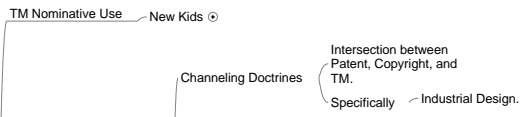
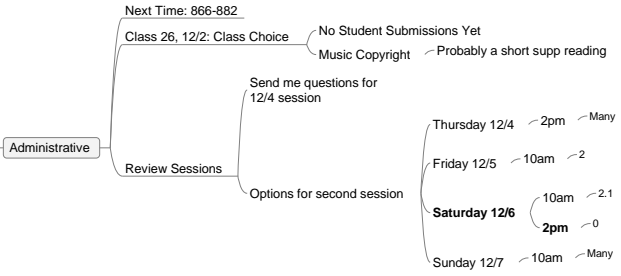
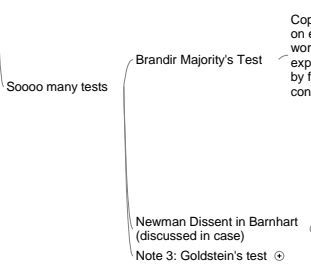
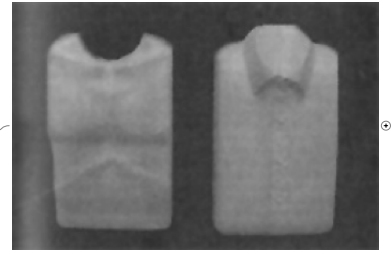
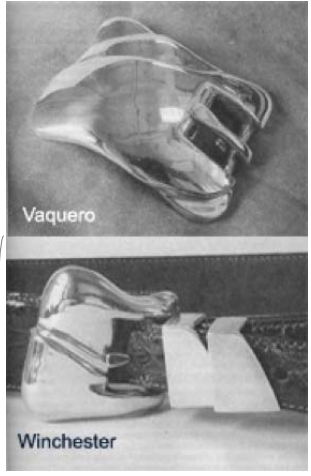


**Class 24: Patent And Copyright Remedies**



- Test / Statute
  - First: Applies only to Pictorial, Graphic, and Sculptural Works
  - Second: Applies only to useful articles.
  - Third: Copyright extends only to PGS "features" that can be identified SEPARATELY from and are capable of existing independently of the utilitarian aspects of the article.

Definition (406): An article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.



Or...  
 If design elements reflect a merger of aesthetic and functional considerations, not conceptually separable; or  
 where design elements can be identified as reflecting the designer's artistic judgment exercised independently of functional influences, conceptually separability exists; or  
 Were the aesthetic elements significantly influenced by functional consideration?

**Class 24: Patent And Copyright Remedies**

Last Time

Functional TMs, Useful Articles, and Channeling Doctrines

Functional TM

Basic Idea

Tests - Two offered in text

TrafFix/Qualitex

A product feature is functional and cannot serve as a trademark if it essential to the use or purpose of the article OR if it affects the COST OR QUALITY of the article.

Restatement (3d) of Unfair Comp. (785)

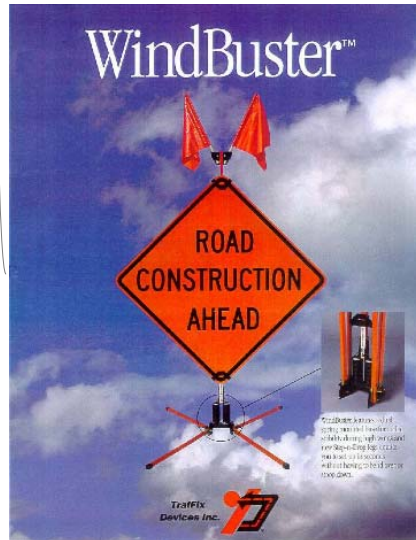
Functional if the design affords benefits in the manufacturing, marketing, or use of the goods or services with which the design is used ...

apart from any benefits attributable to the design's significance as an indication of source... that are important to effective competition by others; and that are not practically available through the use of alternative designs.



TrafFix

Basic Facts



Burdens ©  
Held  
Reasoning  
How would this have fared under the Restatement rule?

Compare the two doctrines;