EXAM #_____

# INTELLECTUAL PROPERTY MANAGEMENT
# FINAL EXAM — SPRING '09

Professor Jorda May, 2009

**Instructions**:
This is a two-hour (more for certain foreign students) open-book exam. You may consult the course materials as well as any other materials.

Write your answers in the blue books supplied, but please use only one side of the page and observe the margins. Please print or write as legibly as possible.

Grading will be anonymous; please do not put your name on anything you turn in. BE SURE YOUR EXAM NUMBER IS ON EACH BLUE BOOK YOU TURN IN.

## PROBLEM I

In what ways can software (computer programs) be protected by Intellectual Property Rights (IPRs)? In your answer discuss how and why any IPRs are applicable. Also, is it possible to protect software via copyright and trade secrets? **[20 points]**

## PROBLEM II

Sam Brainy was hired as service engineer by Zenith Corp. to perform start-up and adjustment services relating to certain texturing machines, including start-up of the machines, troubleshooting on them, working on customer trials, and reporting to his service manager. Sam was sent by his service manager to a customer's plant to try an idea of the service manager for altering the feed path on the texturing machine. He did so, but the idea didn't work. While resting in his hotel room, he conceived of his own novel way of improving the feed path which would greatly increase the speed at which the final product could be produced. He tried the idea the next day, and it worked. Zenith claimed title to a patent on that invention because Sam was an employed inventor. Sam disagreed and litigation ensued. Who wins and why? **[20 points]**

## MISCELLANEOUS QUESTIONS

1. What is the legal and commercial significance of a "Patent Pending" marking? **[5 points]**
2. In what specific sense or instance are patents and trade secrets compatible and complementary, if at all? **[5 points]**
3. Why are companies reluctant to accept ideas for new products from outsiders ("unsolicited disclosures") and what are the conditions or requirements under which companies will look at unsolicited disclosures to determine potential interest. **[5 points]**
4. What is the legal and commercial significance of so-called "housemarks" and what is the interface between them and standard trademarks and service marks? **[5 points]**
5. What is the Patent Cooperation Treaty (PCT) and why is it "sweeping the globe"? **[5 points]**
6. Must the inventorship designation be identical between corresponding US and foreign patent applications? **[5 points]**

**--END OF EXAMINATION—**

KFJ/RUH/4.29.09

Final Examination

Introduction to Commercial Law/UCC

Professor Dickinson Spring 2009

This is the final examination for the course Introduction to Commercial Law/UCC. This examination consists of three statements of fact followed by questions. You are to direct your thinking and responses to the questions propounded then record your responses in ink on the right hand page of the examination books provided. You will have three hours to consider, determine then record your responses. You may have with you during the examination a single purpose first language (other than English) to English dictionary. You may also have a copy of *Selected Commercial Statutes*, published by Thomson West annotated in your own hand writing as you Wish.

Part I

Dan Collector has amassed a beyond belief collection of guns and other armaments indulging in the acclaim this collection brings him at gun shows and with his friends down at the Legion. Because this collecting activity is essentially a sedentary one Dan has amassed several clogged coronary arteries the treatment for which has brought him to his banker for a loan on April 15,2009. Banker tells Dan that a loan to cover his outstanding medical bills (hundreds of thousands) would be possible if Dan can meet the bank loan committee's collateral requirements. Dan offered his gun collection expressing his belief that it was worth double the amount of the requested loan. Banker expressed the opinion that the committee would find this acceptable but that the collection would have to be assessed before Bank could make any commitment.

\ Banker suggested that he and Dan could move this along if the required paper work (loan application, references etc.) were completed then and there. Among the documents signed by Dan was one titled "Security agreement" that recited that Dan "granted a security interest to the bank in all guns and armaments held or hereafter acquired". Dan signed, then waited three weeks for the assessor then two more for the bank committee. On May 1 Dan got a letter from bank committee inviting him to return to the bank to sign the note from him to it representing the proceeds of the loan it had approved and would pay out upon Dan's signing. Because Dan was in the hospital he did not get to the bank to sign the note until May 10, 2009.

1) Has the Bank's security interest attached? If so when and how did this occur? If not explain why not.
2) Assume that Dan's Brother has been in possession of a Winchester 38 lever action rifle that had been owned and used by his and Dan's grandfather. Assume further that Dan has coveted this rifle since he first got a hunting license at the age of 12 and has left a place in his collection display cases for

this piece when Brother finally gives it up to him. While Dan is convalescing in the hospital in September brother determines to make the sentimental gesture of bringing Dan the Winchester on the first day of deer hunting season and allowing him to display it in Dan's collection on Dan's promise that if the collection is ever broken up the Winchester will be returned to Brother. Did Bank's security interest attach to the Winchester when it came into Dan's possession? If yes, be sure to explain why. If no, explain why not.

## Part II

Mike Stock Broker left work in a Hurry on Friday stuffing his mail, including his paycheck made out to Mike's order, into his brief case. His hurry was motivated by a felt need for his 4:00 P.M. cocktail. Mike made it to a satisfactory bar and sat at a table where he put the brief case down on the floor beside him. At the third drink Mike did not notice that a person with bright red hair had removed his brief case and was going through it as he went out the door.

Red found Mike's paycheck. He took it to Tom' Check cashing signed Mike's name on the back of the check endorsing over to Tom C, and took the money the check was made out for from Tom who did not ask Mike for any identification.

1) When Tom presented the check to the drawee bank (which was also Mike's bank) the bank called Mike. Can Mike retrieve the check from Tom? If so why and how. If not, why not?

## Part III

Used Car Charlie opened the Yellow Submarine Car lot on the first day of classes at the start of his quest for the Juris doctor degree in order to finance his education, On the second day of classes Charlie sold a clunker to Fred classmate who paid Charlie with a promissory note for $1,000 made payable to the order of Charlie.

Fred was from far away and had no local bank so Charlie, who needed cash now, took the note to Cash buyer who paid Charlie $800.00 for Fred's note. Of course by day three of classes the clunker had fallen apart and Fred was demanding his money back. Charlie told Fred he had sold Fred's note to Cash. Fred went for Cash. Cash told Fred he did not have the note because three days before was his and his wife's wedding anniversary so he gave wife the note by indorsing it in blank and giving it to her as a present.

1) Fred told Cash that because the clunker did not run he would not pay the note to wife when it became due. Is Fred's position legally sound? If yes, please explain why. If not, explain why not?

End of Examination