

Copyright case: Skidmore v. Led Zeppelin, USA

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Jury instructions not erroneous or prejudicial to plaintiff; court dumps "inverse ratio rule" providing for lower standard of proof of substantial similarity when a high degree of access is shown. After an en banc rehearing, the U.S. Court of Appeals in San Francisco has affirmed a district court's judgment after a jury trial in favor of the defendants in a copyright infringement suit alleging that classic rock band Led Zeppelin and members of the band copied a portion of the hit song "Stairway to Heaven" from the song "Taurus," written by Spirit band member Randy Wolfe. The jury had found that plaintiff Michael Skidmore—as trustee of a trust managing the late Wolfe's assets—owned the copyright to "Taurus" and that the defendants—including Led Zeppelin members Robert Plant and Jimmy Page—had access to Skidmore's composition, but it determined that the two songs were not substantially similar under the extrinsic test. In October 2018, a three-judge panel of the appellate court vacated the district court's judgment in part after it determined that some of the instructions given to the jury were erroneous and prejudicial. The three-judge panel had determined that it was error for the district court to fail to instruct the jury that the selection and arrangement of unprotectable musical elements were protectable. However, the en banc court held that there was no plain error because the instructions that were given fairly and adequately covered Skidmore's argument regarding extrinsic similarity of the works. Contrary to the earlier panel decision, the en banc court also held that the district court did not commit a reversible error by instructing the jury that a limited set of a useful three-note sequence and other common musical elements were not protectable themselves, but that an original work could incorporate such elements. Finally, the court held that Skidmore forfeited his argument that the jury should have been given an instruction on protectability of the "selection and arrangement" of musical elements, and that in any case the omission of this instruction did not prejudice Skidmore (Skidmore v. Led Zeppelin, March 9, 2020, McKeown, M.).

Case date: 09 March 2020
Case number: No. 16-56057
Court: United States Court of Appeals, Ninth Circuit

A full summary of this case has been published on [Kluwer IP Law](#).

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