

**FINAL EXAMINATION**  
**INTRODUCTION TO INTELLECTUAL PROPERTY**  
**Paul Ohm**  
**December 8, 2008**

**Instructions:**

Please read these instructions carefully before proceeding.

1. The examination consists of three (3) pages, including this one. You will find three questions. Please make sure that your copy is complete and that you answer all three questions.
2. You have three hours (180 minutes) to complete the exam, and the exam is worth 180 total points. You should devote approximately one hour to each question. **Each question is worth 60 points or one-third of the total score.**
3. Answers will be graded based on content, clarity of expression, and organization. I suggest that you spend time outlining your response before you start to write. Where information is not provided that would be relevant to the analysis, feel free to explain how different facts would lead to different outcomes.
4. Assume that all cases that were pending when we discussed them in class are still undecided. If any cases have been decided or statutes have been changed during the course of the semester, you are not responsible for knowing the final rule, result or reasoning, and you will gain nothing by talking about the new decision or statute.
5. Since this is a class about entertainment and invention, some of the fact patterns may be based on real creative content, technology, and products. You will not be rewarded or penalized for facts about the actual content, technology, and products that are not presented in the exam questions. Feel free to add these types of details if you think they improve the readability of your answer.
6. In answering these questions, you may consult any written materials you wish.
7. Please type your answers or write them neatly. Mark your answers with your exam number, not your name. If you are handwriting the exam, please write on only one side of each page.
8. You must turn in these questions with your answers.
9. Good luck!

## **PROBLEM ONE** (One Hour; 60 Points)

You are a new attorney with a solo legal practice specializing in intellectual property. One day, a prospective new client walks in carrying a small box. Her name is Delilah, and the box is her invention.

The box looks a little like an old-timey camera. It has a lens on one side and a little sliding door on the other. “It’s an origami duplicating machine,” Delilah explains, as she reaches into her pocket and pulls out a origami crane. [Note from Professor Ohm: As Wikipedia explains, “Origami is the ancient Japanese art of paper folding. The goal of this art is to create a representation of an object using geometric folds and crease patterns preferably without the use of gluing or cutting the paper, and using only one piece of paper.”]

She puts the crane on the table, aims the lens at it, and pushes a button on the box. The box shakes and shudders for a few moments; a bell rings; Delilah opens the sliding door; and she pulls out an identical crane.

“I’ve sold ten thousand of these machines for \$100 each. The origami community loves it, because they can use it to duplicate even the most complicated origami pattern. Unfortunately, I’ve been sued by Penelope.”

Penelope is the most famous origami artist in the world. Her designs are so beautiful that they hang in art museums around the world. They are so complex that even the most skilled artisans cannot duplicate them without touching and unfolding them, and for this reason they are usually kept behind glass in museums. Art collectors have paid as much as \$25,000 for a single Penelope creation.

Delilah hands you a copy of the civil complaint. It alleges only copyright infringement, and it names Delilah as the sole defendant. Penelope claims the copyright in two relevant works: (1) the designs of her origami hanging in museums; and (2) a book she has written called “Penelope’s Secrets Revealed” in which she gives step-by-step instructions for ten of her simpler designs.

In the part of the complaint describing the acts of infringement, Penelope alleges that thousands of Delilah’s customers have used Delilah’s machines in museums to duplicate her designs or to mass-produce the designs in the book. Two of these customers have begun selling Penelope knock-offs on the Internet.

When you press Delilah, she admits that even before she started selling the machine, she had anticipated that people were going to use her machine to copy other artist’s designs. She also notes that many people use her device for less problematic reasons, for example to mass produce original designs for party decorations.

Draft a motion for dismissal (focus only on substance not procedure; this isn’t CivPro!) arguing why this Copyright lawsuit is without merit.

## **PROBLEM TWO** (One Hour; 60 Points)

After word of your stunning victory on behalf of Delilah, new clients start pouring in. One day, the town's local inventor, Patches, visits your office. He's holding a small plastic eating utensil. It looks like the well-known "spork"—part spoon, part fork—which has been around for decades, but upon closer examination, you see that he's added a sharp cutting edge along one of the tines of the fork.

"I've sold thousands of these! I call it 'The Sporkknife,' my registered trademark, and I have a patent!" He explains that he used another attorney to register the trademark and file the patent application. He hands you the granted patent, which cites the following prior art:

- A spoon.
- A knife.
- A fork.
- A spork.
- The Contractor's Buddy: A ten-foot-long industrial tool for mounting to a truck with three surfaces, one for cutting, one for scraping, and one for scooping.

Part of the patent's specification contains the following paragraph:

The present invention improves on the prior art by combining all three standard eating utensils into one, tiny, easy-to-carry package. Unlike the spoon, knife, fork, and even the spork, this invention crams three functions into one tool. Unlike the Contractor's Buddy, this tool is small enough to fit in a pocket.

The first claim reads:

1. What is claimed is . . . a tool of any size comprising three surfaces, one rounded for scooping like a spoon, one with tines for piercing like a fork, and one sharpened for cutting like a knife.

Patches wants to sue patent and trademark infringers. To prepare for these lawsuits, he asks you to assess his patent and trademark. Write a memo to Patches focusing on possible problems with the validity of his patent and discussing the strength of his trademark.

## **PROBLEM THREE** (One Hour; 60 Points)

Congress is considering amending the Patent Act to create a new statutory fair use defense, modeled after copyright's fair use defense, and they have asked for public comment. Draft a comment arguing for or against such a proposal. Give specific policy arguments for or against the proposed defense, and point to specific features of copyright and patent doctrine to support your arguments. Be persuasive.