

**Class 9: Computer Software**

**Administrative**

Next Time

MODIFIED ASSIGNMENT

280-304; § 101 ("Compilation")

Stop before Part 3, New Paradigms

**Last Time**

Useful Articles

Test / Statute

Conceptual Separability

Policy

Brandir Majority's Test

Conceptually separable if

Design elements can be identified as reflecting the designer's artistic judgment exercised independently of functional influences

Merger of aesthetic and functional considerations

Inseparable if

Form influenced in significant measure by utilitarian concerns

Brandir Dissent's Test

Does the article cause an ordinary reasonable observer to perceive an aesthetic concept not related to the article's use?

Comparing Tests

**Class 9: Computer Software**

**Computer Software Copyrightability, In General**

CONTU  
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How to write a program

- Source code
- Object code
- Complication: Interpreted Code
- Much more in Altai, page 244
- The process
  - Design
  - Coding
  - Debugging
- Often, highly collaborative
- Creativity required
  - Lots
  - "Elegance"
  - But a bit more "left brain" than traditional art

Class 9: Computer Software

Non-Literal Copying of Programs

CA v. Altai and Softel v. Dragon have similar facts

Competitors want to create similar code

Second-comer (D) in both cases first literally copies P's code, and doesn't dispute charges of copyright infringement

D then assigns task of rewriting code to team of programmers who didn't see P's code

"Clean Room Design" technique

CA v. Altai

Facts

CA (P) writes a program, a scheduler

Not a calendar program

For "scheduling" the computer's operations

Altai (D) hired P's ex-programmer

Didn't know he had worked on the scheduler

Didn't know he had pilfered a copy of the source code

D assigned rewriting task to eight other programmers

Held?

Reasoning

Abstraction-Filtration-Comparison Test

Softel v. Dragon

Most General

Pin

Pin depicting animal

Pin depicting small animal

Pin depicting insect

Pin depicting bee

Bee pin

Bee pin, any size, gems, gold or silver

**Defendant**

Bee pin, any size, gems, gold plating

Bee pin, any size, white gems, gold plating

bee pin, 3 inches, b&w striping, white gems, gold plating

Most Specific