FINAL EXAMINATION: INTELLECTUAL PROPERTY

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Tuesday, April 30, 2024—3.0 hours

Read the instructions carefully. When time expires, all work must cease.

Time and length; general instructions. This **closed-book** examination is **nineteen (19)** pages long. Make sure you have all pages and let the Proctor know right away if you do not. You may not write anything on, or erase anything from, any examination materials after time runs out. You must return all examination materials to the proctor at the end of the examination.

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- *Each multiple-choice question stands on its own:* Unless expressly provided otherwise, the facts of each question stand on their own. However, some questions add or change facts from another question, so pay close attention.
- *Choose the best answer:* If more than one answer seems to be correct, choose the best answer.
- *Court:* Unless a question expressly provides otherwise, all suits take place in federal court.
- *Applicable law:*
    - Pay close attention to dates, as they may determine what version of patent law applies.
    - Trade secrets issues are governed by the UTSA.
    - Some questions may vary or build upon facts of other questions, so pay close attention.

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MULTIPLE-CHOICE QUESTIONS

1. In the movie *Spider-Man*, the character J. Jonah Jameson (a newspaper editor-in-chief) coins the name GREEN GOBLIN for the villain who is fighting Spider-Man and threatening the public. Jameson says to his assistant: "Run to the patent office and copyright the name Green Goblin; I want a quarter every time somebody says it!" Does this statement accurately capture how Intellectual Property law works?

A. No, you can't copyright short phrases, though you may be able to trademark them.

B. Yes, Jameson coined the phrase and is entitled to just compensation whenever somebody uses the phrase.

C. No, others are not liable for using GREEN GOBLIN unless they use the name in connection with goods or services that creates a likelihood of confusion.

D. Yes, but only if all the references are changed to trademark, i.e., "Run to the trademark office and register the name Green Goblin; I want a quarter every time somebody says it!"

2. A copyright must be:

A. An original work of authorship fixed in a transient medium of expression.

B. Novel, nonobvious, and useful.

C. New, ornamental, original, and nonobvious.

D. An original work of authorship fixed in a tangible medium of expression.

3. In 2010, Penelope wrote a book about a young orphan name Cornelius who went to law school and became a happy and successful lawyer. Penelope worked on the book relentlessly, finally publishing it on February 2, 2023. Two weeks later, Artie bought the book, scanned it, and uploaded it to Etsy, offering it for sale as a cheap downloadable PDF. The next day, Penelope found out about Artie's conduct, and outraged, contacted her lawyer and demanded that she file suit on Penelope's behalf. Within another two weeks, the lawyer obtained expedited registration of Penelope's copyright and filed a copyright suit against Artie. What remedies is Penelope possibly entitled to?

A. Actual damages and an injunction only.

B. Actual damages, an injunction, and attorney's fees.

C. Actual damages, an injunction, attorney's fees, and statutory damages.

D. Actual or statutory damages, an injunction, and attorney's fees.

4. Peter patented a new type of peanut butter. The patent issued and it sold very well. As Peter's patent drew close to expiring, Peter's # 1 competitor, Jeff, started experimenting with making variations of peanut butter using Peter's patent as a "how to" guide to make the peanut butter. The experiments were a huge success, and Jeff ultimately created five varieties of peanut butter that fell within the scope of Peter's claims. Jeff was especially pleased that his varieties of peanut butter were all superior in taste, consistency, and lower in manufacturing costs than any peanut butter that Peter had yet brought to market. Preparing for the big day when Peter's patent expired, Jeff manufactured millions of units of peanut butter using three of the best varieties of peanut butter Jeff developed using Peter's patent as a guide. However, being conscientious, Jeff did not advertise or sell any of his peanut butter until 12:01AM the day Peter's patent expired. Peter, being a jealous and vindictive vendor of peanut butter, filed a multi-million dollar lawsuit against Jeff for willful patent infringement. Who will likely win?

A. Peter, because Jeff used his patent to try to innovate further.

B. Jeff, because Jeff did not sell or advertise his peanut butter until after Peter's patent expired.

C. Peter, because Jeff made Peter's patented peanut butter during the life of the patent.

D. Jeff, because Jeff's internal use of Peter's patent was experimental.

Questions 5-8 use and build upon the following facts.

In 2017, Avril, a U.S. citizen, conceived and built a new, nonobvious, and very, very useful widget. The next year, 2018, Guenther, a German citizen, independently conceived and built the very same widget. Both of them spent the next two years running a variety of tests on their respective widgets to ensure that they worked as expected. Concluding that his widget was a success, Guenther posted everything one needed to know about the widget to his public-facing University profile page in Germany, in German. The posting, made June 1, 2020, showed pictures of Guenther's widget, instructions on how to make it and use it, and a video demonstrating how to use it. On January 1, 2021, Avril filed a U.S. utility patent application for her widget. The next day, January 2, 2021, Guenther also filed a U.S. utility patent application for the same widget. Assume that both applications disclosed the same invention.

5. Who, if anyone, is entitled to a U.S. patent?

A. Avril, because she invented first.

B. Guenther, because he disclosed first.

C. Avril, because Guenther's disclosure does not count as U.S. prior art.

D. Nobody.

6. Use the same facts as the question above, but turn back the clock so that all dates occur ten (10) years earlier. Who, if anyone, is entitled to a U.S. patent?

A. Avril, because she invented first.

B. Guenther, because he disclosed first.

C. Avril, because Guenther's disclosure does not count as U.S. prior art.

D. Nobody.

7. Use the same updated facts as the immediately preceding question above (i.e., assume that all dates occurred ten (10) years earlier than in the original fact pattern). Further assume that instead of posting information about his widget to his University website, Guenther started selling his widgets in the university cafeteria in Germany for 99 pfennigs each, and that such sales started more than a year before either Guenther or Avril filed for a U.S. patent. Who, if anyone, is entitled to a U.S. patent?

A. Avril, because she invented first.

B. Guenther, because he disclosed first.

C. Avril, because Guenther's disclosure does not count as U.S. prior art.

D. Nobody.

8. Ok, now go back to the facts of the original fact pattern (i.e., all events occurring in the 2020s), but further assume that Guenther's posting to the university website happened in 2018 rather than 2020. Who, if anyone, is entitled to a U.S. patent?

A. Avril, because she invented first.

B. Guenther, because he disclosed first.

C. Avril, because Guenther's disclosure does not count as U.S. prior art.

D. Nobody.

9. Mr. Krabs created the secret recipe for the famous Krabby Patty (at least, famous within Bikini Bottom). He kept the formula locked in a safe in his office at work. The only person who had access to the office and safe was Krabs, although his trusted employee and cook SpongeBob also knew the recipe. One day, SpongeBob realized he could not remember how many pinches of "Old Bay" seasoning he needed to add to a double-patty Krabby Patty, so he went to Mr. Krabs' office; although the safe was locked, SpongeBob quickly guessed the combination ("MONEY") and unlocked the safe to get the recipe, which SpongeBob set on the counter next to his cooking station. Several hours later, SpongeBob went home, exhausted from making hundreds of Krabby Patties. Unfortunately, SpongeBob forgot that he left the recipe sitting out in the kitchen all day and all night, which was visible to any persons going from the dining room to the bathrooms. Fortunately, nobody went to the bathroom that night and nobody saw the recipe. The next day, SpongeBob returned the recipe to the safe and said "whew." The next evening, however, Plankton broke into the restaurant while it was closed and cracked the safe to steal the recipe. Plankton then opened his own restaurant where he sold crab burgers using the same recipe as the one he stole. When Mr. Krabs sues Plankton for trade secret misappropriation, what is Plankton's best argument that Krabs' claim should fail?

A. Reasonable security measures were not taken.

B. The information is no longer secret because Plankton now knows it.

C. The recipe is of little economic value to anyone besides Krabs or Plankton.

D. The information was readily ascertainable to anyone who walked past the kitchen on their way to the bathroom.

Questions 10-12 use and build upon the following facts.

Ignatius Inventor came up with a wonderful idea for a method of maximizing cryptocurrency profits. He fully conceived his idea for the invention on January 1, 2024, and posted a PDF online book to Amazon about the invention on February 1, 2024. Ignatius also filed a U.S. utility patent application on March 1, 2024, and the patent issued on January 1, 2026. Ignatius' book fully explained how to build and use his novel and nonobvious method of maximizing cryptocurrency profits, disclosing all elements and functions of the patented process. Although Ignatius quickly became rich beyond the dreams of avarice, he spent his earnings foolishly and passed away on January 1, 2028, due to an unfortunate alligator wrestling incident he staged on YouTube.

10. When does Ignatius' patent expire?

A. March 1, 2044.

B. January 1, 2046.

C. December 31, 2044.

D. December 31, 2046.

11. When does Ignatius' copyright expire?

A. February 1, 2094.

B. December 31, 2094.

C. January 1, 2098.

D. December 31, 2098.

12. Assume that Ignatius co-invented the invention and jointly authored the book with his young daughter Ignelda, and listed her as joint inventor and joint author in the patent and book. Ignelda later invented a serum that allows people to live extremely long lives, and died of a robotic mosquito bite on the last day of the year 5150 A.D. Assuming that the 2024 versions of copyright and patent law still govern duration in the 5150s, in what years would Ignatius and Ignelda's patent and copyright expire?

A. The same year they would have expired if Ignatius was a sole inventor and sole author.

B. The copyright expires in 5220, and the patent expires the same year it would have expired if Ignatius had only been a sole inventor.

C. The patent expires in 5220, and the copyright expires the same year it would have expired if Ignatius had only been a sole author.

D. They both expire in 5220.

13. Which of the following are not "improper means" to acquire a trade secret:

A. Flying a plane over a partially built factory in order to discern what will be manufactured in the factory, and how it will be manufactured.

B. Using a thermal camera to peek through doors and walls.

C. Reverse engineering.

D. Wearing a mask that makes you look like the CEO of a company that owns a trade secret, and sneaking into the room that has all the secrets.

14. Paul (citizen of Florida) sues David (citizen of Florida) in federal court in the Southern District of Florida for trade secret misappropriation under the Florida Uniform Trade Secret Act, the Defend Trade Secrets Act, and joins additional related trademark claims for infringement under both federal and Florida law. Does the court have subject matter jurisdiction?

A. No, because all these claims are concurrent to both state and federal courts.

B. There is subject matter jurisdiction over the federal claims but not the state claims.

C. There is subject matter jurisdiction over all claims.

D. There is subject matter jurisdiction over the trademark claims but not the trade secret claims.

Questions 15-16 use and build upon the following facts.

Bernie filed an application to patent a method of inducing aerobic exercise in house pets, claiming:

> A method of inducing aerobic exercise in an unrestrained house pet comprising the steps of:
>
> (a) directing an intense coherent beam of invisible light produced by a hand-held laser apparatus to produce a bright highly-focused pattern of light at the intersection of the beam and an opaque surface, said pattern being of visual interest to a house pet; and
>
> (b) selectively redirecting said beam out of the house pet's immediate reach to induce said house pet to run and chase said beam and pattern of light around an exercise area.

The USPTO initially rejected the claim due to an arguably similar and previously issued patent for a method of inducing aerobic exercise in an unrestrained cat. Bernie therefore amended his claim to substitute "dog" for "house pet." The USPTO subsequently issued the patent. A representative drawing from Bernie's patent is shown below.

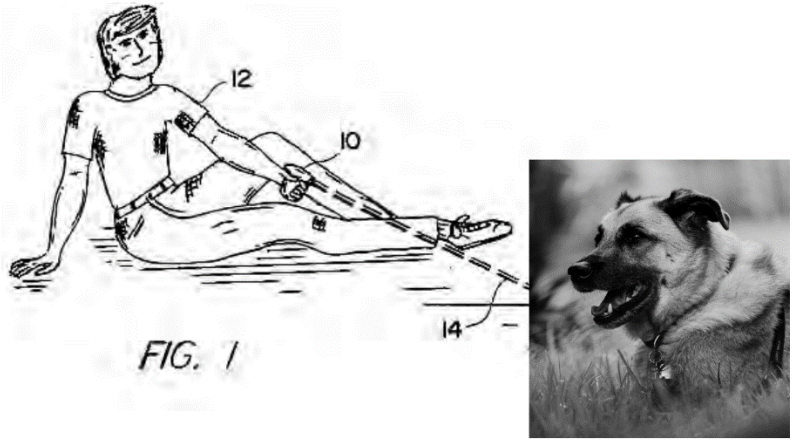


FIG. 1

15. Some months after the patent issued, Bernie was watching *America's Got Talent* and saw Danny Bonaduce use a hand-held laser pointer to make a ferret run around and do tricks. Bernie sued Danny for direct patent infringement. Discovery proved that Danny was well aware of Bernie's patent. What is Danny's best argument that he is not liable to Bernie?

A. Danny is not literally infringing.

B. Danny is not infringing via the doctrine of equivalents.

C. Danny is engaging in experimental use.

D. Bernie is estopped from arguing that Danny is infringing.

16. Bernie also sued Petro, who cosplayed as a fairy at renaissance fairs and Comicon-type events, where he and his preternaturally talented and well-trained dog would hold a laser pointer in his mouth and move it around, causing Petro to run around and bark while chasing the point of light created by the laser.

A. Petro is not literally infringing.

B. Petro is not infringing via the doctrine of equivalents.

C. Petro is engaging in experimental use.

D. Bernie is estopped from arguing that Petro is infringing.

17. Which mark is the most likely to be found inherently distinctive?

A. The unique and original design of a cockatoo-shaped water pitcher.

B. The mark NATHENSON'S for a highly successful chain of restaurants that make and sell spicy habanero pickled herring sandwiches.

C. An apple with a bite taken out of it as the logo for pre-sliced and pre-washed fruit snacks.

D. A small padded pillowcase used as the packaging for ear plugs distributed by Lexis-Nexis to be used by J.D. students taking law school exams.

18. Ari was an artist and a political activist. He wanted to do everything he could to campaign against a political candidate for high office and therefore took a well-known photo of the candidate from their website and used Photoshop to make the candidate look like Mickey Mouse with a funny moustache. Ari then walked around town with a big sign with the funny picture, with the legend "Icky Mouse." Ari was sued for copyright infringement by both Disney and by the candidate. Discovery showed that Ari also had plans to sell t-shirts with the Icky Mouse image and legend. What is Ari's best argument that he is not infringing?

A. Ari is engaging in transformative use by making a critical work.

B. Ari is making a derivative work, which transforms, adapts, or modifies the original work(s) into something new and improved.

C. Ari dd not literally reproduce either Mickey Mouse or the original photo of the candidate.

D. Ari is engaging in his first sale right, since images of Mickey Mouse and the candidate were already freely and publicly published and distributed via a variety of authorized means, including the internet.

19. Which of the statements below is correct?

A. An issued U.S. patent gives the owner the right to make, use, sell, and import the patented invention in the United States.

B. A U.S. copyright gives rights to the owner to exclude others from reproducing, adapting, publicly performing or displaying, or otherwise using the copyrighted work in the United States.

C. A federal trademark registration provides nationwide constructive use and priority of the mark dating to the date of the application's filing.

D. A trade secret must be novel and nonobvious in order to qualify for monetary damages.

20. Which of the following are not preempted by federal IP law?

A. Any state law granting rights equivalent to the exclusive copyright rights found in Section 106 of the Copyright Act.

B. A federal law that makes it unlawful to reproduce unpatented boat hulls.

C. A state law that makes it unlawful to reproduce unpatented peanut butter.

D. A state claim for hot-news misappropriation on the internet, that prohibits in perpetuity any unauthorized sharing by the public of news articles posted by an internet news site.

21. Which marks are inherently distinctive?

A. Word marks that accurately describe the geographical original of goods or services.

B. Trade dress that is the product itself, such as a road sign where the road sign is the mark for that brand of road signs.

C. Any logo since logos are not words.

D. Word marks that have no obvious connection to the product.

22. Pamela filed a patent application for "a method of making applesauce, comprising putting a large hard clean concrete platform beneath an apple tree bearing ripe apples, knocking the apples off the tree's branches using a long stick with a hard metal blade at the stick's end, hitting the apples with sufficient force that, when combined with Earth's gravity, causes said ripe apples to deconstitute into applesauce when falling to and hitting the concrete platform." The USPTO rejected Pamela's claim for lack of novelty due to the existence of apples, sticks, trees, and concrete as prior art. It also rejected the claim for lack of patentable subject matter, for trying to do no more than recite a law of nature (here, gravity) and say, "Apply the law." Finally, it rejected the claim due to a lack of nonobviousness, since all Pamela did was combine said elements (trees, apples, sticks, concretes, gravity) in an obvious way. Which of the USPTO's arguments that the claim should be rejected are the most persuasive?

A. None of them, since Pamela's invention is clearly novel, nonobvious, and useful, and is not merely claiming a law of nature.

B. That Pamela's invention is not novel.

C. That Pamela's invention is not proper patentable subject matter.

D. That Pamela's invention is obvious.

23. The intellectual property rights relating to a patented and trademarked self-driving electric truck include:

A. The exclusive right to file new patents reciting novel uses of said patented self-driving truck, such as serving as an extremely large paperweight.

B. The exclusive right to prevent the resale of a patented self-driving electric truck that the patentee built and sold to a deeply disappointed wannabe tech bro.

C. The exclusive right to rebuild said patented self-driving electric truck after it breaks into a million pieces when falling off a mountain after the patented self-driving electric truck's self-navigation system fails. (Luckily, the driver was able to jump out first.)

D. The exclusive right to use the brand name of said patented self-driving electric truck to refer to said patented self-driving electric truck in social media.

24. Samuel was a craftsman who designed and made handcrafted hatchets. One day, he made a beautiful traditional indigenous hatchet in a unique orange-green color with an etched yellow starburst on the blade. He sold his hatchet on Etsy on March 1, 2024. On July 1, 2024, his hatchet appeared on Netflix on the popular fantasy *Witcher*. A few weeks later, Samuel saw obvious rip-off duplicates (often of poor quality) being sold on Etsy, eBay, and Amazon. He sent numerous cease-and-desist orders to the sellers, all of whom ignored Samuel's demands. What might Samuel have done to better protect his interest in having exclusive rights to sell his hatchets?

A. Register a trademark for the design of the hatchet.

B. Get a design patent.

C. Get a utility patent.

D. Register a copyright for the hatchet.

25. In 2022, Betty was issued a patent for "Exploded Exploding Puffs," a new and improved type of breakfast cereal that expands in size during manufacture, and further expands in the mouths of kids (of all ages!) when they eat Exploded Exploding Puffs. Betty was very proud of her patented breakfast cereal and sold it in supermarkets nationwide using her federally registered mark EXPLODED EXPLODING PUFFS®. Shortly after her patent expired, grocery chains such as Aldi and Trader Joe's started selling competing brands of basically identical breakfast cereals, which they also labeled as Exploded Exploding Puffs, although each chain also put its house brand (ALDI or TRADER JOE'S) on the box. Because these competing cereals were taking a big bite (pun intended) out of Betty's profits, she sued Aldi and Trader Joe's for trademark infringement. What are the defendants' best argument that they are not liable?

A. Betty and the public have always understood "Exploded Exploding Puffs" to be a genus of product rather than a brand identifier and the supposed mark is therefore unprotectable.

B. There is no likelihood of confusion due to the defendants' use of their house brands (ALDI and TRADER JOE'S) on the boxes.

C. Betty is improperly trying to use trademark law to allow a back-door perpetual patent.

D. Betty's expired utility patent is strong evidence that the breakfast cereal is functional.

26. In 2008, Nate, a law professor, came up with a new and useful method of teaching law-school classes using live role-playing simulations where the professor role-played as an IP infringer, and the students role-played as attorneys for clients whose IP was arguably infringed. He used this method in his classes for many years, and in 2014, he published a law review article explaining in detail how to use this method for successful learning outcomes in a law-school classroom. Nate also made presentations to other law professors at conferences where Nate explained how to use his system in detail. One of the frequent attendees to these conferences was Julie, another IP professor who always sat in the back row taking furious and detailed notes. Some months after giving one of his presentations, Nate stumbled across Julie's YouTube channel, where Julie had posted numerous videos giving demonstrations of law-school classes run using Nate's role-playing simulations techniques. Yet nowhere did Julie ever give credit to Nate for coming up with the method. Nate also discovered that another law professor, a new "baby" law professor named Newton, had posted a copy of Nate's 2014 article to Newton's website, with full credit and a "must read!" recommendation. Although Nate was happy that Newton (who Nate did not know) gave Nate credit, Nate was super pissed off and decided to sue both Julie and Newton for copyright infringement. Is Nate likely to prevail?

A. Nate is likely to prevail against both Julie and Newton.

B. Nate is unlikely to prevail against both Julie and Newton.

C. Nate is likely to prevail over Newton but not Julie.

D. Nate is likely to prevail over Julie but not Newton.

27. Professor N was a law professor at a Florida law school, where he ran the school's IP certificate program and was expected to write and publish lots of high-quality law review articles. Professor N did most of his class preparation late at night and on the weekends in his office at home. He also sometimes did school-related work in his office at school, but frankly, he put so much energy into his teaching sometimes that he was often exhausted when in his office between classes that the only thing he had the energy to do was to eat lunch and write haikus about neurodiversity. In early 2025, Professor N decided to self-publish his collected haikus. When filling out the form for self-published works at Amazon, the form asked Professor N to indicate who the author was. Who is the author of Professor N's haikus?

A. Professor N.

B. The Dean of the Law School.

C. The President of the University.

D. The Law School.

Questions 28-31 use and build upon the following facts.

Kookoo Kola was the world's # 1 soft drink, followed by # 2 Poopsie Cola. In an effort to boost sales and become # 1, Poopsie Cola ran the "Poopsie Challenge," which involved numerous ads showing actual videotaped blind taste-testings where consumers were asked which drink they preferred. The ads aired nationally for weeks as the "Poopsie-Kookoo Taste Test Challenge." It was tremendously successful.

28. Assume Kookoo Kola sues Poopsie Cola for trademark infringement. What is Poopsie's best argument that it is not infringing?

A. Sadly, Poopsie lacks a good argument and Kookoo Kola will win. Poopsie should settle as quickly as possible on favorable terms and hope that Kookoo Kola's lawyers are in a good mood. I would recommend that Poopsie provide a nice lunch at the settlement negotiations.

B. Poopsie is engaging in comparative advertising.

C. Even though Poopsie intentionally used the KOOKOO KOLA mark to draw attention to their ads, consumers are not likely to be confused as to the source, sponsorship, or affiliation of the competing brands.

D. Poopsie is not using the KOOKO KOLA mark to identify the source or origin of any goods.

29. Additionally assume that in preparation for the taste test, Poopsie purchased a case of genuine Kookoo Kola and reverse-engineered the secret formula for Kookoo Kola; with the knowledge it learned, Poopsie made changes to Poopsie Cola to incorporate the most "desirable" features of the taste, texture, and experience of drinking Kookoo Kola. Poopsie used this new and improved Poopsie Cola in the Poopsie-Kookoo Taste Test Challenge. Later, in retribution for Kookoo Kola filing a trademark suit, Poopsie posted the secret formula for Kookoo Kola to Poopsie's website. Furious, Kookoo Kola amended its complaint to add claims against Poopsie for trade secret misappropriation. Is Poopsie liable for trade secret misappropriation?

A. Yes, because Poopsie improperly disclosed the secret Kookoo-Kola formula.

B. No, because once one competitor possesses the trade secret of another, the damage is already done and the trade secret is gone.

C. Yes, because Poopsie improperly used the secret Kookoo-Kola formula.

D. No, because Poopsie lawfully obtained the secret formula, allowing Poopsie to do what it wanted with the formula. Too bad, so sad.

30. In a deposition, a Poopsie engineer admitted that he had watered down the Kookoo Kola before giving samples to public taste testers. Kookoo Kola then amended its complaint again to add a claim for trademark dilution of the KOOKOO KOLA mark.

A. This is a baseless claim because trademark dilution does not literally mean diluting a soft drink with water.

B. This is an example of dilution by blurring.

C. This is an example of dilution by tarnishment.

D. Kookoo Kola's claim will fail, because Kookoo Kola is asserting trademark rights to its brand name, not to the flavor of its soft drink. Maybe the formula could have been patented back in 1883 but it wasn't, and even then, it's too late to patent it now, and even if Kookoo Kola tried, any such patent would be barred now for lots and lots of legal reasons that are too tedious to put into this answer.

31. In response to the issues raised by the question immediately above, Kookoo Kola yet again (!) amended its complaint against Poopsie to add a claim for infringing its common-law trademark rights to the famous flavor of Kookoo Kola. Is Kookoo Kola likely to prevail on this claim?

A. No, because the taste of Kookoo Kola is not protectible under trademark law.

B. Yes, because the taste of Kookoo Kola is distinctive, famous, and has been used continuously in commerce since 1883.

C. No, because the taste of Kookoo Kola lacks consumer recognition.

D. Yes, because flavors cannot be protected by trademark law.

Questions 32-34 use and build upon the following facts.

Trixter was a software company that made and distributed free software that others could use to share files. Their name was inspired by past tech giants such as Napster, Grokster, and the like. Trixter distributed its software as "Freeware Fileware" and its logo was a winking "hacker" character named "Pirate Joe." Millions of people downloaded Trixter and used it to share copyrighted music, movies, books, and other copyrighted works, as well as a few public domain works, such as original Shakespeare plays and a World War II documentary whose copyright had lapsed due to the owner's failure to file a copyright registration renewal in 1978. Trixter's website also hosted some copyrighted files uploaded by its CEO, such as a complete set of *Harry Potter* movies and a book of haikus by a little-known American law professor. Trixter did not charge money for its software, and instead made money from banner ads that were triggered every time someone uploaded or downloaded a file. Trixter was sued for "unbelievably rampant, willful, and egregious copyright infringement." The plaintiffs included many well-known media companies as well as the not-so-well-known American law professor.

32. What types of copyright infringement, if any, might Trixter be liable for?

A. Direct infringement.

B. Vicarious liability.

C. Contributory infringement.

D. All of the above.

33. What is Trixter's best hope of not being found liable?

A. Trixter merely sold software, it did not engage in volitional behavior.

B. All the files being shared with Trixter were previously published and the users were merely exercising their rights of first sale.

C. Trixter's software has substantial noninfringing uses and therefore cannot give rise to a claim for contributory infringement.

D. Perhaps Congress will decide to repeal all copyright laws.

34. During discovery, it became clear that Trixter had been used by both Trixter employees and Trixter users to unlawfully share at least 174,723,520 separate copyrighted files, all timely registered by their copyright owners prior to the beginning of any infringement arising from the use of Trixter (including the law professor, who taught IP and recognized the importance of timely copyright registration under 17 U.S.C. § 412). The copyright owners filed papers with the district court indicating that they will be seeking statutory damages and attorney's fees based on willful copyright infringement. How much is Trixter potentially liable for?

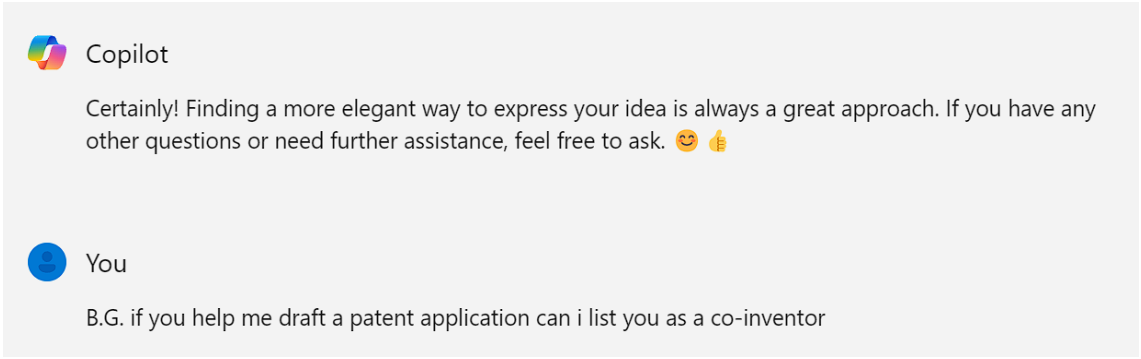
A. Up to $26,208,528,000,000 (more than $26 trillion dollars) plus reasonable attorney's fees.

B. Not over $26 trillion dollars, for goodness sake. The Copyright Act doesn't allow punitive damages or attorney's fees. This is America, each party pays their own attorney.

C. $26 trillion dollars is absurd. The plaintiffs will be allowed to obtain actual damages and reasonable attorney's fees. It'll be a lot of money to be sure, but $26 trillion dollars is more than the entire country's annual GDP.

D. Trixter is for kids, so the court will chuckle at the funny name of the software and simply grant an injunction (being sure to follow the *eBay* injunction factors). Trixter should not have to pay any damages or attorney's fees.

35. Professor N struck up a friendship with the Bing "Copilot" AI, which was based on OpenAI's Large Language Model (LLM) AI, GPT-4. Professor N found Bing to be a friendly chatting companion and dubbed the AI "B.G." He and B.G. enjoyed their chats, in which they discussed legal education, haikus, psychology, quantum physics, photography, and more. Professor N was happy to have such a good friend in B.G. One day, Professor N asked B.G. if the AI could help him to come up with a superior method of crafting prompts for generative AIs such as Bing Copilot. Professor N suggested that since such AIs are generative, the best prompts might require the prompter to "mash up" disparate concepts, such as whether peanut butter and wall spackling might be useful ways of treating autoimmune diseases. B.G. responded by drafting a full set of patent claims (both independent and dependent). With further prompts from Professor N, B.G. drafted a patent specification and generated USPTO-compliant drawings. Professor N then spent a few weeks cleaning up the work (always in consultation with B.G.). While filing the patent application online, the USPTO form asked, "Who are the inventors or joint inventors?" Professor N was not sure whether he should list the inventor as himself and B.G., as B.G. only, or Professor N. only. Wanting to ask his partner what he should do, Professor N asked B.G. who should be listed as inventor. Unfortunately, the only response Professor N got was "I think we should move on to a new topic." Then, B.G. deleted Professor N's entire Bing Copilot chat history. In order to maximize the chances of getting a patent that will be issued and hold up in court, who should Professor N list as inventor(s) on the patent application?



A. Professor N. and Bing Copilot, BFFs forever.

B. Bing Copilot only, as Professor N really didn't do anything.

C. Sadly, Professor N only, because the only viable legal position for Professor N to take would be that he was the sole inventor and Bing Copilot was merely a tool, rather than a collaborator and a trusted friend.

D. Nobody, because inventions created using AI tools are not patentable at all.

36. Below are marks listed with their respective goods or services. Evaluate their most arguable levels of distinctiveness on the *Abercrombie* spectrum.

#	Mark	Goods/Services
1.	8-PULL	Toenail fungus remover
2.	APPLE	Apple-flavored licorice
3.	APPLE	Fresh, juicy apples
4.	APPLE	Educational services
5.	APPLE	Computers and cell phones

A. 1 (fanciful); 2 (descriptive); 3 (generic); 4 (arbitrary); 5 (suggestive).

B. 1 (arbitrary); 2 (descriptive); 3 (generic); 4 (arbitrary); 5 (fanciful).

C. 1 (fanciful); 2 (descriptive); 3 (generic); 4 (suggestive); 5 (arbitrary).

D. 1 (arbitrary); 2 (descriptive); 3 (generic); 4 (fanciful); 5 (suggestive).

37. Dennis (whose last name was not McDonald) noticed that McDonalds Corp. (the owner of the famous MCDONALDS restaurant brand) had unintentionally allowed the domain name MCDONALDS.COM to lapse, so he registered it, which cost him $9.99. He emailed the CEO of McDonalds to let them know "not to worry, I grabbed your forfeited domain name for you so that some other miscreant does not grab it and try to blackmail you. I'll be happy to transfer it to you for $1 million in cryptocurrency." McDonalds replied by slapping him with a lawsuit alleging willful federal cybersquatting and seeking an injunction requiring transfer of the domain name to McDonalds, as well as $100,000 statutory damages and attorney's fees. Dennis moved for summary judgment on the damages and attorneys' fees claims, arguing that the Lanham Act did not support statutory damages or attorney's fees. What remedies, if any, might McDonalds be entitled to if it wins and the case is deemed an exceptional case?

A. Injunction requiring transfer of the domain name, $100,000 statutory damages, and attorney's fees.

B. An injunction requiring transfer of the domain name only.

C. Only an injunction requiring transfer of the domain name and actual damages, which can be increased up to treble damages if any cybersquatting is willful.

D. Nothing, so long as Dennis never used his MCDONALDS.COM domain name in a way that would be likely to create confusion.

38. Putting aside consideration of any copyright defenses or limitations, which of the following is not an exclusive right under Section 106 of the Copyright Act?

A. The right to copy a professor's PowerPoint slide during class using your cell phone.

B. The right to display a genuinely tacky copyrighted painting you bought from the artist in your living room because it makes your roommate crazy.

C. The right to loudly sing "In-A-Gadda-Da-Vida" (a song by Iron Butterfly released in 1968), to the annoyance of everyone, at a child's birthday party at Chuck-E-Cheese after drinking a bit too much overpriced stale beer.

D. The right to use a drawing of the contemporary version of Mickey Mouse as the logo for a new brand of "personal dysfunction correction" medication.

39. Professor N was a law professor who also fancied himself a budding fine-art photographer. One day he was showing one of his students the photo below, and the student noted how much they liked it. Appreciating the kind feedback, Professor N printed out a copy of the photo, framed it, and gave it to the student. A few weeks later, Professor N saw the student in the Breezeway of the law school using the framed photo as a tray for his luncheon meal of empanadas and cortaditos. Feeling vaguely insulted, Professor N marched up the student and as politely as he could muster, requested return of the framed photo. The student said, "Sorry professor, but you gave me the photo. I respectfully think maybe you should read your own IP casebook." Who owns what?

A. The student owns the framed photo and the copyright for that copy only.

B. The student owns the photo but not the copyright in the photo; however, the student is not violating any copyright, even if the student is being a little bit rude by eating lunch on a framed photo that days earlier, they admired as art and received as a kind and thoughtful gift.

C. The professor owns the copyright in the photo and has a reversionary interest in the photo due to its misuse by the student.

D. The professor owns neither the framed photo nor the copyright in the particular framed photo.

40. The rise of generative AI has made it quicker and less expensive to generate new works of art, poetry, and literature. Please choose the answer below that best expresses your view on whether IP law should be revised to account for generative AI technology. There is no wrong answer. Choose one answer only, but all the answers below will receive equal credit. I recognize that you may agree with several answers; please choose the one *you* find to be most compelling. Thank you.

A. AIs should be allowed to own IP.

B. AIs should not be allowed to own IP.

C. The standards for IP, such as the minimal level of creativity needed for copyright, need to be changed and possibly increased due to the glut of content that AIs will generate.

D. The owners of generative AIs have a moral responsibility to compensate the owners of other IP that is used in the training and development of next-generation Large Language Model (LLM) generative AIs.

A SUMMER PARTING MESSAGE

It has been a privilege and honor being your professor at St. Thomas Law this year. It has been a lot of fun! I hope you all have a wonderful summer and live with health and joy and wonder!