

## Daniel Geyser, Eugene Goryunov, David McCombs, Nicolette Nunez in Thomson Reuters Westlaw Today: 'Thank You for Your Service, Justice Breyer'

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**PRACTICES** Intellectual Property, Intellectual Property Litigation, Appellate, U.S. Supreme Court

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*[Daniel Geyser](#), [David McCombs](#), [Eugene Goryunov](#) and of Haynes Boone recount a retiring justice's part in forming the U.S. Supreme Court's major intellectual property decisions.*

When the U.S. Supreme Court rises for its summer recess, a legal legend will descend from the bench one final time. After 27 years on the high court, Justice Stephen Breyer is retiring at the end of the Term. Justice Breyer has dedicated decades of service to the legal community and the nation, shaping all areas of the law with his distinct sense of pragmatism and commitment to common-law adjudication. And while he has touched virtually every major legal doctrine in his decades on the bench, we focus today on his oversized impact in the field of intellectual property.

His distinctive approach to the law has honed the IP legal landscape, marked equally by his pathmarking majority opinions and his thought-provoking dissents. As with so many aspects of the law, Justice Breyer will leave a pronounced footprint in the IP realm for years (if not generations) to come.

### **Justice Breyer's Pragmatic Approach to the Law**

Justice Breyer's IP jurisprudence is marked primarily by the same pragmatic considerations that pervade his thinking across all legal doctrine. That approach reflects a healthy regard for balanced decision-making to promote the public good. It asks, essentially, what makes sense — how should a system function?

While it recognizes the relevant text as an anchor, it places less emphasis on rigid adherence to a provision's words than pursuit of its underlying purpose and the practical consequences of competing constructions. This often means more multifactor tests than bright-line rules, and it favors flexible standards over categorical directives. And the ultimate search remains the same: what reading allows the law "to work better and more simply for those whom it is meant to serve."

If ever there was a field tailor-made for Justice Breyer's pragmatism, IP is an ideal candidate. In a sense, IP is all about balancing. If IP protections are too weak, the incentives to invent and innovate might disappear; yet if IP protections are too strong, the public loses the critical exchange and development of ideas, to the detriment of the arts, the sciences, and social progress. Market growth and productivity, in short, turn on a calibrated system that works properly.

To that end, this legal area is ripe with the hallmarks of Justice Breyer's distinctive brand of judging: functional considerations; doctrines that lack bright lines; standards that require careful balancing to promote innovation without stifling industry or suppressing speech; and legal rules driven by their practical effects.

Justice Breyer has approached all areas of IP law with an eye toward protecting invention without inhibiting progress — and creating sensitive frameworks with the flexibility necessary for the system to function. In copyright law, for example, Justice Breyer has sought to support true innovation while setting reasonable limits via a broad doctrine of fair use.

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