Introduction to Intellectual Property

Final Examination

Professor Field Fall 2003

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. Digit (D) sold his patent to Pott (P). If P alleges that D is now infringing that patent; D's *best* defense is that:
   A. the patent he sold to P covered an obvious invention lacking utility and novelty.
   B. the only technology that he uses is covered by an expired patent.
   C. P didn't pay enough money for his patent.
   D. P wouldn't give him a license.

2. Pento (P) holds a patent on a disposable razor containing unique blades but not on the blades separately. If DimCo (D) buys used razors and replaces the blades:
   A. D surely infringes P's exclusive right to use.
   B. D surely infringes P's exclusive right to make.
   C. D's liability depends on purchasers' right to replace blades.
   D. D's liability depends on whether he exports the refurbished razors.

3. Potable (P) holds a water-purification patent. Potential infringers need not worry:
   A. if those skilled in the art need to tinker to optimize the process.
   B. if P's patent does not disclose a key step in his process.
   C. because water purification has long been practiced.
   D. because most of P's claims are too broad.

4. Zola invented an improved way to do internet fortune-telling. In considering whether to seek a patent, her *least* important consideration is that:
   A. it would be impossible for users of her service to figure out how it works.
   B. sometimes her invention works; sometimes it doesn't.
   C. the invention requires the use of software.
   D. the future cannot be predicted.

5. If Zola (Q 4) managed to get a patent, an infringer who defended on the basis that:
   A. the invention can be used to deceive consumers would most likely lose.
   B. many fortune-telling patents have issued would most likely win.
   C. the patent covers a business method would most likely win.
   D. the invention is nonobvious would most likely lose.

6. Under § 102(b), Irving cannot patent his gadget if, two years ago, he:
   A. sold six to friends in Canada and Mexico.
   B. offered to sell rights in his invention to a manufacturer.
   C. made several and gave them to people to test in confidence.
   D. offered to sell one based on engineering drawings, but he never made any.

7. Hoozit's patent will most easily withstand a validity challenge if:
   A. those skilled in the art cannot get her invention to work.
   B. those skilled in the art didn't expect her invention to work.
   C. her invention is more cost-effective than what came before.
   D. those skilled in the art are not surprised by the success of her invention.

B. Copyright

*Answer **only** 5 of 7.*

1. Molly (M) registered a simple marketing game and sent a copy to DozCo (D). When D copied the directions for her game on its boxes, she sued. M will most likely:
   A. win if she registered within three months.
   B. lose if she omitted the notice required by § 401.
   C. lose if the idea and expression are seen to merge.
   D. win because it is easy to detect infringement of simple game directions.

2. After Petunia (P) sold copies of her rag doll for about six months, she registered her copyright. If Darta (D) wants to use photos of the doll on note cards, she could most likely:
   A. do so because dolls are useful under § 101.
   B. not do so despite whatever utility dolls have.
   C. not do so unless the design of P's dolls is obvious.
   D. do so, but only if her photos of P's dolls are very small.

3. By phone, Petunia (Q 2) later agreed that, if D paid a small fee, she could use photos of the doll on note cards. After six months, P called D and said that she changed her mind.
   A. D's future use would make her liable under § 504(c) as an innocent infringer.
   B. D's future use would make her liable under § 504(c) as a willful infringer.
   C. D's prior use infringes because she had no written agreement.
   D. D's prior use does not infringe.

4. P (Q2) hired Sarah (S), an independent seamstress, to design new clothes for her doll. S did so and also designed a re-sized version to fit a competing doll sold by Martha (M). If P sues M:
   A. she will lose if S is not an employee.
   B. she will lose because clothes are not copyrightable.
   C. she may lose unless S assigned her copyright in writing.
   D. she may lose unless S agreed in writing to work "for hire".

5. George (G) wrote an obscene song. Howard (H) later put it on the internet.
   A. H may be criminally liable even if he thought that what he did was okay.
   B. H may be civilly liable even if he thought that what he did was okay.
   C. G has no rights because obscene works aren't mentioned in § 102(a).
   D. G cannot recover from H because he has unclean hands.

6. Pedant (P) wrote a textbook. If Linda (L) copied most of it for students, her use was:
   A. fair because it was non-commercial.
   B. acceptable under § 107 unless P lost sales.
   C. unacceptable under § 107 despite her being a teacher.
   D. unfair because she should have known that her use would infringe.

7. Also, L (Q. 6) used many of P's theories in a published article. Her use is:
   A. fair if she credited P as the source of her theories.
   B. not infringing regardless of whether she cited P.
   C. infringing regardless of whether she cited P.
   D. unfair if she did not cite P.

C. Trademarks

[All statutory citations to the Lanham Act]

Answer only *5 of 7.*

1. After Metro (M) expressly abandoned its mark, Panna (P) used it on the same product. Droopy (D) used it on a very similar product two days later.
   A. M has no rights against either P or D.
   B. A court might allow both P and D to use the mark.
   C. P will prevail over D because he used the mark first.
   D. P cannot prevail over D because their goods are different.

2. Bob (B) got a patent on a type of shoe he sold as a "Phong." When B's patent expired, DimCo (D) began selling less-well-built "phongs" for half the price. If B sues, a court should:
   A. permit D to sell his similar item as a "phong."
   B. permit D to call his product whatever he wishes.
   C. require D to stop selling anything called a "phong."
   D. require D to copy B's product exactly if he wants to call it a "phong."

3. If B (Q2) also objects to the fact that D's "phong" looks exactly like his (at least on casual inspection), a court is most likely to:
   A. require B to show that others need not copy to compete effectively.
   B. regard B's trade dress as inherently distinctive.
   C. refuse relief until B registers his trade dress.
   D. bar all relief because B's patent has expired.

4. Soon after Pedrot (P), a NH firm, filed an intent-to-use application for AAX® toothpaste, Domas (D) began selling axes under the same mark in Alaska. After P gets registration, D is:
   A. unlikely to infringe under § 32 because the markets are geographically remote.
   B. unlikely to infringe under § 32 because he was the first to use.
   C. unlikely to infringe presumptively under § 32.
   D. likely to infringe under § 43(a)(1)(A).

5. Only after D (Q 4), already holding aax.com, sought trademark registration, did P learn of him. P then registered aax-axes.com. In such circumstances, courts are most likely to regard:

A. D's uses as okay.
B. D as a cybersquatter.
C. P as entitled to aax.com because D lacked a trademark.
D. P as obligated to pay damages to D because of its unclean hands.

6. Granny (G) says that her Home-brand toothpaste works better than AAX® (Q 4). If relief is available to P, it is most likely to be under:

A. § 43(a)(1)(A).
B. § 43(a)(1)(B).
C. § 43(a)(1)(C).
D. § 32.

7. DentCo (D), having never heard of P (Q 4), sold Plaax™ dental floss from Plaax.com for 7 years beginning soon after AAX® was filed. If P sues, a court would most likely rule in:

A. P's favor if relief is sought under § 43(d).
B. D's favor if relief is sought under § 37.
C. D's favor if relief is sought under § 32.
D. P's favor if relief is sought under § 32.

D. Miscellaneous

Answer only *5 of 7.*

1. Detailed specifications are needed to make Precision's (P) once-patented gizmo. Cruk (C), an employee, sold a set of specifications to Diablo (D). P fired C and sued D; P will probably:

A. lose because its patent has expired.
B. be able to stop D from ever selling gizmos.
C. be able to get the specifications returned or destroyed.
D. lose unless C expressly promised not to do such things.

2. After that suit (Q 1) settled, P learned that C also sold a set of specifications to Mercoid (M). When P sued M too, its attorney found a copy of the specifications accidentally left in a Diablo court file following settlement. If M moves to dismiss, the motion should be:

A. granted; the critical information has been published.
B. denied; the specifications were secret when M bought them.
C. granted; reasonable measures to preserve secrecy were not taken.
D. denied; no one having the critical information would, say, put it on the internet.

3. Besides bringing civil suits (Q 1, 2), P notified state and federal prosecutors in Florida. Criminal actions were filed against D and M in federal court (alleging purchase of information known to be secret) and against C in state court (alleging sale of information known to be secret). Before the actions could be tried, however, someone published P's specifications on the internet.

A. Continuing secrecy should be unnecessary for criminal liability.
B. Conduct of the type alleged is not criminal under federal law.
C. Continuing secrecy should be required for criminal liability.
D. Conduct of the type alleged is not criminal under state law.

4. AapCo sells its copyrighted software on the internet. A clickwrap agreement obligates users not to (1) make backup copies, (2) criticize Aap or (3) reverse engineer its software.

A. Provision 1 is likely to be preempted by the copyright law.
B. Provision 2 is likely to be preempted by the First Amendment.
C. Provision 3 is likely to be preempted by the patent law.
D. All listed provisions are unlikely to be enforceable.

5. LoonyCo publishes books of cartoon characters. Although they contain no patterns, each explicitly allows purchasers to make one, but only one, doll based on any character depicted.

A. Buyers have common law rights to make dolls based on characters in such books.
B. Buyers have statutory rights to make dolls based on characters in such books.
C. All rights to make dolls arises from express permission in the books.
D. No prior statement is true.

6. Phussy (P) is an "extreme" skate-board champion who performs ever-changing, but definitely life-threatening, stunts. To discourage possible imitators, P allows no type of camera at her performances. Despite that, Victor (V) managed to tape one. V probably will infringe P's

A. publicity rights if people are charged admission to see his tape.
B. copyright if people are charged admission to see his tape.
C. publicity rights if his tape is put on the web.
D. copyright if his tape is put on the web.

7. V (Q 6) also sold photos to *The Extremity* (E), a periodical catering to fans of extreme sports. If E publishes, P will probably:

A. win if she sues for INS misappropriation.
B. win if she sues for infringement of her trade secrets.
C. lose under all theories unless E is a for-profit periodical.
D. lose under all theories regardless of whether E is a for-profit periodical.

Part II: Matching
[20 points]
*Answer **only** 20 of 24*

Related *terms* are grouped. Lettered definitions match only one term. Please enter the **best** letter in the corresponding space **on the answer sheet**.

1. Continuing use
2. Fact
3. Validity
4. Fair use
5. Commerce clause
6. Compulsory license
7. Search
8. State trademark registration
9. Willfulness
10. Cancellation
11. Limited times
12. Maintenance fees
13. Renewal
14. Intellectual Property
15. Coined word
16. Misappropriation
17. Exhaustion of right
18. Transferrable
19. Ex parte examination
20. Vicarious liability
21. Attorney fees
22. Noninfringement
23. Functional
24. Notices

A. Actionable free riding
B. Unprotected trade dress
C. Not protected by copyright
D. Typical property characteristic
E. May be recovered only by statute
F. Required to keep patents in force
G. An IP interest of very dubious value
H. Ordinarily needed for trademark rights
I. Unlikely to arise in trade secret litigation
J. A good defense to all types of IP liability
K. Often challenged by defendants in IP litigation
L. Does not confer the right to make or sell anything
M. Necessary to keep trademark *registrations* in force
N. Needed for copyright in works published before 1988
O. Restricts congressional authority under Art I § 8, cl 8
P. Limits patentees' ability to call some conduct infringing
Q. Action that should be taken before adopting trademarks
R. Affects the amount and availability of statutory damages
S. Makes one person legally responsible for the acts of others
T. Perhaps the most valuable type of trademark and domain name
U. Possible inter partes proceeding under Title 15 of the U.S. Code
V. Requires copyright, but not patent, owners to permit use of their IP
W. Required for patents as well as for copyright and trademark registration
X. Provides congressional authority for trademark and trade secret legislation

Examination No. _____KEY_____

Answer Sheet

Part I — (80%)

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

A. Patents

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

B. Copyrights

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

C. Trademarks

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

D. Miscellaneous

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

Part II — (20%)

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

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