

Exam No. \_\_\_\_\_

**PATENT LAW**

Professor Crouch

Fall 2013

*This examination consists of six short answer questions and a total of two pages including this page*

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**Instructions:** This is a 2 hour essay examination. It will be available for pickup in Room 203 at any point (8 a.m. – 2 p.m.) during the exam period. This is a short-answer examination. The best answers will be concise; focus only on the best answers to the questions asked; and fit within the word limits set. Cite to statutes and key cases when relevant.

**Materials allowed.** This is an open book, open note, and open computer examination. You may use class notes or outlines, commercial outlines, the Internet, or any other material. You may not rely on contemporaneous communications with any other person (either via local or remote communication). The honor code applies to this take-home examination. You must perform all work on your own and abide by the instructions on this page.

**Avoid Plagiarism.** Please take steps to avoid plagiarism or even the appearance of plagiarism.

**Write your blind examination number in the space indicated above on this page.** Do not put your name on anything in connection with this examination. At the end of the exam, you must return this paper as well as your answers.

To be clear – you need to turn-in your answers on a separate paper. They may be hand-written or typed/printed.

**GOOD LUCK!!**

## Questions:

1. Alice's patent covers a new flat panel television made with cobalt-ion-trixles (a truly new compound). In her initial patent application, Alice did not disclose a WiFi transmitter/receiver as part of the television. However, during patent prosecution she added a claim directed to the television that includes both the cobalt-ion-trixles and a WiFi transmitter – arguing that the new WiFi limitation is okay because WiFi is so well known in the art. Assuming that WiFi is truly well known in the art, what is the most likely argument against patent validity? (20 words).
2. Bob's patent application is directed to *a method of replicating in vitro cell culture of **human** embryonic stem cells capable of living without differentiation on a fibroblast feeder layer*. Is the application subject-matter eligible? (100 words)
3. Referring back to Bob's application, it turns out that Bob came up with a working model of the invention and then waited 11-months to file his patent application. Meanwhile, about six-months before Bob filed his application Cindy independently created *a method of replicating in vitro cell culture of **pig** embryonic stem cells capable of living without differentiation on a fibroblast feeder layer*. Cindy immediately published her work in Science magazine. Identify three facts that would help you know whether Cindy's publication counts as prior art and indicate the relevance of those facts. (100 words).
4. Referring back to Bob's application and Assuming that Cindy's publication counts as prior art, what is the most likely reason why the Bob's application would be rejected as unpatentable? (20 words).
5. During infringement litigation, how should a patentee determine whether to argue for a broad claim construction or instead for a narrow claim construction? (50 words).
6. Is a patent claim containing a term directed toward a concentration of "about 5%" necessarily unpatentable as indefinite? (50 words).