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POTENTIAL PATENT RIGHTS IN STORYLINES

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QUESTION: Can I get a patent for my story?

ANSWER: My initial reaction would be to say no, but I recently read an article that has made me reconsider my answer. I'd say no, because patents are a form of intellectual property meant to protect inventions and discoveries, not original works of authorship. A story is an original work of authorship and as such would be subject to protection under copyright law. The article I read, "A Potentially New Intellectual Property: Storyline Patents", by Andrew Knight, argues the premise that a story, specifically the storyline or plot, may be subject to patent protection.

Under United States patent law, a patent grant may be given to any new, useful and non-obvious invention or discovery. The types of inventions or discoveries subject to such protection are any new and useful process, machine, article of manufacture or composition of matter, or any new and useful improvement thereof. Within the last few decades, several types of processes have been afforded patent protection, which in the past were not considered patentable, in particular software and business methods.

Software was not originally provided patent protection under the legal principle that it was written matter (the code) and written matter is not subject to patent protection, but rather to copyright protection. That principle has since been rejected with regard to software by the courts and the method or process (functionality) directed by the software code is recognized as patentable.

Knight states that software has two valuable components: the written expression, or code, and the underlying method or process which the software program instructs a machine to perform (functionality). In the same vein, Knight asserts that storylines also have two valuable components: the underlying storyline and the particular expression of that storyline. Accordingly, Knight suggests that the methods of performing and displaying fiction plots are functional and, therefore, by analogy, the underlying storyline, like software functionality, should be patentable for innovative storylines.

The concept of whether story lines are patentable has not yet been tested or accepted. Although Knight himself has filed some patent applications for storylines, they have not been granted a patent. Also, even if a patent were to be granted by the US Patent Office on a storyline, the courts may find such a patent to be invalid.

The biggest challenge in my view is for a storyline being able to pass the non-obvious requirement of the patentability test. It be would easy enough to establish that a storyline is new and useful, but to establish it as non-obvious would be difficult. The non-obvious requirement means that the invention/storyline must not be obvious to one of ordinary skill in the art. As a simplistic example, if a table with a rectangular surface is already known in the art of carpentry, then it would be obvious to a skilled carpenter to modify the rectangular table surface to a square (a specific type of rectangle) table surface. Since the modification is obvious, the square table surface would not be patentable, even though it may be a useful and new expression of a table surface.

Per the both the new and the non-obvious patentability standards, storylines that are already known would not be subject to patent protection (i.e., boy meets girl, boy gets girl, boy loses girl), despite different expressions of that same storyline (i.e., *Romeo and Juliet* versus

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West Side Story). When you consider the works of Joseph Campbell and his insights into the basic storylines throughout the world, it is difficult to imagine what new, non-obvious storyline a writer would have to create in order for the storyline to not be obvious. Some enterprising writer aspiring to a storyline patent will have to not only create such a storyline, but also convince the US Patent Office and the courts that the storyline is subject to patent protection.

It remains to be seen whether Knight will be successful in his attempt to secure patents for his storylines. But he does make a strong case for making the attempt, because in his words, "When the average cost of making and marketing a Hollywood movie exceeds $100 million, there is no good excuse for saving $20,000 on a few storyline patent applications." The economic returns could be immense, because the holder of a patent for a particular storyline would have a limited term monopoly (on average, about 17 years) on that storyline and would have the exclusive right to make, use and sell that storyline. So, a writer who would want to use a particular, patented storyline, no matter how the writer would express that storyline, would have to seek permission from the patent owner to do so.