Introduction to Intellectual Property

Final Examination

Professor Field Fall 2001

Instructions

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]

Enter the *letter* for the most correct concluding phrase or statement in the numbered space **on the answer sheet** . In Part I, only the first 5 *answers* will count in each section.

A. Patents

Answer only *5 of 7*.

1. The amount spent to examine and enforce patents should:
   A. relate directly: The more spent on examination, the more on enforcement.
   B. relate inversely: The more spent on examination, the less on enforcement.
   C. be unaffected by adopting a registration system.
   D. have nothing to do with one another.

2. Gearloose seeks to patent a device for faster-than-lightspeed communication. He will have the most difficulty meeting the requirements of:
   A. § 112 if others have disclosed similar things.
   B. § 102 if others have disclosed similar things.
   C. § 101 if the Examiner doesn't believe it works.
   D. § 103 if the Examiner doesn't believe it works.

3. Gyro invented a combination fly swatter and kitchen spatula. His device is most likely to be unpatentable if:
   A. spatulas were previously used to swat flies.
   B. no one in their right mind would buy it.
   C. it combines pre-existing materials.
   D. no one would want to make it.

4. Despite expectations, Gyro's device [Q.3] sold well for nearly two years before he filed an application.
   A. Given his unexpected commercial success, obviousness may pose a problem.
   B. Given his unexpected commercial success, novelty will not pose a problem.
   C. Given the duration of his success, obviousness will pose a problem.
   D. Given the duration of his success, novelty will pose a problem.

5. Cortright's patent claims a new use for an old substance. She can therefore prevent:
   A. consumers from using that substance.
   B. sales of that substance that induce infringement.
   C. sales of that substance that contribute to infringement.
   D. sales of that substance to consumers who might infringe.

6. Analog has not used its patent, but Digital has. Analog should be
   A. able to stop Digital despite nonuse.
   B. denied any damages for Digital's use.
   C. found to have an unenforceable patent.
   D. denied an injunction against Digital's use.

7. Tabor found that his pumps worked better if parts were made of bronze, but his patent mentions only brass. If Huber's pumps infringe his claims:
   A. Tabor's patent is invalid.
   B. Tabor's patent is unenforceable.
   C. Tabor will get attorney fees as a matter of right.
   D. Tabor should may recover statutory damages in lieu of actual damages.

B. Copyright

Answer only *5 of 7*.

1. SwimComps, Ltd. paid Ralph to hand out towels at diving competitions. In his idle time, Ralph also made videotapes. Ralph's copyright in the tapes is most apt to depend on:
   A. whether he is an "employee" as defined by the National Labor Relations Act.
   B. whether he is an "employee" as defined by the Copyright Act.
   C. the common law governing master-servant relationships.
   D. whether he used his own camera.

2. Governor's campaign committee (GC) put up a website. Opponent's committee (OC) copied some web pages and used them in a TV commercial to make fun of Governor. OC's best defense to infringement would be:
   A. if GC didn't register before posting the pages, that it has no copyright.
   B. if GC didn't put notice on any copied page, that it has no copyright.
   C. that government works cannot be copyrighted.
   D. that its use is fair.

3. Zorko sells videos of his carefully choreographed act in which he throws knives at a beautiful assistant. After TVCorp taped a live performance and broadcast it, Zorko sued.
   A. Zorko will lose; news broadcasts are protected by the First Amendment.
   B. If he has not registered, Zorko's right of publicity cannot be infringed.
   C. Zorko cannot sue for anything except copyright infringement.
   D. Zorko will lose; none of his tapes were broadcast.

4. Fred shows movies. He loaned a copy of the Harry Potter film to a known CD pirate who made many copies.
   A. Fred is liable for contributory infringement.
   B. Fred is liable for induced infringement.
   C. Fred clearly did nothing wrong.
   D. Fred is liable under § 106(2).

5. Buffo sculpted a ceramic toothbrush. If the Copyright Office refused to register it:
   A. its decision would be correct; toothbrushes are useful.
   B. she could nevertheless sue an alleged infringer.
   C. its decision would be correct; toothbrushes lack novelty.
   D. no court would be able to review that decision.

6. George sent one of his poems to Newspaper with a note saying: "You may like this poem." Newspaper published it. Newspaper:
   A. infringed; it did not have written permission.
   B. did not infringe; it had an implied license.
   C. did not infringe; such use is fair.
   D. now owns the copyright.

7. Gentile sells unflattering posters of Cope-Up's new downtown building. If Cope sues:
   A. it will lose; Gentile has explicit rights under the Act.
   B. it will win; Gentile's use does not fall within § 107.
   C. it will lose; buildings cannot be copyrighted.
   D. it will win; Gentile infringes its copyright.

C. Trademarks

Answer only *5 of 7*.

1. Since 1990, Skunkwerx has sold Possum perfume only in Newark, NJ. In 1995, Crudco began selling Possum hair dressing in Los Angeles, CA. Crudco has since expanded into Nevada and New Mexico. If Crudco tries to register and Skunkwerx opposes:
   A. Crudco must get the whole country; it did not sit on its rights.
   B. Crudco should get most of the country; it did not sit on its rights.
   C. Crudco should get nothing; Skunkwerx was the first to use the mark.
   D. Crudco should get nothing if hair dressing and perfume are sold in the same stores.

2. In 1993, Murgatoid opened a Cola-Kid restaurant in Concord and began advertising in state-wide papers. It also registered with the state. Customers often drive up from Nashua. Raptor, a Boston firm, got federal registration of Cola-Kid in 1994. In January 2001, Raptor opened a Cola-Kid restaurant in Manchester. In December 2001, Murgatoid sued:
   A. It will win on the basis of its state registration.
   B. It will lose, it has no rights outside of the Concord city limits.
   C. It should win; Manchester is within its primary advertising area.
   D. It should lose; it will probably have to close its Concord restaurant.

3. Fleur's whiskey is sold in distinctive bottles. Gucci has a new line of shirts with a little Fleur bottle on the pocket. On these facts, if Fleur brings suit:
   A. Fleur is likely to prevail under § 32.
   B. Fleur is likely to prevail under § 43(a).
   C. Gucci will be allowed to continue; Fleur did not register its bottle.
   D. Gucci will be allowed to continue if it adds a tag with a disclaimer.

4. Bleur sells soda in bottles allegedly similar to Fleur's (Q.3). To stop Bleur, Fleur:
   A. must have federal registration for its bottle.
   B. need not prove that consumers are likely to be confused.
   C. must prove that its bottle has acquired secondary meaning.
   D. need not prove that its bottle has acquired secondary meaning.

5. After being denied admission to Franklin Pierce Law Center, Myrtle registered the domain name, <FPLC.biz>, and began to post bogus information for prospective students and others. When contacted, Myrtle offered to sell her registration for $50,000. If Pierce Law sued, Myrtle:
   A. could be liable for statutory damages up to $100,000.
   B. could be liable for statutory damages up to $500,000.
   C. would win; FPLC is now Pierce Law.
   D. would win; her site is a parody.

6. When threatened with suit, Myrtle (Q.5) assigned <FPLC.biz> to Pierce Law. Later, however, the Law Center changed its domain name to <piercelaw.edu>. Myrtle then registered <fplc.net> and put up content similar to what she had before. If Pierce Law sued at that time:
   A. that <fplc.edu> was abandoned means that it has no basis for suit under § 43(a)(1)(A).
   B. it would lose under § 43(a)(1)(A); it is non-profit (not commercial).
   C. that neither party is commercial is irrelevant under § 43(a)(1)(A).
   D. it would lose under § 43(a)(1)(A); Myrtle's site is non-profit.

7. Once again Myrtle (Q.6) desisted, but again she changed her mind. She registered <piercelawsucks.com> and variations, such as <fplcsucks.com> and <fplcsucks.net>. If suit were brought under § 43(c). Pierce Law could:
   A. lose; her uses are unlikely to cause source confusion.
   B. win; her uses are likely to cause source confusion.
   C. lose; her use is noncommercial.
   D. win; her uses dilute its name.

D. Miscellaneous

Answer only *5 of 7*.

1. Foobert, Inc. plans to launch a new product under a new brandname. Employees have been told not to copy anything without permission. Beyond that, the firm needs to commission:
   A. only copyright infringement searches.
   B. only trademark infringement searches.
   C. only patent and trademark infringement searches.
   D. copyright, patent, trademark and trade secret infringement searches.

2. Working as a paid research assistant for Professor Hoozit at Major University, Joe made an important invention. Because he was also a tuition-paying student, Joe felt exploited. He left, taking his research notebooks with him. If MU decided to pursue the matter, Joe:
   A. could be excluded as the "inventor" in any patents MU might obtain.
   B. might have to return the salary, but he could keep the notebooks.
   C. would surely own the notebooks that explain his invention.
   D. might face criminal prosecution.

3. Sarah was also working with Hoozit (Q.2), but as an unpaid graduate student. When she accused Hoozit of using her published ideas and data without attribution, MU ignored her. Sarah then sued both Hoozit and MU. On these facts:

A. Sarah's chances of success with a state misappropriation claim are good.
B. Sarah's chances of success with a federal copyright claim are good.
C. Both a and b offer Sarah excellent prospects for success.
D. Neither a nor b offers Sarah any chance of success.

4. Tom quit Froot, Inc. and went to work for Poof Co. taking a file listing important customers. Froot found out. It sued, and the complaint listed Poof customers who could have been approached only by using the purloined file. On these facts, Poof:

A. wins if it did not obtain the file by improper means.
B. wins if the complaint is published in a local newspaper.
C. wins if most of Froot's competitors have essentially the same customers.
D. cannot lose; a file listing customers is not proper subject matter for a trade secret.

5. Froot (Q.4) later informed its customers that it believes that Poof infringes one of its patents and that it has commenced suit for trade secret theft. Poof then counterclaimed asking for a declaration of non-infringement and for product disparagement.

A. Poof will lose; Froot has a First Amendment right to express its noncommercial views.
B. Poof can win only by showing that everything Froot *said* is false.
C. Both of Poof's claims could be based on federal law.
D. Poof's claims both concern matters of state law.

6. Soapy, Inc. agreed to pay Sam for a way to put hollow plastic bubbles into soap bars. Under their deal, Sam gets 0.4¢ per bar for the term of any patent that might issue and 0.1¢ otherwise. Later, they agreed not to seek a patent. If, after 25 years, Soapy gets tired of paying, the contract will be:

A. enforceable regardless of what competitors do.
B. enforceable but only if no competitor offers the same thing.
C. unenforceable; the term would already be more than that for a patent.
D. unenforceable; enforcing such deals discourages people from getting patents.

7. Soapy (Q.6) adopted "Float" as the mark for its new product. It spent $5 million promoting it before, three years later, J&J Inc. figured out how to make the same product. If Soaps sued J&J for trade dress infringement, a court is apt to find:

A. such bubbles to be functional but nevertheless protected as trade dress.
B. that J&J can include the bubbles but cannot use the word "float."
C. such bubbles to be nonfunctional and protected as trade dress.
D. that J&J may make the product and indicate that it floats.

Part II: Matching
[20 points]

Definitions match only one numbered term. Please enter the **best** letter in the corresponding space **on the answer sheet** . Only the first 20 answers will count.

1. Dilution
2. Parody
3. Clean hands
4. Plug
5. Independent creation
6. Exhaustion of right
7. Coined word
8. Doctrine of equivalents
9. Third-party requester
10. Intellectual property
11. Art. I § 8 cl. 8
12. Cancellation
13. Noncommercial
14. Incontestability
15. Reverse engineering
16. Renewal
17. Contributory infringement
18. Disparagement
19. Derivative
20. Cybersquatting
21. Invalidity
22. Substantial similarity
23. Commerce
24. Statutory damages

A. Defined in the copyright act.
B. Defined in the Lanham Act.
C. Defined in the patent act.
D. Very unlikely basis for trademark liability but possible for patents and copyrights.
E. May be sought from domain name pirates and copyright infringers.
F. A trademark procedure; it may be pursued in court or within the PTO.
G. Impossible for copyrights and patents but not for trademarks.
H. Negates all chances of infringement.
I. Generally needed to obtain injunctive relief.
J. Not the source of power for federal trademark legislation.
K. Confers no right to engage in commercial activity.
L. May confer rights on purchasers of patented goods.
M. No longer needed to keep copyrights in force.
N. Probably the strongest form of trademark.
O. A defense to only trade secret infringement.
P. The most protected category of speech.
Q. Defined in the Vessel Hull Protection Act
R. Actionable under 15 U.S.C. § 1125(a)(1)(B).
S. Actionable under 15 U.S.C. § 1125(c).
T. Actionable under 15 U.S.C. § 1125(d).
U. Is facially at odds with 35 U.S.C. § 251¶4.
V. The legal test for copyright infringement.
W. A possible defense to trademark and copyright, but not to patent, infringement.
X. A defense to both copyright and trade secret, but not to patent or trademark, infringement.

Examination No. _____

Answer Sheet

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Part I — (80%)

*Answer **only** 5 of 7 in each set* (4% each)

A. Patents

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

B. Copyrights

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

C. Trademarks

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

D. Miscellaneous

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

Part II — (20%)

*Answer **only** 20 of 24* (1% each)

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