Fundamentals of Intellectual Property

Final Examination

Professor Field Fall 2007

This is a three-hour, open-book exam. You may consult any written materials. Do not discuss the exam with others.

- Put your exam number and answers on the sheet provided.
- Note that questions in Part I are worth four times as much as those in Part II.
- Do not waste time answering more questions than you need to!

Part I: Multiple choice

[80 points — 20 questions total]

Specific Instructions: Put the letter for the most correct concluding phrase or statement in numbered spaces on the answer sheet. Only the first 5 answers in each section (A–D) count.

A. Patents [Section references to 35 U.S.C.]

Answer only 5 of 7.

1. After WebCo was found to infringe Mo's patent, treble damages were awarded. He does not practice the invention, but Mo also seeks to enjoin future infringement. If so:
   A. the court has no choice; that is the only way to protect Mo's property rights.
   B. the court must avoid what amounts to a nonstatutory compulsory license.
   C. that he already been well paid should figure into the court's decision.
   D. that he does not practice should figure into the court's decision.

2. Razo has U.S. patents on a shaver. Although expensive, it sells them as "disposable" to high-end customers. Sharp buys them used via the internet and gets blades resharpened overseas. If Razo sues, Sharp will be:
   A. found to induce Razo's customers to infringe its patents.
   B. found to violate Razo's implied "single-use-only" condition.
   C. obligated to indicate clearly that its Razo shavers are recycled.
   D. unable to bring reconditioned Razo shavers back into this country.

3. Irma is the first person to devise a way to solve a long-standing computational dilemma important to manufacturers. A valid patent:
   A. could claim all possible solutions because she is the first to solve the dilemma.
   B. could claim most possible applications of her particular solution.
   C. is nevertheless unlikely because her invention is mathematical.
   D. could claim most possible uses of her particular solution.

4. Prior investigators got nothing but explosions, but Sally has found that specific members of a family of substances can be usefully combined without adverse result. If so, any composition patent's:
   A. validity is open to doubt unless components behave differently in combination.
   B. proper scope can be broader if she understands the factor(s) affecting compatibility.
   C. Both A and B are correct.
   D. Neither A nor B is correct.

5. John can make pearls that only experts can distinguish from ones much more expensive and harvested at considerable risk. If he got a process patent:
   A. it could be invalid if his are essentially the same as natural pearls.
   B. the patent could help defend if he was accused of deceit or fraud.
   C. enforcement could be denied if he uses the invention to deceive people.
   D. it would be invalid because his pearls can be substituted for the real thing.

6. John (Q 5) showed samples to one manufacturer who didn't believe him. A year later, another was eager to get exclusive rights to his invention. If a patent is later sought:
   A. it will be invalid for filing more than one year after disclosure to a stranger.
   B. it will be invalid for filing more than one year after an offer to sell.
   C. Neither foregoing statement is true.
   D. Both foregoing statements are true.

7. Robin, an engineer who flunked out of culinary school, discovered that a technique used by a few chefs is useful for blending polymers. A patent claiming that use that would be:
   A. invalid for lack of novelty.
   B. valid if chefs are unskilled in polymer arts.
   C. valid if no one skilled in polymer arts would investigate the culinary arts.
   D. valid if no one else skilled in polymer arts knows of that blending technique.

B. Copyrights [Section references to 17 U.S.C.]

Answer only 5 of 7.

1. Greek firm, Xtc, designed a flying pig hat. If copies are sold in the U.S. and:
   A. the hat has been registered, copyright is nearly impossible to invalidate.
   B. the hat has been registered, copyright is presumed valid.
   C. the hat is not registered, no court has jurisdiction.
   D. All foregoing statements are true.

2. Art's book successfully reproduces domestic folk paintings exactly.
   A. Art need not worry about infringing copyright himself.
   B. Any copyright could be infringed by use of one of Art's images on T-shirts.
   C. Any copyright could be infringed by a sequence of Art's images on a web site.
   D. Because Art's reproductions are exact, the Office would not register his copyright.

3. Bob signed an agreement to illustrate Mary's book. After he delivered the illustrations and she paid him, Bob mentioned that he also expects a share of book royalties. On those facts:
   A. copyright could be hers if the agreement states that his work is for hire.
   B. because Bob is a freelance artist, she can obtain rights only by transfer.
   C. as owner of the illustrations, she need not pay for their reproduction.
   D. copyright is hers because she commissioned the work.

4. Zips is paid to have guys run fancy cars through dangerous, high-speed maneuvers. Despite measures taken to prevent it, Ed taped their new trick act and put it on the web. If so:
   A. Ed's web page is likely to receive strong protection as speech.
   B. because Ed fixed their act, only federal courts have jurisdiction.
   C. despite their act's now being fixed, a state court could award punitive damages.
   D. Zips could get statutory damages by registering a copy of what Ed put on the web.

5. Molly, a highly paid professional, loaned Ralph several photos. Before returning them, he made copies for his commercial website. If she now wants something done about that:
   A. federal authorities might convict him for holding stolen property.
   B. federal authorities might convict him under the Copyright Act.
   C. state authorities might convict him for holding stolen property.
   D. All foregoing statements are true.

6. Before returning the photos (Q5) Ed encouraged Sara to post a couple on her non-commercial web page. If, believing them to belong to Ed, she did so:
   A. Ed is liable for contributory infringement.
   B. Sara is equally subject to criminal sanctions.
   C. Ed may be liable for induced infringement.
   D. Sara has neither civil nor criminal liability; her use is fair.

7. Eric, an architect, designed Tom's house on the Merrimack River. If Sam takes photos of the house and scenery from his boat for use in ads for his microbrewed beer:
   A. Tom, but not Eric, will have a cause of action for copyright infringement.
   B. Eric, but not Tom, will have a cause of action for copyright infringement.
   C. Copyright infringement isn't possible until Eric's work is registered.
   D. Copyright infringement isn't possible.

C. Trademarks [Statutory references to Lanham Act]

Answer only 5 of 7.

1. When ACo's widget patent expired, BCo copied everything, including color. If so, ACo:
   A. can clearly recover under § 43(a) for copying the color.
   B. can clearly recover under § 43(a) for copying the structure.
   C. might recover under state unfair competition law for copying the color.
   D. might recover under state unfair competition law for copying the structure.

2. When ECo formally abandoned its world-famous mark, others tried to grab it:
   A. If 1Co's use crosses state lines first, it will get exclusive rights.
   B. 2Co would get exclusive rights by filing an ITU application before 1Co used.
   C. Section 2(d) could be used to prevent registration by anyone other than ECo.
   D. ECo has no basis for preventing use or registration by others.

3. Reviewing an FTC order to halt use of "Concord" for sports coaches, a court:
   A. would probably affirm.
   B. might question the need for such strong action.
   C. would find the FTC without authority to take such action.
   D. must reverse absent survey evidence that consumers are being misled.

4. WebCo registered Silk for what it called web "worms." It later called its product web "spiders" (the accepted name). If it referred only to the old name in a § 8(b)(1) affidavit:
   A. any relief later sought under § 34(a) must be denied for unclean hands.
   B. the Act would limit possible cancellation to the initial five years.
   C. such deceit would warrant cancellation at any time.
   D. that is not apt to jeopardize its registration.

5. Morton's application to register "Bomb" for sandwiches known as torpedoes and submarines was published under § 12. If prior user, SnackCo, wants to prevent registration, it must use:

A. the *duPont* factors applicable in § 13 proceedings.
B. the *duPont* factors applicable in § 37 proceedings.
C. the *Polaroid* factors applicable in § 17 proceedings.
D. the *Polaroid* factors applicable in § 20 proceedings.

6. Ed's PizzaKing has been in Concord for five years, but the PTO earlier registered PizzaKing to a chain with restaurants in Texas (PK). Should PK later want to stop Ed:

A. five years of nonuse outside of Texas will have resulted in abandonment of its rights.
B. Ed can get its registration cancelled if PK has no stores outside Texas.
C. relief may be delayed, but PK's rights cannot be denied.
D. Ed will win if no consumer has associated him with PK.

7. The March issue of *Happening* included a pull-out section with ads mocking those run elsewhere by JCPenney, Sears, Gap and others. Names are changed to, e.g., IPPlenty, Smears, and Sap, but, because the subjects of derision are clear, several sued. On these facts, plaintiffs:

A. are likely to prevail using both § 43(c) and state law.
B. are unlikely to prevail using either § 43(c) or state law.
C. may prevail under § 43(c), but state dilution law is preempted.
D. may prevail under state law, but § 43(c)(3) will prevent federal relief.

D. Miscellaneous

Answer only 5 of 7.

1. KrookCo hired Mary to sift through Lugent's dumpster that sits in a public alley. If Mary is spotted, she can most probably:

A. rely on her right to use information found in public places.
B. refuse to name her client based on its right to privacy.
C. rely on Lugent's failure to protect any secrets.
D. be ordered to name her client.

2. Joe was once employed by Lugent as an inventor. If within two weeks of leaving, Joe filed three patent applications based on work done at Lugent, the company:

A. would have a cause of action for patent infringement.
B. could reasonably seek criminal prosecution under the EEA.
C. might get as much as $10 million in damages under the EEA.
D. is out of luck because Joe's obligations ended with his employment.

3. In 1985, Fred assigned all rights in an unpatented invention to BumCo for its promise to pay a 7% royalty. In 1986, BumCo obtained a patent with Fred's help. After the patent expires (or is invalidated), the agreed royalties:

A. will continue to be due under federal contract law.
B. will be terminated because of patent preemption.
C. will continue to be due under state contract law.
D. must be reduced by half.

4. Apex and Beta both make construction equipment. Apex is sending a copy of a patent to Beta's customers and suggesting that it covers an item sold by both. If Beta sues:

A. it is unlikely to prevail without survey evidence.
B. Apex's misleading message can be enjoined under state law.
C. Apex's misleading message must be enjoined under § 43(a)(1)(B).
D. and can invalidate the patent, Apex must pay for losses caused to Beta.

5. The May issue of *Happening* has an article about "sexy" celebrities — some young, some elderly, and others deceased. Brad and Suzi, each young and alive, regard themselves as "hot," but only he is mentioned. If both sued:

A. Suzi might win under § 43(a)(1)(B) because her sexiness was not acknowledged.
B. Brad might win under § 43(a)(1)(A) because some ads break up the article.
C. Brad's right of publicity would be infringed if his picture is published.
D. *Happening* should prevail over both.

6. Mabel, the president of BimCo, bought a HooHa™ widget at Wal-Mart. She plans to copy and sell it, but notices this molded on the bottom: "Those who buy HooHa™ merchandise agree not to copy it." Under those circumstances, BimCo:

A. will be liable for contract damages if it copies.
B. can copy because enforcement of any agreement is preempted.
C. can copy only if Mabel bought the widget on behalf of BimCo.
D. can copy only if Mabel bought the widget in her personal capacity.

7. Long-term employees of Apex have designed a new widget. Before it is marketed, Apex most needs to:

A. investigate obligations of its employees to all former employers.
B. search records of the Copyright Office.
C. search records of the PTO.
D. All foregoing statements are true.

Part II: Matching

[20 points]

Specific instructions: Answer only 20 of 24. Only the first 20 answers count.

Each numbered item is intended to match only one lettered item. Put the best letter in up to 20 numbered spaces on the answer sheet.

1. Unfair competition
2. Creativity
3. Sweat of the brow
4. Invalidity
5. Estoppel
6. First sale doctrine
7. Fair use
8. Punitive damages
9. Statutory damages
10. Treble damages
11. Right to use
12. Right to exclude
13. Originality
14. Novelty
15. Parody
16. Ideas
17. Lack of copying
18. Registration
19. Free riding
20. Willfulness
21. Functionality
22. Likelihood of confusion
23. Potentially unlimited duration
24. Secondary meaning

A. Not forbidden as such.
B. Synonymous with source significance.
C. Characteristic of no form of property.
D. Standard defense to most forms of IP.
E. Characteristic of all forms of property.
F. True for both trademarks and trade secrets.
G. Fatal to claims for trade dress infringement.
H. Actionable under both state and federal law.
I. Remedy for patent and trademark infringement.
J. Sometimes applied to prevent unfair consequences.
K. Defense to copyright and trademark infringement.
L. Unnecessary for liability under Lanham Act § 43(c).
M. Required for valid patents but not other forms of IP.
N. May expand sanctions for all types of IP infringement.
O. Defense to infringement of trade secrets and copyrights.
P. Possibly protected by trade secret but not copyright law.
Q. Available for copyright infringement and cybersquatting.
R. Adequate for valid copyright; inadequate for valid patents.
S. Possible remedy for breach of rights conferred by state law.
T. Not protected as such by patents, copyrights or trademarks.
U. Required for patents and copyrights but no other form of IP.
V. Jurisdictional requirement for copyright but not trademark suits.
W. Copyright equivalent of patent and trademark exhaustion of rights.
X. Free-speech-related defense to trademark and copyright infringement.

Examination No. ____KEY____

Answer Sheet

Part I — (80%)

Again, in each set, only the first 5 answers count (4% each).

A. Patents

1. __D__
2. __C__
3. __B__
4. __C__
5. __C__
6. __C__
7. __C__

B. Copyrights

1. __B__
2. __C__
3. __A__
4. __C__
5. __B__
6. __C__
7. __D__

C. Trademarks

1. __C__
2. __C__
3. __B__
4. __D__
5. __A__
6. __C__
7. __B__

D. Miscellaneous

1. __D__
2. __B__
3. __C__
4. __A__
5. __D__
6. __B__
7. __C__

Part II — (20%)

Again, only the first 20 answers count (1% each).

1. __H__
2. __U__
3. __P__
4. __D__
5. __J__
6. __W__
7. __K__
8. __S__
9. __Q__
10. __I__
11. __C__
12. __E__
13. __R__
14. __M__
15. __X__
16. __T__
17. __O__
18. __V__
19. __A__
20. __N__
21. __G__
22. __L__
23. __F__
24. __B__