

FINAL EXAMINATION
INTELLECTUAL PROPERTY

P.N. Davis

Thursday, December 5, 2013

1:30 - 4:30 PM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS SIX (6) PAGES.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 60 min. II = 30 min. III = 40 min. IV = 20 min. V = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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THIS IS AN OPEN EXAM. You may bring in anything you wish. Laptop computers are allowed, but not internet connections.

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Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 3 hours. You will be given 3 hours to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.
5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.

6. The difference between triumph and disaster may lie in a **careful** reading of the questions.

I.

(60 minutes)

The City of Columbia dedicates one percent of its building construction budgets for public art at those building sites. Suppose that in 1995 it constructed a downtown parking garage and attached to its facade a sculpted 15' x 15' *bas-relief* of Daniel Boone's face. The *bas-relief* was commissioned by the city. The artistic style of the *bas-relief* generated great public controversy, which has not died down.

Note. A *bas-relief* is defined as a low relief sculpture carved into or projecting from a flat plane (such as, a wall). Coin designs are *bas-reliefs*.

A.

Suppose the city decides to remove the *bas-relief* from the facade of the parking garage and not replace it with some other art work. Removal will cause its destruction. Does the sculptor have a cause of action to prevent the city from removing the *bas-relief*? Discuss all relevant legal issues. State a result.

B.

Suppose instead that city has decided to tear down the parking garage and replace it with a multi-story mixed use building, with retail space, internal parking, and residential condominiums. Demolition will destroy the *bas-relief*, with no way to preserve it. Does the sculptor have a cause of action to prevent the city from tearing down the parking garage and destroying the *bas-relief*? Discuss all relevant legal issues. State a result.

C.

Instead, suppose the city has found a way to remove the *bas-relief* from the facade of the parking garage without damaging it. So, the city has decided to remove it and mount it on a new addition to city hall. Does the sculptor have a cause of action to prevent its removal and remounting it in another location? Discuss all relevant legal issues. State a result

D.

Suppose that Peter Photo took a photograph of the *bas-relief* from the public sidewalk across the street. Does the sculptor have a cause of action to require Peter Photo to destroy the

photograph? Discuss all relevant legal issues. State a result.

E.

Can Peter Photo publish the photograph in a guidebook of Columbia, Missouri, without the sculptor's consent? Discuss all relevant legal issues. State a result.

F.

Must Peter Photo mention the name of the sculptor as creator of the *bas-relief*? Discuss all relevant legal issues. State a result.

G.

Suppose the city gave consent to the publication of the photograph. Does that consent change your answer to subquestion E. Discuss all legal issues. State a result.

H.

Can Peter Photo obtain a copyright for his photograph? Discuss all relevant legal issues. State a result.

END OF QUESTION I.

II.

(30 minutes)

Adams and Bailey each independently invented a small remote-controlled drone. It incorporated principles of airplanes and encrypted digital radio signals. All of the critical elements of each drone were identical.

Adams put together an example of his invention in August 2012. He spent a couple months flying it around a public park to make sure it worked properly. In April 2013, he offered it for sale by advertising it in a flying model magazine. He engaged a patent attorney to prepare a patent application in February 2013. The attorney prepared the application after he completed applications for other inventors who had engaged him previously. The attorney filed Adams's application for a patent in November 2013.

Bailey independently conceived the same remote-controlled drone in February 2013. Without building an example of his invention, Bailey immediately prepared to file a patent application, which he did in September 2013. He did not build an example of his invention because he knew that earlier analog radio-controlled model aircraft were known to work, and he did not think that improving them with a digital radio signal would affect operability.

Adams and Bailey did not know of each other's work at the times they each conceived the invention.

Should the PTO grant a patent to either Adams or Bailey or neither? Discuss all relevant legal issues. State a result.

END OF QUESTION II.

III.

(40 minutes)

Dr. Wilson Proboscis M.D. is a plastic surgeon specializing in rhinoplasties [“nose jobs”] and has practiced for 25 years. Five years ago, he established a web page which advertises and illustrates his work; this web page has yielded many patients from around the United States and 50 other countries (from as far away as Argentina, Australia, India, and South Africa.) With the consent of his patients, he has posted about 50 pairs of “before and after” photos of his patients’ faces. His web page lists his name, address, contact information, and credentials; it does not list the identities of the photographed patients. Dr. Proboscis has developed a reputation as a marvelous plastic surgeon; very few of his patients weep before their mirrors after their surgeries.

Last year, Dr. Proboscis received e-mails from two former patients indicating that his photographs of their faces were posted by two plastic surgeons in Los Angeles on their web pages, indicating that they were photos of their own patients. Dr. Proboscis looked at those web pages and searched for other copies on other web pages of his photographs of his patients’ faces, using *Google Search*. He found five other web pages by doctors posting his photographs as portraying their own patients.

Dr. Proboscis wishes to have those photographs removed from those other web pages. Does he have one or more causes of action in court? Whom should he sue? Discuss all relevant legal issues. State a result for each cause of action.

END OF QUESTION III.

IV.
(20 minutes)

Subway Sandwich Shops extensively advertises its sandwiches as “Footlong” throughout the United States and the world, and has done so for years.

A.

Can it obtain an injunction against Casey’s General Stores for the latter’s recent use of the term in connection with its convenience store sandwiches? What theory or theories could it use? Discuss all relevant legal issues. State a result.

B.

Can Subway obtain registration of the term “Footlong” as a trademark? Discuss all relevant legal issues. State a result.

Note. Sub sandwiches at both stores are torpedo-shaped and 12 inches in length.

END OF QUESTION IV.

V.
(30 minutes)

Briefly define the following terms:

- (1) incontestability
- (2) prior art reference
- (3) likelihood of confusion
- (4) concurrent use
- (5) right of paternity
- (6) dilution
- (7) obviousness
- (8) distinctiveness
- (9) doctrine of equivalents
- (10) parody

END OF QUESTION V.