the same design. If copyright protection were allowed to subsist, the public would be deprived from exploiting the work for the duration of the copyright. The second ground was a more practical one. The patent procedure required publication in the Official Gazette without notice of copyright. Since the 1909 Copyright Act required a notice of copyright on all published copies to secure and maintain copyright protection, this requirement foreclosed copyright protection for the patent drawings and placed the work in the public domain.

Prior to 1974, The United States Patent and Trademark Office had an election policy similar to that of the Copyright Office. The Patent Office discontinued this requirement in view of the decision in *In re Yardley*, 493 F.2d 1389 (C.C.P.A. 1974), wherein the court stated that even though there is a definite overlap, "Congress has not provided that an author inventor must elect between securing a copyright or securing a design patent." *Id.* at 1394. "[T]he mere fact", said the court "that the copyright will persist beyond the term of any design patent which may be granted does not provide a sound basis for rejecting appellant's patent application." *Id.* at 1395. Reassessing its policy, the Copyright Office chose to follow *Korzybski* instead of *Yardley*, on the rationale that the latter case was limited to an interpretation of the design patent act while *Korzybski* interpreted the Copyright Act.

The Copyright Office regulations based on the election doctrine have been criticized. In his treatise on copyright, Nimmer observes:

Without offering the rationale of publication or any other basis, Copyright Office Regulations under the 1909 Act simply provided that once a patent has been issued, copyright registration would be denied to a work of art and to a scientific or technical drawing. There appears to be no statutory or other justification for this position. It would seem on principle that if a work otherwise meets the requirements of copyrightability, it should not be denied such simply because the claimant happens to be entitled to supplementary protection under other legislation.<sup>1</sup>

We agree.

In consideration of the foregoing, the Copyright Office is issuing this Policy Decision and amending 37 CFR chapter II in the manner set forth below.

<sup>1</sup> David Nimmer and Melville B. Nimmer, *Nimmer on Copyright* § 2.19 (1994).

## PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

**Authority:** Section 702, 90 Stat. 2541, 17 U.S.C. 702.

2. In § 202.10, paragraphs (a) and (b) are removed, the existing paragraph (c) is redesignated as paragraph (b), and a new paragraph (a) is added to read as follows:

### § 202.10 Pictorial, graphic, and sculptural works.

(a) In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form. The registrability of such a work is not affected by the intention of the author as to the use of the work or the number of copies reproduced. The availability of protection or grant of protection under the law for a utility or design patent will not affect the registrability of a claim in an original work of pictorial, graphic, or sculptural authorship.

**Marybeth Peters,**

*Register of Copyrights.*

Dated: March 14, 1995.

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 95-7363 Filed 3-23-95; 8:45 am]

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting; Arts in Education Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Plus Section) to the National Council on the Arts will be held on April 10-14, 1995. The panel will meet from 10:30 a.m. to 5:30 p.m. on April 10; from 9:00 a.m. to 6:00 p.m. on April 11; from 9:00 a.m. to 2:00 p.m. on April 12; and from 8:30 a.m. to 5:00 p.m. on April 13. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 13 from 3:15 p.m. to 5:00 p.m. for a policy discussion including a discussion of the FY 96 and 97 Arts Plus guidelines.

The remaining portions of this meeting from 10:30 a.m. to 5:30 p.m. on April 10; from 9:00 a.m. to 6:00 p.m. on April 11; from 9:00 a.m. to 2:00 p.m. on April 12; and from 8:30 a.m. to 3:15