



**United States Copyright Office**

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September 18, 2018

McCarter & English, LLP  
Attn: Mark Giarratana  
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**Re: Second Request for Reconsideration for Refusal to Register ACCUGRID Disposable Specimen Radiography System with Localizing Grid; Correspondence ID: 1-2S45N25; SR: 1-3910420312**

Dear Mr. Giarratana:

The Review Board of the United States Copyright Office (“Board”) has considered Beekley Corporation’s (“Beekley’s”) second request for reconsideration of the Registration Program’s refusal to register a text and two-dimensional artwork claim in the work titled ACCUGRID Disposable Specimen Radiography System with Localizing Grid (“Work”). The Work consists of a logo, the localizing grid, and text instructing radiologists and pathologists how and where on the grid to place a specimen and how to analyze it. The Work is attached as Appendix A.

After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board finds that the Work’s logo and text exhibit copyrightable authorship and thus may be registered. The grid, however, is excluded from this finding.

The Work had been denied registration because the Office’s Registration Policy and Practice division concluded that the Work lacks the authorship necessary to sustain a copyright claim—specifically, the text “consists of minimal sentences” and the grid “is considered a blank form.” Letter from Kristen Sosinski, Registration Examiner, to Mark Giarratana, McCarter & English, LLP at 1 (Apr. 20, 2017). The copyrightability of the logo was not addressed. In denying Beekley’s first request for reconsideration, the Office stated that the Work was identical to another work previously submitted by the Beekley, which the Office had refused to register for lack of originality and authorship. *See* Letter from Stephanie Mason, Attorney-Advisor, to Mark Giarratana, McCarter & English, LLP at 1 (Nov. 30, 2017). Beekley had not mentioned the previous application or rejection in submitting the Work at issue here. But in its second request for reconsideration, Beekley argues that the earlier work is not identical to the Work at issue because the previous submission only made a two-dimensional artwork claim, whereas the application now on appeal claims “all content appearing on the work” – i.e., the logo, the grid, and the text.

The Board finds that the Work contains a sufficient, although minimal, amount of original and creative text and two-dimensional authorship. Our decision to register the Work is based on the low standard for copyrightability articulated in *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). Note, however, that the Board’s decision relates only to the logo and the text. The grid is excluded from the copyright registration because it is not copyrightable subject matter.

Section 102(b) of the Copyright Act provides that copyright protection for expressive works does not extend to “any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b). This codifies the longstanding principle, known as the idea/expression dichotomy, that copyright law protects the original expression of ideas, but not the underlying ideas themselves. *See Baker v. Selden*, 101 U.S. 99, 102–04 (1879). The Office is permitted to register a sufficiently original artistic description, explanation, or illustration of an idea, procedure, process, system, method of operation, concept, principle, or discovery. *See* H.R. Rep. No. 94–1476, at 56 (1976). However, under those circumstances “the registration would be limited to the copyrightable literary, musical, graphic, or artistic aspects of the work . . . .” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.3(A) (“COMPENDIUM (THIRD)”).

Copyright’s merger doctrine, which states that idea and expression merge together when the expression cannot be separated from the idea, is a closely related principle that bars copyrightability of certain works. *See Baker*, 101 U.S. at 103 (explaining that if the “art” that a book “teaches cannot be used without employing the methods and diagrams used to illustrate the book, or such as are similar to them, such methods and diagrams are to be considered as necessary incidents to the art, and given therewith to the public”); *CCC Info. Servs., Inc. v. Maclean Hunter Mkt. Reports, Inc.*, 44 F.3d 61, 68 (2d Cir. 1994) (“[W]hen the expression is essential to the statement of the idea, the expression also will be unprotected, so as to insure free public access to the discussion of the idea.”).

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the logo and text included in the Work satisfy the requirement of creative authorship necessary to sustain a claim to copyright. The text includes twelve sentences providing instructions such as “Manipulate tissue through bag” and “*DO NOT OPEN THE BAG!*” Though these instructions describe a process for utilizing the specimen radiography system, they do not constitute the system itself. Furthermore, the specific words and sequence of words that were chosen are not “essential to the statement of the idea,” so merger does not bar copyright protection. *See CCC Info. Servs.*, 44 F.3d at 68. The text and the logo—the all caps “ACCUGRID” letters projected out from the bullseye of a two-ringed target, with lines trailing back to the bullseye from the corners of each letter, giving the logo a three-dimensional appearance—together demonstrate at least the modicum of creativity required by *Feist*. *See* COMPENDIUM (THIRD) § 716 (explaining that instructional texts are registrable if they contain a “sufficient amount of original authorship”).

However, the localizing grid included in the Work does not satisfy the legal standards discussed above. Copyright protects the original expression of ideas, but not the underlying ideas themselves—and the title of the Work clearly indicates that the localizing grid is part of the specimen radiography system. Though the text instructing users of the system is, in this case, eligible for copyright protection, the applicant cannot use copyright to control use of the system itself. *See Baker*,

101 U.S. at 102–04. Accordingly, the grid is not eligible for copyright protection. *See Baker*, 101 U.S. at 103; *CCC Info. Servs.*, 44 F.3d at 68.

For the reasons stated herein, the Review Board of the United States Copyright Office reverses the refusal to register the copyright claim in the Work, excluding the grid because it is not eligible for copyright protection. *See COMPENDIUM (THIRD) § 313.3(A)*. The Board now refers this matter to the Registration Policy and Practice division for registration of the Work, provided that all other application requirements are satisfied.

No response to this letter is needed.



**BY:** \_\_\_\_\_

**U.S. Copyright Office Review Board**

Karyn A. Temple, Acting Register of Copyrights  
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and Associate  
Register of Copyrights

Catherine R. Rowland, Associate Register of  
Copyrights and Director of Public Information  
and Education

**Appendix A**



Patent Pending

**BEEKLEY**  
CORPORATION

Prestige Lane, Bristol, CT 06010  
1-800-BEEKLEY  
(1-800-233-5539)  
In CT 583-4700  
Fax 203-584-2739

## Disposable Specimen Radiography System with Localizing Grid

**SURGERY:**

Place specimen in bag on top of tray. Seal bag.

**RADIOLOGY:**

*DO NOT OPEN BAG!* Radiograph specimen in bag, centering tissue on grid tray. Manipulate tissue through bag. Compress as required. Record coordinates of area of interest in space provided.

**PATHOLOGY:**

Note coordinates. Cut bag away from specimen. Resubmit tissue slices for detailed localization in new Accugrid.

**WARNING: OBSERVE BIOHAZARD PRECAUTIONS.**  
*Open or puncture only in Biohazard Safe environment.*

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BEEKLEY CORPORATION 1-800-BEEKLEY