# Introduction to Intellectual Property

**Final Examination**

Professor Field Fall 2002

**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.* <<

**Basic Facts**

1. In May 1999, Iben Smart, while working for Lumen Electric, invented a light bulb with a ten year life span. Using only 20 watts, it casts the light of common 75 watt bulbs. Lumen began to sell them. After the first year, sales were brisk, so it applied for a patent. When sales dropped off in June 2002, it abandoned the application. The patent wouldn't have been valid anyway because:
   A. the bulbs weren't proper subject matter under § 161.
   B. lack of sales shows that the bulbs weren't useful.
   C. light bulbs were invented by Edison.
   D. the bulbs were sold before filing.

2. In April 2000, Smart (Q.1) quit and went to work for Apex. Apex later filed for a patent on an improved "Lumen" bulb and began to sell it. Apex's patent issued in December 2002, but it would be invalid if:
   A. Lumen's bulb was sold more than a year earlier.
   B. Apex's improvements would be obvious under § 103.
   C. Apex's improvements would be obvious under § 102.
   D. Smart made the invention while working at Lumen.

3. Lumen's making improved (Q.2) bulbs would probably infringe Apex's rights:
   A. unless Apex refuses to license its patent.
   B. if the Apex bulb would not have infringed Lumen's patent.
   C. unless Smart made the invention while employed by Lumen.
   D. because it abandoned its rights when it abandoned its application.

4. If Lumen held a valid patent on the original bulb (Q.1), Apex (Q.2) would probably
   A. infringe until it obtains its own valid patent.
   B. infringe even after it obtains its own valid patent.
   C. not infringe because Lumen's rights were exhausted.
   D. not infringe because Lumen chose to stop marketing its bulb.

5. Smith invented another bulb for Apex. It works if filled with neon, but helium (another inert gas) is best. If the application mentioned only neon, this patent would be invalid because:
   A. of § 103 (c).
   B. neon doesn't satisfy § 101.
   C. of failure to satisfy § 112 ¶ 1.
   D. of failure to satisfy § 112 ¶ 2.

6. Apex assigned to Beta all rights (Q.5) west of the Mississippi River. Jones, Inc. is selling the patented bulbs in New York. Validity aside, Jones is not liable to Apex if it:
   A. made the bulbs itself in Nevada.
   B. bought the bulbs from Beta in Maine.
   C. bought the bulbs from Beta in Mexico.
   D. bought the bulbs from Beta in California.

7. Beta (Q.6) assigned to Gamma the right to sell for *residential* use only. Later, Beta sued Brown, Inc. for selling bulbs covered by the patent to *commercial* parties in Nevada.
   A. If he bought from Gamma, Brown cannot infringe.
   B. If he bought from Gamma, Brown probably infringes.
   C. If he bought locally from Apex (Q.6), Brown cannot infringe.
   D. Brown probably does not infringe because field of use restrictions are illegal.

**B. Copyright**

>> Answer only *5 of 7.* <<

1. While working for ToyCo as an engineer, Mai wrote a book on the history of toy wagons.
   A. Mai owns the copyright if he paid to have it published.
   B. ToyCo owns the copyright because Mai was an employee.
   C. ToyCo owns the copyright if writing the book was within the scope of Mai's job.
   D. ToyCo owns the copyright if they commissioned Mai to write it in his free time.

2. ToyCo published the book and promptly registered copyright as a work for hire.
   A. Under § 410(c), the book is presumptively a work for hire.
   B. Under § 411(b)(2), the book is presumptively a work for hire.
   C. Under § 410(c), the promptness of registration is irrelevant.
   D. Under § 408(a), promptness aside, registration is irrelevant.

3. An appendix (Q.1) contains wagon drawings collected from various sources. Jon's
   A. reproducing those drawings cannot infringe because Mai did not make them.
   B. reproducing those drawings risks only infringement of copyright in the book.
   C. reproducing one drawing as a wagon cannot infringe.
   D. photocopying one drawing will be fair use.

4. ToyCo (Q.2) reproduced some book pages on lamp shades. Ben copied the shades.
   A. His use is fair.
   B. He infringes because he is copying book content.
   C. He infringes because the shades are copyrightable derivatives.
   D. He cannot infringe because the shades can be protected only by design patents.

5. Snipper buys Nuws-Today and clips out stories of interest to 40 clients who do not subscribe. Nuws sued him because it wants to sell 40 more daily newspapers.

A. In the 7th Circuit, Snipper would have little to worry about.
B. In the 9th Circuit, Snipper would have little to worry about.
C. No court would regard Snipper as infringing Nuws § 106(2) right.
D. If Nuws would gain few additional subscribers, Snipper should win.

6. Bozo continually strives to improve his "human cannonball" act by watching videotapes.

A. Bozo can sue infringers of his rights without registration.
B. Bozo's act clearly does not qualify for protection under § 102(a).
C. Broadcasting an unauthorized videotape of his act would infringe under state law.
D. Broadcasting an unauthorized videotape of his act would infringe under federal law.

7. Copy Cop copied course materials for a Harvard professor. Publisher sued because the materials contain an unlicensed, 3-page excerpt from its 363-page book. Publisher:

A. should win if fair use factor 3 controls.
B. should win if fair use factor 4 controls.
C. should lose if the rights of ultimate consumers are considered.
D. will surely lose if the rights of ultimate consumers are ignored.

**C. Trademarks (all citations to the Lanham Act)**

>> Answer only *5 of 7.* <<

1. Wallah (W) holds a federal trademark registration for toothpaste and has sold its product in New York City (NYC) for 5 years. Voila (V) dental floss has been sold in NYC for 7 years. V learned of W when its president heard a radio ad; she thought the name was the same.

A. V should be able to cancel W's registration.
B. W has superior rights in NYC if it was the first to use elsewhere.
C. W has superior rights in NYC because it registered with the U.S. PTO.
D. V has superior rights in NYC because it was using its mark prior to W's registration.

2. If V (Q.1) was the first to use anywhere within the U.S., it:

A. will probably be able to get exclusive national rights.
B. can surely get a court to enjoin W from selling in NYC.
C. is unlikely to get a court to enjoin W from selling in NYC.
D. will probably be unable to sue under § 43(a) for lack of interstate commerce.

3. V and W (Q.1) settled by agreeing not to advertize on radio. V has discovered another firm (VT) that just began selling Voila toothbrushes in NYC. If it wants to sue VT, V

A. will find that it has no federal cause of action until it registers.
B. may sue under § 43(a) despite its selling only in NYC.
C. may sue under § 32 despite its selling only in NYC.
D. will lose because there's no likelihood of confusion.

4. The V-W settlement (Q.3) makes:

A. VT's case stronger; if floss and toothpaste don't confuse, neither do toothbrushes.
B. VT's case weaker because it did not search before adopting its mark.
C. VT's case stronger because both W and V have unclean hands.
D. no difference in VT's case.

5. Gizmo, Inc. has registered the Widget mark for an otherwise nameless product. Pyro has copied the product. Should Gizmo sue, it is likely to get the best remedies if:

A. Pyro's product contains several non-functional features of Gizmo's product.
B. Gizmo's product is always blue, and Pyro's is red.
C. consumers know the product only as a "widget."
D. Pyro's label reads "PYRO™ widget."

6. Retreads, Inc. sells an extensive line of refurbished auto parts under their original names. If an original manufacturer (OM) objects, a court is most likely to:

A. halt sales if any of OM's goods are patented.
B. require a tag indicating that OM's goods are refurbished.
C. require Retreads to remove OM's mark regardless of cost.
D. require permanent indications that OM's goods are refurbished.

7. Under § 2(f), ShoeCo got federal registration of Phlats for shoes, despite the fact that "flats" (sounds the same) is a popular type of woman's shoe. On Dec. 31, 2000, it abandoned the registration. On Jan. 1, 2001, Doofus began selling Phlats shoes.

A. Despite § 2(d), Doofus should have no difficulty obtaining federal registration.
B. Despite § 2(e)(1), Doofus should get immediate federal registration.
C. ShoeCo could probably get some kind of relief under § 43(a).
D. ShoeCo has no rights because it abandoned its registration.

**D. Miscellaneous**

>> Answer only *5 of 7.* <<

1. FulCo sells Bally car wax. Each can says prominently: "This product is PROTECTED by a TRADE SECRET! Purchasers agree not to reverse engineer it." However, after SimCo bought a can, it did exactly that. Now SimCo also sells Bally car wax. FulCo has:

A. a state cause of action for breach of contract.
B. no state cause of action for breach of contract.
C. no state cause of action for unfair competition.
D. a cause of action under § 1836(a) of the Economic Espionage Act of 1996.

2. After a patent issued, BulbCo discovered a very efficient way to make the lights protected by the patent. When BulbCo's patent expired, Vortex began to make them, using the same process. Vortex:

A. may not do so if it reverse engineered BulbCo's process before its patent expired.
B. may do so if a former BulbCo employee showed it how to make the lights.
C. may do so if it just learned that the process is the same.
D. cannot be stopped once the patent expired.

3. After BulbCo's patent (Q.2) issued, it also found that its lights work best if they are uniquely shaped and made of pale green glass. Since its patent expired, BulbCo is likely to enjoy trade dress protection for:

A. only the color.
B. only the shape.
C. both the color and the shape.
D. neither the color nor the shape.

4. Members of Parents against Cola (PAC) believe that soft drinks are bad for children's health. PAC designs and distributes posters. One depicts the classic Coke bottle. The bottle is red; instead of Coca-Cola, it reads "Croak-a-Cola." (Citations to Lanham Act.)

A. Without constitutional protection, PAC could easily be stopped under §43(a)(1)(B).
B. PAC probably infringes Coke's trade dress under § 43(a)(1)(A).
C. PAC clearly dilutes Coke's trademark under § 43(c).
D. PAC has ample defenses within § 43(c).

5. PAC (Q.4) also designed a similar poster criticizing Pepsi. Beneath a "Pesty-Cola" bottle, the poster says "Poison a kid today!" With regard to that poster, PAC:

A. enjoys no common law privileges.
B. enjoys no First Amendment protection.
C. may be liable in damages for a false statement of fact.
D. may be liable in damages for an implied message that is false.

6. PAC posters are printed and distributed by PubCo. Only a few Croak (Q.4) and Pesty (Q.5) posters had been distributed when Coke and Pepsi (C&P) threatened to sue PubCo. When it immediately stopped its activities on behalf of PAC, PAC sued C&P for intentional business interference. C&P's threats:

A. are privileged if C&P's suit(s) would not be frivolous.
B. are unprivileged because PAC registered its copyrights.
C. are privileged regardless of C&P's beliefs about PAC's or PubCo's liability.
D. are unprivileged because PubCo is immune from suit under Lanham Act § 32(2)(A).

7. DairyCo sells ice cream and related products from copyrighted kiosks shaped like old-fashioned milk bottles. It also sells posters and small coin banks. George took a photograph of a kiosk from which he also made posters and bottle-shaped banks. DairyCo sued.

A. George's posters infringe DairyCo's copyrights.
B. George's banks do not infringe DairyCo copyrights.
C. George's posters are probably actionable under state unfair competition laws.
D. If DairyCo's products contain no milk, George may prevail on unclean hands.

**Part II: Matching**

>> Answer *only* 20 of 24. <<

[**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. Art. I § 8 cl. 3
2. Art. I § 8 cl. 8
3. Misuse of right
4. Coined
5. An agency-approved application
6. Copyright and trade secret infringement
7. Patent and trademark infringement
8. Patent Act
9. Copyright Act
10. Lanham Act
11. Professional identity
12. Actual confusion
13. Disclaimer of affiliation
14. Induced infringement
15. Contributory infringement
16. Right to use
17. Reasonable measures to preserve
18. Space shifting
19. Secondary meaning
20. Exhaustion of right
21. Restatements of law
22. Statutory damages
23. Misleading representations
24. Proper acquisition

A. Said to be inspired by the Statute of Monopolies.
B. Has no preemption provision.
C. May preempt zoning boards.
D. Zoning boards may not be preempted.
E. Turns on the meaning of "staple."
F. A likely source of congressional authority for trade secret legislation.
G. Measured predominantly by innocence or willfulness.
H. May generate criminal liability.
I. May not generate copyright liability.
J. Essentially synonymous with "fanciful."
K. Gives rise to "distinctiveness."
L. More likely to generate an infringer's defense than an owner's liability.
M. Useful when a stranger may legitimately use a source indicator.
N. Serves the same end as the "first sale" doctrine.
O. Active encouragement is probably needed.
P. Something that no IP owner has.
Q. Something that a trade secret owner usually must show to obtain relief.
R. Helpful to rebut allegations of trade secret misappropriation.
S. Unnecessary for a trademark owner to prevail.
T. Sometimes helpful in interpreting statutory provisions.
U. Protected by the right of publicity.
V. May attract the attention of the FTC as well as competitors.
W. Mostly, but not totally, avoidable by doing searches.
X. Required for patent and copyright but not trademark rights.

Examination No. _____

# Answer Sheet

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## Part I — (80%)

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

### A. Patents

1. ___D____
2. ___B____
3. ___C____
4. ___B___
5. ___C____
6. ___D____
7. ___B____

### C. Trademarks

1. ___D____
2. ___C____
3. ___B____
4. ___D____
5. ___A____
6. ___D____
7. ___C____

### B. Copyrights

1. ___C____
2. ___A____
3. ___C____
4. ___B____
5. ___A____
6. ___D____
7. ___C____

### D. Miscellaneous

1. ___B____
2. ___C____
3. ___D____
4. ___D____
5. ___C____
6. ___A____
7. ___D____

## Part II — (20%)

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

1. ___F____
2. ___A____
3. ___L____
4. ___J____
5. ___X____
6. ___H____
7. ___W____
8. ___B____
9. ___D____
10. ___C____
11. ___U____
12. ___S____
13. ___M____
14. ___O____
15. ___E____
16. ___P____
17. ___Q____
18. ___I____
19. ___K____
20. ___N____
21. ___T____
22. ___G____
23. ___V____
24. ___R____