INTERNATIONAL & COMPARATIVE TRADEMARK LAW
FINAL EXAMINATION

Dr. Gerd F. Kunze
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Instructions:

This is a two-hour, open book exam (three hours for students with native language other than English). You may consult the course materials and any other materials. Yet, your examination must be your own work. Do not discuss it with other students.

Mark an "X" in the fields where you believe that the indicated answer is correct. If you believe that the answer is wrong, leave the field blanc.

Grading will be anonymous. Please do not put your name on anything you turn in. **BE SURE YOUR EXAM NUMBER IS NOTED ON THE PAPER YOU TURN IN.**

Question 1

Does the minimum scope of protection provided for well-known marks in a) to d) give rights against registration and use of conflicting signs

	a)	b)	c)	d)
for similar goods				
for similar services				
for non-similar goods and services, provided the well-known mark is registered				
for non-similar goods and services, even if the well-known mark is not registered				

a) = the Paris Convention
b) = the TRIPS Agreement
c) = the Joint Recommendation on the Protection of well-known marks
d) = decision 486 of the Cartagena Agreement

[10 points]

Question 2

Which of the following features are applicable to international applications or registrations governed by the Madrid Agreement (MA) or by the Madrid Protocol (MP) or by both the MA and the MP?

	MA	MP
Dependence on a basic national mark in a Contracting Party during a minimum period of 5 years		
A national *application* in the country of origin may serve as basis for the international application		
The international application may be filed direct with the International Bureau in Geneva		
National Offices of designated Contracting Parties may opt for a period for issuing a provisional refusal that is longer than one year		
National Offices must content themselves with a designation fee of CHF 73		
National Office may chose between English and French as language of the procedure		
The owner of the international registration may transfer it to an assignee for a part of the goods or services or for some of the designated Contracting Parties		
The international registration must be published in the Journal of the Offices of the designated Contracting Parties in order to become valid		
Renewal is made by simple payment of the fees; no proof of use may be requested		
Licenses may be registered in the international register		

[15 points]

Question 3

The Chinese owner of the trademark DRAGON, registered in China, applies on March 15, 2000 for an international registration of his trademark, designating the Contracting Parties listed below. The international registration is registered under that date. On May 20, 2002 his Chinese registration of the trademark DRAGON is cancelled and, as a consequence, his international registration is cancelled. Can he transform his international registration in national applications, safeguarding the registration date of March 15, 2000, in some of the designated countries, and if yes, in which countries:

- Austria
- Denmark
- Estonia
- Finland
- France
- Georgia
- Germany,
- Iceland
- Japan
- Norway
- Poland
- Russian Federation
- Spain
- Swaziland
- Sweden
- Turkey
- United Kingdom
- Viet Nam

[10 Points]

Question 4

The same owner of the Chinese trademark and the international registration DRAGON renounces on May 20, 2002 the protection of his international registration for all countries with the exception of France and Viet Nam. The International Bureau registers the renunciation and informs the respective designated countries. Can he transform his international registration into national applications in the same countries, if any, as in the case described in Question 3?

- Yes
- No

[5 Points]

Question 5

Which treaties give the owner of a trademark that is protected in a member country, without being well-known, the right to oppose the use or application for registration of a conflicting mark in another member country, where the trademark of the owner is not registered?

- The Paris Convention
- The TRIPS Agreement
- The Trademark Law Treaty
- The Inter-American Convention of 1929
- Decision 486 of the Cartagena Agreement
- Mercosur Protocol regulating Trademarks etc.

[10 points]

Question 6

Which of the following features are applicable to Community Trade mark registrations (CTM) or applications (CTMA)?

- The CTM has unitary character
- Dependence on a basic national mark in a Member State of the European Community
- The CTMA *must* be filed with a national Office in the Member State where the applicant has his place of business
- The Office in Alicante examines CTMA on absolute grounds and on earlier rights
- The Office in Alicante and *all* national Offices operate a search on earlier marks
- Oppositions may be based on trade names

- An opposition may be based on an international registration, which is protected in Denmark
- The opposition *procedure* begins with the communication of the oppositions to the applicant for registration of a CTM
- The opposition *procedure* begins not earlier than two months after communication of an opposition to the applicant
- Well-known marks are a ground for refusal of a CTMA
- Well-known CTM are protected in the Community without registration
- CTM having a reputation are protected against dilution
- The protection of CTM having a reputation is restricted to non-similar goods or services
- The owner of a CTMA or CTM may claim seniority of an identical earlier national mark in a Member State
- When a CTMA does not lead to registration the applicant may convert it into national applications in *all* Member States of the Community
- In case of infringement of a CTM the CTM Courts have exclusive jurisdiction
- The CTM Courts are national courts
- *Any* decision of a CTM Court has effect for the whole Community
- The owner of the CTM may transfer it to an assignee for some of the Member countries
- The owner of CTM may license it for a part of the goods or services or for some of the Member Countries; that license may be exclusive or non-exclusive

[20 points]

Question 7

Which of the following features are advantages that the TLT provides for trademark owners and applicants:

- No certification of signatures
- Maximum requirements that an Office may ask for the establishment of a filing date
- Obligatory Introduction of the Nice Classification of Goods and Services
- A definition of the trademark
- The Nice Classification serves only administrative purposes
- Multi-class applications must be accepted by the Offices and result in one single registration
- The applicant may divide his application into several applications, by distributing among the latter the goods or services listed in the initial application
- the furnishing of any extract from a register of commerce cannot be requested
- Obligatory opposition procedure
- Offices must accept general powers of attorney;
- Registration and renewal period of 10 years
- Protection of well-known marks
- No obligation to furnish the original transfer contract for a request to record a change in ownership

[15points]

Question 8

a)

To maintain a trademark registration, which of the following Treaties or laws provide for an *obligation* to use the trademark within a certain period of time? .

- The Paris Convention (PC)
- The TRIPS Agreement (TRIPS)
- The Trademark Law Treaty (TLT)
- Decision 486 of the Cartagena Agreement (486)
- The CTM Regulation

b)

If an obligation to use is provided by Member States, respectively by the European Community in the case of a CTM, which grace periods of non-use are given:

	PC	TRIPS	TLT	486	CTM Regulation
No grace period allowed					
Reasonable period of time					
2 years					
3 years					
5 years					

[15points]