

## Sec. 8—Powers of Congress

## Cl. 8—Copyrights and Patents

**State Power Affecting Patents and Copyrights**

Displacement of state police or taxing powers by federal patent or copyright has been a source of considerable dispute. Ordinarily, rights secured to inventors must be enjoyed in subordination to the general authority of the states over all property within their limits. A state statute requiring the condemnation of illuminating oils inflammable at less than 130 degrees Fahrenheit was held not to interfere with any right secured by the patent laws, although the oil for which the patent was issued could not be made to comply with state specifications.<sup>1453</sup> In the absence of federal legislation, a state may prescribe reasonable regulations for the transfer of patent rights, so as to protect its citizens from fraud. Hence, a requirement of state law that the words “given for a patent right” appear on the face of notes given in payment for such right is not unconstitutional.<sup>1454</sup> Royalties received from patents or copyrights are subject to nondiscriminatory state income taxes, a holding to the contrary being overruled.<sup>1455</sup>

State power to protect things not patented or copyrighted under federal law has been buffeted under changing Court doctrinal views. In two major cases, the Court held that a state could not use unfair competition laws to prevent or punish the copying of products not entitled to a patent. Emphasizing the necessity for a uniform national policy and advertent to the monopolistic effects of the state protection, the Court inferred that, because Congress had not extended the patent laws to the material at issue, federal policy was to promote free access when the materials were thus in the public domain.<sup>1456</sup> But, in *Goldstein v. California*,<sup>1457</sup> the Court distinguished the two prior cases and held that the determination whether a state “tape piracy” statute conflicted with the federal copyright statute depended upon the existence of a specific congressional intent to forbid state protection of the “writing” there involved. Its consideration of the statute and of its legislative history convinced the Court that Congress in protecting certain “writings” and in not

<sup>1453</sup> *Patterson v. Kentucky*, 97 U.S. 501 (1879).

<sup>1454</sup> *Allen v. Riley*, 203 U.S. 347 (1906); *John Woods & Sons v. Carl*, 203 U.S. 358 (1906); *Ozan Lumber Co. v. Union County Bank*, 207 U.S. 251 (1907).

<sup>1455</sup> *Fox Film Corp. v. Doyal*, 286 U.S. 123 (1932), overruling *Long v. Rockwood*, 277 U.S. 142 (1928).

<sup>1456</sup> *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964); *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964).

<sup>1457</sup> 412 U.S. 546 (1973). Informing the decisions were different judicial attitudes with respect to the preclusion of the states from acting in fields covered by the Copyright Clause, whether Congress had or had not acted. The latter case recognized permissible state interests, *id.* at 552–560, whereas the former intimated that congressional power was exclusive. *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 228–31 (1964).