Patent Law – Prof. Crouch
Fall 2017

Honor Code Reminder: Under the Honor Code, the submission of any academic work constitutes a representation on the student's part that such work has been done and submission is being made in compliance with all applicable provisions of the Code.

EXAM INSTRUCTIONS

1. **START OF EXAM**: *Do not start <u>reading</u> (other than this cover page) or <u>writing</u> on scrap paper until the proctor starts the exam.*

2. **EXAM NUMBER:** Write your exam number on the line above.

3. **LENGTH of EXAM**: TWO HOURS

4. **EXAM MODE**: The exam is a Open+Network

5. **MATERIALS**: OPEN.

6. **NUMBER OF PAGES:** This exam consists of 6 PAGES.

7. **SPECIAL INSTRUCTIONS**:
   a. Answers that go beyond word limits will be penalized.

* DO NOT BEGIN EXAM UNTIL TOLD TO DO SO *

Introduction: On her drive from Florida to Mizzou in June 2017, Dean Lidsky struggled to find food to match her true Texan tastes. That adversity sparked an idea: A mobile device APP that suggests nearby restaurants based upon a person's home-state. Lidsky has not yet built a working model, but has designed the system to use look-up-tables that match various home-states with food preferences and then links those food preferences to various restaurants.

The two tables below show examples of how the home state can be used to correlate with food type affinities and then matched to restaurants. A phone's location information also be used to help generate the list of nearby restaurants with high affinity.

Home State	Food Type	Affinity Level
Texas	Barbeque	95%
Texas	Steak	92%
Texas	Vegan food	0.7%
Missouri	Fried Twinkies	88%
Massachusetts	Chaowdah	83%
State Food Table		

Food Type	Restaurant Name
Barbeque	Royce's Ribs
Steak	Lambert's Steak House
Vegan food	Bailey's Main Squeeze
Fried Twinkies	Reuben's Fried Mindfulness
Chaowdah	Strong Seafood
Restaurant Table	

Lidsky filed a non-provisional patent application on December 5, 2017 with the following claim 1 (drafted by her Florida-based patent attorney).

I claim:
1. A preference matching system comprising:
   a mobile device having a screen, a processor, and a memory; and
   software code stored in said memory, wherein said software code is configured provide a user of the mobile device with ranked list of restaurants,
   wherein said ranked list is based at least upon an affinity metric and a proximity metric, and wherein said affinity metric is based upon a predetermined correlation between a food-type and an aspect of said user.

Question 1. (150 words) Is claim 1 directed toward eligible subject matter?

Question 2. (60 words) Provide a concise argument that claim 1 fails for lack of definiteness.

Question 3. (100 words) On November 30, 2017, Gely filed a U.S. patent application that disclosed all-but-one of the elements of Lidsky's invention. Namely, Gely did not incorporate the phone's location information. Rather, Gely would require users to enter location information. Note, it appears that Gely independently created his invention, but he was actually inspired by Lidsky's comment when she arrived about her difficulty in finding food that matched her Texan tastes. Although filed in 2017, Gely's application was kept secret by the USPTO until it was published (under Section 122) in May 2019.

Would Gely's application count as prior art against Lidsky's patent application if used for an obviousness rejection?

Question 4. (80 words) Assume here that Gely's patent application *is* prior art against Lidsky's patent application, make the argument that Gely *anticipates* Liskdy's claim.

Question 5. (12 words) During patent prosecution, Lidsky added a limitation to claim 1 explaining that the "proximity metric" uses a phone's GPS and Cell-Site location. The examiner accepted this amendment even though neither GPS nor Cell-Site location information were particularly disclosed in the originally filed application. The examiner reasoned (correctly) that these additions were very well known in the art and so a person of ordinary skill in the art would know how to add them without any further disclosure.

Would this amendment invalidate the issued claim under either the Written Description or Enablement requirements (or both)?

Question 6. (40 words) Assuming Lidsky's patent issues and is valid. Would a competing app producer be liable for freely distributing the APP? (Assume that the competitor's app while in-use on a device would practice each limitation of the claimed invention.)

End of Questions