PROCESS OF RELAYING A STORY HAVING A UNIQUE PLOT

BACKGROUND

[0001] Hollywood has been failing. Hackneyed plots are commonplace in modern movies and creativity has been replaced by expensive "special effects." Elaborate explosions and sophisticated fight scenes bore even the slightest intellect where the storyline is confused, dull, or lacking. There is a substantial need for original, intellectually exciting plots in all forms of entertainment, such as novels and, particularly, motion pictures.

[0002] Traditionally, patent protection has provided the economic and moral impetus for technological improvements in all fields. An inventor is motivated to absorb the substantial financial, time, and personal costs of identifying problems with current technologies and inventing solutions to those problems when he is assured the right to exploit that invention by excluding others from making, using, selling, offering to sell, and importing his invention. 35 U.S.C. §271. Where patent protection is not available or is not easily obtained or enforced, such as in the typically statist welfare countries of Central and South America and communist countries such as China, technological progress is stunted by at least two causes: a) inventors employed by a company little motivation to disclose their inventions to the public, and thus tend to keep their inventions as trade secrets within the company; and b) independent inventors have virtually no motivation whatsoever to disclose their inventions to anyone, because of (justifiable) fears of appropriation.

[0003] In much the same way, the progress of intelligent fictional plots, particularly of movies, has been stunted worldwide. Currently, a writer may receive free, comprehensive, and automatic copyright protection on anything she writes. If her skill consists primarily of expressing old, stale concepts in new, creative, exciting ways, then she will benefit from copyright protection. However, if her skill consists primarily of inventing new and unique broad concepts, then copyright protection will only protect one of uncountably many possible expressions of those new and unique concepts. This dangerous dichotomy is explained further.

[0004] Patents and copyrights aim to protect different interests. A copyrighted work is a particular expression or embodiment of a broader concept. For example, a broad concept might be, "Life is worth living for its own sake, and the only economic system that respects humans' right to live freely for their own happiness, without brute force compulsion to be sacrificed for the benefit of others, is capitalism." A particularly beautiful expression of this broad concept is Ayn Rand's *Atlas Shrugged,* which is subject to copyright protection. Ayn Rand's estate does not own all embodiments of the broad concept—only the single expression embodied by her novel.

[0005] In sharp contrast, a patented invention protects each and every possible embodiment of a broad invention. Consider a patent on a car. It is not a particular actual car that is the subject of a patent, rather the wide class of possible cars that fall within the scope of the patent. In other words, a particular car is simply one protected embodiment of the broader patented invention. Because of the broad scope of rights afforded to a patent owner, one may not receive a patent on an invention that is old or obvious. 35 U.S.C. §§102-103.

[0006] Thus, patent protection and copyright protection differ substantially on the ease with which infringement may be avoided. Because a patent protects all expressions or embodiments of the single broad invention, a competitor who desires to use or sell the invention without paying royalties may not; it may only avoid patent infringement by paying royalties or avoiding the invention altogether. In sharp contrast, a competitor who desires to use the broad concept disclosed in another's work (e.g., book or article) may freely do so without infringing any copyrights, even when the broad concept is new and nonobvious. All the competitor must do is to create a moderately different expression of the broad concept.

[0007] It is clear that copyrights protect those who are good performers: those who sing well, dance well, write well, act well, and so forth. Copyrights are based on a system of recognition in which society rewards performers because they express an old concept in an original (and hopefully desirable) way, not because they express a new concept. Of course, many artists do invent original concepts, but it is their expression of those concepts, not their creation or invention of those concepts, that copyright protection rewards.

[0008] For example, one who sings a touching version of "White Christmas" may receive copyright protection on his performance—not because he invented the concept of singing about Christmas—not because he wrote the lyrics to the song—but because his particular vocal expression of it is original. Further, a woman who writes and performs a love song may receive copyright protection on both the lyrics and her performance—not because she invented the concept of singing about love—but because her particular written expression of love, and her particular vocal expression of those written lyrics, are original. Finally, consider the man who invents an entirely new and nonobvious type of music or method of performing music. Clearly, copyright law cannot protect his invention. His only possible resource—which, to date, has not been tapped for the field of artistic inventions, such as original movie plots and new types of artistic expression—is patent protection.

[0009] There is no reason—neither statute nor case law nor PTO practice—why artistic inventions are not patentable subject matter under 35 U.S.C. §101. In the landmark decision *Diamond* v. *Chakrabarty* (447 U.S. 303, 1980), the Supreme Court held that living creatures were patentable subject matter under the doctrine that statutory subject matter includes "anything under the sun that is made by man," with three exceptions: laws of nature, physical phenomena, and abstract ideas. According to the Manual of Patent Examining Procedure, these three exceptions recognize that subject matter that is not a practical application or use of an idea, a law of nature, or a natural phenomenon is not patentable. §2106 (IV)(A).

[0010] Certainly a movie implementing a unique plot is a practical application or use of the unique plot, so the unique plot should not be barred patentability under §101. The invention of a new plot is just that—an invention—not merely an expression of an existing concept. Similarly, the practical application or use of any new artistic invention should be patentable subject matter.