United States Court of Appeals

for the

Second Circuit

Plaintiffs-Appellees,

Defendant-Appellant,

Defendants.

Texaco,WLVDOVRYLFLRXXOFLUHQHGGHVVOWLOWLQKLVWRDDLQW

YLUWXOOODOOXRGEHIDLUXHUVHODWHGOWKHGWWLSSERKDOOEXW

HUDVHVWKHRSURILWHGXDOOEQHIURPWKHILUVWIDF

TexacoDQWKHSODLQWLIWRIWKHVWDWXWHDYRLGVFLUFXODULW

UHVWRUHVEDODQFHWRWKHSDUWLFLSDQWVDFFRUGLQJWRWKHLQWHQ

IRUHEUDOOIDYRUDEOHWUHDWPHQWRIOLPLDULHVDQRWKHUREVWHGXDWLRQO

XHUVQHUWKLVVXEVDFWRU

$ Commercial exploitation of the patent or exclusively acquired use.

I TexacoWKLV&RXWHSODLQGWKDWWKHFRPPHUFLDOSURILWGLPLQRWR

FRQWHQGWKHQDLQVWKDWWKHQVHFRQGDUXHUPDNHVQXWKRULJXH

RIFRSULKWHGPDWHULDOWRWKHGLVDGYDQWDJHRIWKHFRSULKWRZQHU

FRSLQWKHRULLQOXQ GDWHPSKDVLVDGGHG,WEQRQR

FKDUDFWHULJHFRPPHUFLDOVHOOLQVFULKQWKHRSLHUGLUHFWOD

HFOXLYHODFWXHUFRQSLFXQLDOUHUGVIURPLWVXVHRIWKHFRSULKWHG

PDWHULDO,QFRQVUDVWHGWKHVHXHVYRWKHGXHVWKDWSURGXHDQDW

EHQILWVWKHEURDGHUSXEOLFLQWHUHVWFRQGXHGWKDW7KHUHDWHUWKH

SULYDWHFRQPLFUHUDUGVUHVWULFHGFRQDUXHUWRWKHOXRI

EURDGHUSXEOLFEHQILWVRWKHOLNHOWKHILUVWLDEVRUYDWLRQ

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)GG&LU7K HILUVWIDFWRUDVNVZKHWKHURULLQOLJV

FRSLHGLQRGIDLWKWREHQHILWWKHFRSULPDULOLIRFXVHUHFLDOLQWHUHVWV

RIWKHLQLQHUDQ MCA, Inc. v. Wilson)GG&LU

FRXWLVWRFRQGHUXHWKHHDVWHGLQULQHVS ULPDULOIRUSXROLF

EHQILWRUIRUSUIHUVRPHUFLDOLQWKLVEODQHGSURGWKHGHILQWLRQ

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UHSOLHGWKDWDSSHDOOLQWKHUVSRUWLQQUDLVHGQDUGOULVHVWRWKH

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& The district court misread

Harper & Row, Publishers, Inc. v. Nation Enterprises

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SURILWIURPHSORLWDWLRRSWKHWHGPDWHULDOZWKQWKHXWRPDU

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XWLPDWHOWUHDWLQGYDQHQJEHQILWDVLLWHUKDOHQWR

FRPPHUFLDOSURILWVQXHDQVV(&)1RDW FLWLQ

Weissmann v. Freeman)GG&LU Worldwide Church of

God v. Philadelphia Church of God, Inc)GWK&LU

Soc'y of Holy Transfiguration Monastery, Inc. v. Gregory

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7KHGLVWULFWFRXUWVDQDOVRIRXQGWKDWWKHFLOODWHGEHWZHHQWKHSHRSOHRI
DQGLYLGXDOVKDVDFWRULQWKHRYHUDOOIDLUXHRIWKHSHRPSOHQ
VXSRUWRILWVILQLQJWKDW3HQWHFRVWDOSURILWVWDXJKWDQGHFRXUDJHGWRFKDUHSDWURQ
DUHQWGLVSRVLWLYHRIWKHLQFRPPHUFLDOWKHRORJLFDOWUDGLWLRQGIURP
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)GW7KHGLVWULFWFRXU WVUHOLDEHQWKHVHLPSRUWDQWSRLQWRKHZHU
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WKHTXHVWLRQFRPPHUFLDOKRXWHLQLVRVLWLYHDQQRPPHUFLDOW\
FDEHUHDHGDQZLKHGLQ KHIDLUXHFDOFXZKRQYLWDO\
OHDGLQRDILQLRIIDLUXVH7KHGLVWULFWFRXW\DWHEESRQXLRQDLU
XHVHHPVWRGULYHWKHRXWFRPHQLVRIWKLVVXLWDEHURUWKDW
GHULYHVIURPHUUDQGWHWDLQDQRWKHUFDVHRQLFKWKHGLVWULFWFRXW
UHOLHG Holy Transfiguration)GDW3UHP RYLQREIURPWKH
HTXLWLRQRHVQWQHUFRUWKODZHPRYHOLDELOLWDQWVVLQWKHUV
RUNV´ Worldwide Church)GDW:KLOH KHIDFWWKDWDSXEOLFDWLRQ
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identified “teaching”, “research”, and “scholarship” in the statutory “preamble” as examples of uses that may be found to be fair. 17 U.S.C. § 107. And while it got

Authors Guild v. Google, Inc)

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,QWKH Cambridge University PressOLWLDWLRQWKHFRXUWOLPDWHOIRQWKDW

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Id.$FFRUGLQJO\LW[RUNVZHUHQWRIIHUHGIRU

*OLFHQVHRULHYLGHQFHVKRZHGWKDWOLWWOHGHPDQGIRUVXFKOHVVKHIXWK

*IDFWRUVDGMXVWHGLQHIIHFWQRXRXOOUHVXOWLQDILQLQJIDLXH

*EYHQLEUDULHV1DYRUHGVXQFWLQRXDSSURDFKRIKW

*ODZXWVDLQWKHPDUHHQUHVHYHUFDVHVLQRYLQWKHUHQWLWLHV

*KDYHFRQULEXWHGWRWKHEDVRUWLQLEUDUSUDFWLFH, e.g.,

*Sundeman v. Seajay Society, Inc.)GWK&LU IDLXHSHUPLWV

*SURYLGLQFRSRIDFRPSOHWHEFULSWWRDOLWHUDUWKRGDLWDWHKU

*UHVHDUFKDQDSDUWLDOFRSWRDUIRUDXWKHQWLFDWLRQGGDPDHWRWKH

*IUDLOHRULLQ Com. Inst. of Physics v. Schwegman Lundberg & Woessner, P.A.

*1R86LVW(; ,6LQDLU XHSHUPLWV

*FRSLQWRUDHGLVWULEXWLRQHODWHGXHRIUHVHDLFKDUWLFOHQ

*ZKSDWHQSURVHFXWLRQ Lynch Grp. Mgmt. Svces., Inc. v. Bloomberg L.P.

*)GG&LUIDLXH SHUPLWVFRSLQGLVWULEXWLRQRIDGLRQ

*WUDQVFULSWIFRSURUDWHEHOWRIDFLOLWDWHHYLQISWe v. West

*Pub. Corp.)6SG1< IDLXHSHUPLWVFRSLQ VWRUDHH

*DQGLVWULEXWLRQIOHDOEDVHVWRIOHDOHDVHEHKHYDple Inc. v.

*Corellium, Inc.1R86S/ (;WK&LUIDL U

*XHSHUPLWVFRSLQWRUDHGLVWULEXWLRQLVSODDQHGXHWRIPRELOH

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SKVLFDODQYLUWXDOHKLELWLRQGHPLFOLEUDULHVFRPPHULDOLQR

LQWLWXWLRQOGLLWDOUHSRQVRUHGHSRVLWHGRUNVLFOLDEOHDW

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What’s on the menu? - About

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FROOHFWLRQVLQWKHSXOLFQRWDQLDOSRUWLRQVSULKWDQKDVEHHQ

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SURGXFWLYHIDLXHFRPPRQQLEULHVWRGD\WLVFUDWWKHGRFWULQHUHPDLQ

RSHQHQHGQIOHLEOHVWKDW