

**VOLUME 6 OF 8 - EXS. 100-107
(PAGES 1200-1540)**

EXHIBIT 100

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8 Attorneys for Defendants
9 Warner/Chappell Music, Inc. and
Summy-Birchard, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
WESTERN DIVISION

13 GOOD MORNING TO YOU
PRODUCTIONS CORP.; et al.,

14 Plaintiffs,

15 v.

16 WARNER/CHAPPELL MUSIC, INC.,
17 et al.,

18 Defendants.

Lead Case No. CV 13-04460-GHK
(MRWx)

**DECLARATION OF ADAM I.
KAPLAN IN SUPPORT OF
NOTICE OF MOTION AND
CROSS-MOTION AND MOTION
AND CROSS-MOTION FOR
SUMMARY JUDGMENT**

Hearing

Date: January 26, 2015
Time: 9:30 a.m.
Judge: Hon. George H. King,
Chief Judge
Courtroom: 650

1 I, ADAM I. KAPLAN, hereby declare:

2 1. I am an attorney at the firm Munger, Tolles & Olson LLP, counsel for
3 Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (jointly,
4 "Warner/Chappell"). I am admitted to practice law in the State of California and
5 before this Court. I submit this declaration in support of Warner/Chappell's Motion
6 for Summary Judgment. If called upon as a witness to testify as to the contents of
7 this declaration, I could and would competently do so.

8 2. I recognize the document bearing Bates numbers WC0000388-90 as a
9 true and correct copy of the Registration Certificate for E51990, which was marked
10 as Exhibit 9 to the deposition of Thomas Marcotullio (Warner/Chappell's Fed. R.
11 Civ. P. ("Rule") 30(b)(6) witness). This document is Appendix Exhibit 101.

12 3. I recognize the document bearing Bates numbers WC0000103-104 as a
13 true and correct copy of the Certificate of Registration of a Claim to Renewal
14 Copyright for R306186. This document is Appendix Exhibit 102.

15 4. I recognize the document bearing Bates numbers WC0000385-87 as a
16 true and correct copy of the Registration Certificate for E51988, which was marked
17 as Exhibit 4 to the deposition of Thomas Marcotullio (Warner/Chappell's Rule
18 30(b)(6) witness). This document is Appendix Exhibit 103.

19 5. I recognize the document bearing Bates numbers WC0000953-54 as a
20 true and correct copy of the Certificate of Registration of a Claim to Renewal
21 Copyright for R306185. This document is Appendix Exhibit 104.

22 6. I recognize the document bearing Bates number P003299 as a true and
23 correct copy of the Record of the Filing of Copyright Deposits under the Act of
24 March 4, 1909. This document is Appendix Exhibit 105.

25 7. I recognize the document bearing Bates number WC0000977-979 as a
26 true and correct copy of sheet music for Happy Birthday to You!, published in 1935
27 by Clayton F. Summy Co. as publication number 3075. This document is Appendix
28 Exhibit 106.

1 8. I recognize Appendix Exhibit 107 as a true and correct copy of
2 Excerpts of the Confidential Deposition Transcript of Thomas Marcotullio,
3 Warner/Chappell's Rule 30(b)(6) witness, taken on June 3, 2014 [*provisionally*
4 *lodged under seal*].

5 9. I recognize Appendix Exhibit 109 as a true and correct copy of
6 Excerpts of the Deposition Transcript of Jeremy Blietz, taken on July 10, 2014.

7 10. I recognize Appendix Exhibit 110 as a true and correct copy of
8 Excerpts of the Deposition Transcript of Plaintiffs' Expert Witness, Joel Sachs,
9 Ph.D., taken on September 9, 2014.

10 11. I recognize Appendix Exhibit 111 as a true and correct copy Excerpts
11 of Exhibit 47 to the Deposition of Joel Sachs, Ph.D (Expert Report of Joel Sachs,
12 Ph.D. and Exs. J and L thereto).

13 12. I recognize the documents bearing Bates numbers WC0001450-52 and
14 WC0000844-45 as true and correct copies of a Recorded Assignment of Copyright
15 from Patty S. Hill and Jessica S. Hill to The Hill Foundation, Inc., dated October 16,
16 1944. These documents are Appendix Exhibits 112 and 113, respectively.

17 13. I recognize the documents bearing Bates numbers WC0001456-62 and
18 WC0000838-45 as true and correct copies of a Recorded Assignment of Copyright
19 from The Hill Foundation, Inc., to Clayton F. Summy Co., dated October 16, 1944.
20 These documents are Appendix Exhibits 114 and 115, respectively.

21 14. I recognize Appendix Exhibit 116 to be a true and correct copy of the
22 Declaration of David K. Sengstack , dated January 20, 1981 recorded in the
23 Copyright Office on February 2, 1981 (WC0001998-2075).

24 15. I recognize Appendix Exhibit 117 to be a true and correct copy of
25 Confidential Minutes of a September 29, 1931, Meeting of the Board of Directors of
26 C.F.S. Musical Co. (WC0002091-93) [*provisionally lodged under seal*].

27 16. I recognize Appendix Exhibit 118 to be a true and correct copy of
28 Confidential Stock Certificate for Birch Tree Group, Ltd. and Stock Power

1 (WC0002094-97) [*provisionally lodged under seal*].

2 17. I recognize the document bearing Bates numbers WC0001137 and
3 WC0001142-43 as a true and correct copy of an excerpt of an October 1988
4 “Confidential Information Memorandum” regarding Birch Tree Group Ltd. This
5 document is Appendix Exhibit 119.

6 18. I recognize Appendix Exhibit 120 as a true and correct copy of
7 Plaintiffs’ Complaint in this matter, filed on June 20, 2013 (Dkt. 9).

8 19. I recognize Appendix Exhibit 121 as a true and correct copy of
9 Plaintiffs’ First Amended Complaint in this matter, filed on July 26, 2013 (Dkt. 29).

10 20. I recognize Appendix Exhibit 122 as a true and correct copy of
11 Plaintiffs’ Second Amended Consolidated Complaint, filed on September 4, 2013
12 (Dkt. 59).

13 21. I recognize Appendix Exhibit 123 as a true and correct copy of
14 Plaintiffs’ Third Amended Consolidated Complaint, filed on November 5, 2013
15 (Dkt. 72).

16 22. I recognize Appendix Exhibit 124 as a true and correct copy of
17 Plaintiffs’ Joint Report on Parties’ Planning Meeting, filed February 10, 2014 (Dkt.
18 No. 89).

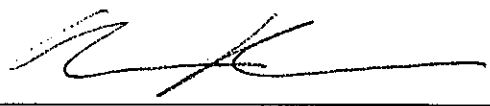
19 23. I recognize Appendix Exhibit 125 as a document bearing Bates number
20 WC0002098 as a true and correct copy of a letter from the United States Copyright
21 Office to Lisa Minnerly, of Warner/Chappell Music, Inc., dated December 9, 2013,
22 regarding the transmission of copies of registrations, including copies of
23 registrations E51990 and E51998.

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24. I recognize the document bearing Bates numbers WC0000963-973 as a true and correct copy of an agreement among The Hill Foundation, Inc., Patty S. Hill and Jessica M. Hill, and Clayton F. Summy Co., dated October 16, 1944. This document is Appendix Exhibit 126.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of November 2014, at San Francisco, California.



ADAM I. KAPLAN

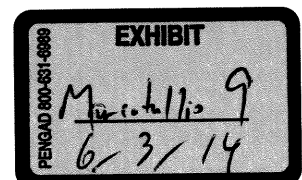
EXHIBIT 101



COPY OF REGISTRATION

E 51990

**NOTE: due to the nature of the storage medium
(CARD CATALOG), the attached photocopies
are the best possible copies available**



27969 E

Happy birthday to you
Composer of this

PUBLISHED
MUSICAL
COMPOSITION

By Mildred J. Hills, etc. by Preston
Warren Grant, etc. with words.

© Copyright for line of Clayton F. Summy Co.

© Dec. 6, 1935
2 c. Reg. 9
Pub. 51990

PUBLISHED
2 c. rec'd and regist'd
Entry, Cl. M. XXc, No.
Copyright claimed by

Clayton F. Summy Co., Chicago.

*(© is claimed on arrangement in case)
(piano solo with text)*

R 306186, Dec. 6, 1962, by Summary-Richard
Co. (YWH of Paxton Ware Co.)

EXHIBIT 102

Original in Renewal File

FORM R

Certificate of Registration of a Claim to Renewal Copyright

REGISTRATION NO.

R 306186

DO NOT WRITE HERE

This is to certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.



1. Renewal Claimant(s), Address(es), and Statement of Claim: *Abraham L. Kaminstein*
Register of Copyrights
United States of America

(a) Name Summy-Birchard Company

Address 1834 Ridge Ave., Evanston, Ill.

Claiming as proprietor of copyright in a work made for hire

(b) Name _____

Address _____

Claiming as _____

(c) Name _____

Address _____

Claiming as _____

2. (a) Title:
HAPPY BIRTHDAY TO YOU! -- easy piano solo with text

(b) Renewable Matter:

Arrangement as easy piano with text

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol. _____; No. _____; Date _____

3. Authors of Renewable Matter:

Clayton F. Summy Co. (now, by change of name, Summy-Birchard

Company) as employer for hire of Preston Ware Orem

4. Facts of Original Registration:

Original registration number: Class E. pub No. 51990

If registered as published, give date of publication December 6, 1935

If registered as unpublished, give date of registration _____

Original copyright claimant Clayton F. Summy Co.

Complete all applicable spaces on next page. } 7

5. Deposit account:

Sunny-Birchard Publishing Company

6. Send correspondence to:

Name Brown, Jackson, Boettcher & Diener, Address 53 W. Jackson Blvd., Chicago 4, Ill. Mr. C. Lyman Emrich, Jr.

7. Send certificate to:

(Type or print name and address)

Form with fields for Name (Sunny-Birchard Company), Address (1834 Ridge Ave.), City (Evanston, Ill.), Zone, and State.

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication; in the case of a work originally registered in unpublished form, the copyright term lasts for 28 years from the date of registration in the Copyright Office.

1940, would be eligible for renewal between June 15, 1967, and June 15, 1968.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires, copyright protection is lost permanently and the work enters the public domain.

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington 25, D. C. The application should be accompanied by the registration fee of \$2.00. Do not send copies of the work.

Who may claim renewal

Except in the case of five specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term. If the author is deceased, the statute gives the right to claim renewal to certain of his statutory beneficiaries as explained below.

- A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below: 1. The author, if living. State the claim as: the author. 2. The widow, widower, and/or children of the author, if the author is not living. State the claim as: the widow (widower) of the author and/or the child (children) of the deceased author. 3. The author's executors, if the author left a will and if there is no surviving widow, widower, or child. State the claim as: the executors of the author. 4. The next of kin of the author, if the author left no will and if there is no surviving widow, widower, or child. State the claim as: the next of kin of the deceased author, there being no will. B. In the case of the following five types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal: 1. Posthumous work (work first published and copyrighted after the death of the author). State the claim as: proprietor of copyright in a posthumous work. 2. Periodical, cyclopedic, or other composite work. State the claim as: proprietor of copyright in a composite work. 3. "Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author." State the claim as: proprietor of copyright in a work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author. (This type of claim is considered appropriate in relatively few cases.) 4. Work copyrighted by an employer for whom such work was made for hire. State the claim as: proprietor of copyright in a work made for hire. 5. Print or label originally registered in the Patent Office prior to July 1, 1940. State the claim as: proprietor of copyright in a print or label.

FOR COPYRIGHT OFFICE USE ONLY

Form with fields for Application received (DEC -6 1962) and Fee received.

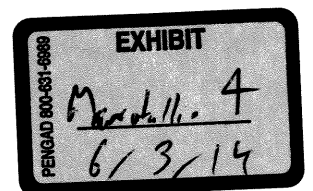
EXHIBIT 103



COPY OF REGISTRATION

E 51988

**NOTE: due to the nature of the storage medium
(CARD CATALOG), the attached photocopies
are the best possible copies available**



E

27970

Happy birthday to you, unison song,
Composer or title

PUBLISHED
MUSICAL
COMPOSITION

by Mildred J. Hill, rev. text and arr.
of music by Mrs. R. B. Norman, ~~etc.~~

**(employee for hire of Clayton F. Summy Co.)*

PUBLISHED

© Dec. 6, 1935

2 c. rec'd and regist'd
Entry, Cl. E.Xc. No.

2 c. Dec. 9

E pub. 51988

Copyright claimed by

Clayton F. Summy Co., Chicago.

*(© is claimed on arrangement for
(Unison Chorus) and record copy.)*

(OVER)

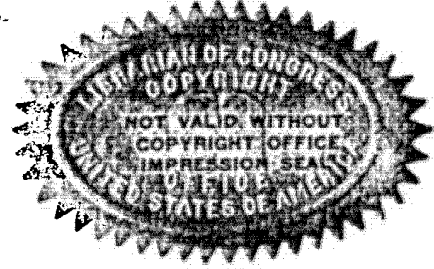
R 306185, Dec. 6, 1962, by Summy-Bickard
Co (RWH of Mrs. R. R. Farmer)

EXHIBIT 104

Certificate of Registration of a Claim to Renewal Copyright

REGISTRATION NO.
R 306185
DO NOT WRITE HERE

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.



Abraham L. Kaminstein

1. Renewal Claimant(s), Address(es), and Statement of Claim:

Abraham L. KAMINSTEIN
Register of Copyrights
United States of America

(a) Name Summy-Birchard Company

Address 1834 Ridge Ave., Evanston, Ill.

Claiming as proprietor of copyright in a work made for hire

(b) Name

Address

Claiming as

(c) Name

Address

Claiming as

2. (a) Title:

HAPPY BIRTHDAY TO YOU! -- Unison Song

(b) Renewable Matter:

Arrangement and revised text

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol.; No.; Date

3. Authors of Renewable Matter:

Clayton F. Summy Co. (now, by change of name, Summy-Birchard Company) as employer for hire of Mrs. R.R. Forman

4. Facts of Original Registration:

Original registration number: Class E pub No. 51988

If registered as published, give date of publication December 6, 1935

If registered as unpublished, give date of registration

Original copyright claimant Clayton F. Summy Co.

Complete all applicable spaces on next page. (A)

5. Deposit account:

Summy-Birchard Company

6. Send correspondence to:

Name: Brown, Jackson, Boettcher & Diener, Address: 53 W. Jackson Blvd., Chicago 4, Ill.
Mr. C. Lyman Enrich, Jr.

7. Send certificate to:

(Type or print name and address)

Name: Summy-Birchard Company
Address: 1834 Ridge Ave.
Evanston, Illinois (State)

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication; in the case of a work originally registered in unpublished form, the copyright term lasts for 28 years from the date of registration in the Copyright Office. In either case, the copyright may be renewed for a second 28-year term only if a claim is registered in the Copyright Office within the last (28th) year of the original copyright term. For example, a work copyrighted on June 15,

1940, would be eligible for renewal between June 15, 1967, and June 15, 1968.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires, copyright protection is lost permanently and the work enters the public domain. The Copyright Office has no discretion to extend the renewal time limits.

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington 25, D. C. The application should be accompanied by the registration fee of \$2.00. Do not send copies of the work.

Who may claim renewal

Except in the case of five specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term. If the author is deceased, the statute gives the right to claim renewal to certain of his statutory beneficiaries as explained below. The present owner (proprietor) of a copyright is entitled to claim renewal only in the five cases listed in Paragraph B, below.

- A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below:
1. The author, if living. State the claim as: the author.
2. The widow, widower, and/or children of the author, if the author is not living. State the claim as: the widow (widower) of the author and/or the child (children) of the deceased author.
3. The author's executors, if the author left a will and if there is no surviving widow, widower, or child. State the claim as: the executors of the author.
4. The next of kin of the author, if the author left no will and if there is no surviving widow, widower, or child. State the claim as: the next of kin of the deceased author, there being no will.
B. In the case of the following five types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal:
1. Posthumous work (work first published and copyrighted after the death of the author). State the claim as: proprietor of copyright in a posthumous work.
2. Periodical, cyclopedic, or other composite work. State the claim as: proprietor of copyright in a composite work.
3. "Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author." State the claim as: proprietor of copyright in a work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author. (This type of claim is considered appropriate in relatively few cases.)
4. Work copyrighted by an employer for whom such work was made for hire. State the claim as: proprietor of copyright in a work made for hire.
5. Print or label originally registered in the Patent Office prior to July 1, 1940. State the claim as: proprietor of copyright in a print or label.

FOR COPYRIGHT OFFICE USE ONLY
Application received
DEC - 6 1962
Fee received

EXHIBIT 105

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA

RECORD OF THE FILING OF COPYRIGHT DEPOSITS UNDER THE ACT OF MARCH 4, 1909

Year 1935
 Entry Number: 51 Thousand
9 Hundred
 And

CLASS E.—MUSICAL COMPOSITIONS (U. S. PUBLISHED)

No.	DATE OF RECEIPT OF TWO COPIES	TITLE	CLAIMANT, DATE OF PUBLICATION, ETC.
90	Dec. 9 1935	Happy Birthday to You! By Mildred J. Hill, Preston Ward (employed for hire by Clayton F. Summy Co.), of U. S. Copyright is claimed on arr. as easy piano solo with text.	Clayton F. Summy Co., 429 S. Wabash Ave., Chicago, Ill. Date of publication Dec. 6, 1935. Renewal R-30618
91	Dec. 7 1935	A Celtic Plaint. (Theme in the 1st at Gregorian mode). By Louise Daggett Fischer,	Louise Daggett Fischer, 302 E. Myrtle St., San Antonio, Tex. Date of publication Oct. 15, 1935. Renewal
92	Dec. 9 1935	Attorneys and Counsellors at Law. March. By Roland C. Bucher, of U. S. Fox band, with solo x 1st Bb trumpet conductor.	Roland C. Bucher, 427 East 8th St., Brooklyn, N. Y. Date of publication Aug. 7, 1935. Renewal R-31381
93	Dec. 9 1935	The Pilgrim. Words and music by Leon H. Hagen, of U. S. S. A. J. B.	Leon H. Hagen, 2910 James Ave., S., Minneapolis, Minn. Date of publication Dec. 6, 1935. Renewal

EXHIBIT 106



HAPPY BIRTHDAY



by

MILDRED J. HILL

- Piano Solo with words....25 cents*
- Piano Solo-March.....30 cents*
- Four Hands.....40 cents*
- Six Hands.....40 cents*
- Second Piano Part.....40 cents*
- Unison Chorus.....08 cents*

CLAYTON F. SUMMY CO.
CHICAGO NEW YORK

T

HAPPY BIRTHDAY TO YOU!

(Vocal or Instrumental)

MILDRED J. HILL

Brightly

mf Hap-py Birth-day to you, Hap-py

Birth-day to you, Hap-py Birth-day, dear

* _____, Hap-py Birth-day to you!

* Here insert the name of the one celebrating.

Copyright, 1935 by Clayton F. Summy Co.
International Copyright

3075

Dec 4, 20

OUTSTANDING PIANO SOLOS

For Teaching and Recital Purposes

Price 30¢ **Vale of Song**
WALTZ WALTER HOLFF
Tempo di Valse
Moderato marc.
mf

Price 25¢ **Soldiers Marching**
N. LOUISE WRIGHT
Allegro
mf *legato*

Price 30¢ **Moccasin Dance**
FRANCES TERRY
Con moto
mf animato

Price 30¢ **The Old Clock**
HUBBARD HARRIS
Not too fast
mf

Price 30¢ **The Band**
N. LOUISE WRIGHT
Allegro con spirito
ff *marcato*

Price 30¢ **Down a Woodland Path**
VALSETTE GODFREY UREN
Allegretto
mf

The above six numbers copyrighted by Clayton F. Summy Co.

Op. 1-2

R.F.I.

CLAYTON F. SUMMY CO., MUSIC PUBLISHERS
429 So. Wabash Ave., Chicago, Ill. 9 East 45th Street, New York City, N. Y.

EXHIBIT 107 - CONFIDENTIAL
[PROVISIONALLY LODGED & FILED UNDER SEAL

Ex. 107

**[PAGES 1225-1540 INTENTIONALLY
OMITTED – FILED UNDER SEAL]**