

Fundamentals of Intellectual Property

Spring 2016

Prof. Ford

Take-home Midterm Exam

This take-home midterm exam is worth 20% of your course grade. It will be distributed at 3:00 pm on Thursday, March 24, and is due back at 3:00 pm on Thursday, March 31. By that time, you must return **two printed copies** of your exam responses to the Registrar's Office. Late exams will result in an automatic reduction of your course grade by **one-third letter grade per day**. Please do not put your name or any identifying information on your exam. Instead, place only your assigned exam number on the top right corner of your answers.

I expect all exam responses to be typed. Format your responses similarly to this document: **single-spaced, with 1.5-inch margins, and empty space between paragraphs**. Use 12-point Century, Palatino, Constantia, Book Antiqua, Cambria, or another high-quality proportionally spaced body-text font; please do *not* use Times New Roman. Number your pages.

Because you have flexibility within the week of when to complete the exam, other students may be completing this exam before or after you do so. Accordingly, you **must not discuss the exam with anyone, student or not, until I tell you that all exams have been turned in**. Additionally, we will not be able to answer any questions about the exam while it is in progress. You may use any materials you wish while completing this exam.

This exam consists of **two short-answer questions**. Each question is worth half the grade. This exam has strict time and word limits. You must not spend more than **four hours** completing this exam (I expect you will need less time than that), and you must not use more than **350 words per question**. Please list your word count for each question after your response to that question. Please also type at the top of your exam the following sentences:

I affirm that I have not discussed this exam with other students or anyone else during its administration. I further affirm that I understand and have complied with the word and time limits, and that I have not spent more than four hours completing this exam.

If any of the questions are unclear, or don't provide necessary information, explain what information would be helpful and how different possibilities would affect your answer.

Good luck!

Question 1 (350 words maximum)

R ♥ J Productions Inc. is a television production company that specializes in romance-themed reality shows. Quinn King was an executive producer and showrunner (an industry term for the producer responsible for day-to-day operations) for R ♥ J, on a cheesy reality dating show called *The Lovelorn*.

Each season of an R ♥ J show has a “bible,” a reference book that producers on the show use to guide production and maintain consistency from episode to episode. (Similar bibles are standard in the television industry, on both scripted and reality shows.) For *The Lovelorn*, each season’s bible explains the show’s rules, how to set up challenges and dates, which kinds of challenges and dates work best, how each week’s episode-ending necklace ceremony works, how to edit episode promos, network contacts, the identities of reliable vendors, and similar information useful in producing a reality dating show. In short, each bible reflects the institutional memory that King and colleagues on the show developed over several seasons producing *The Lovelorn*. The *Lovelorn* bibles also include information about each season’s contestants, including their back stories, relationship histories, and medical and psychological evaluations.

The *Lovelorn* bibles are stamped as confidential on each page, and R ♥ J has policies prohibiting their disclosure. As is common in the industry, though, dozens of employees have copies, which are not closely monitored or tracked. Though it has never happened to an R ♥ J bible, those from shows produced by other companies have sometimes been leaked to gossip websites and the like.

After an especially trashy—and thus highly rated—season of *The Lovelorn*, a competitor, Starburns Industries, recruited King to start a similar show called *Finding Love*. King showed up at *Finding Love* with the most recent season’s *Lovelorn* bible. For the first season of *Finding Love*, King recruited a popular contestant from that season of *The Lovelorn* to be the star looking to find love. The two shows wound up having notably distinct formats, though, with all of the *Finding Love* contestants living together in a mansion and participating in wackier and sillier dates and challenges than the more romantic events on *The Lovelorn*. *Finding Love* was a hit, with the happy couple marrying in a televised ceremony and gracing magazine covers before going through a nasty breakup that was covered by all the tabloids and gossip sites.

After *Finding Love* became a hit, R ♥ J sued Starburns for misappropriation of trade secrets, in the form of the *Lovelorn* bible and information therein. Assess the claims against Starburns. Assume the Uniform Trade Secrets Act provides the governing law.



Question 2 (350 words maximum)

Ralph Guzmán is a camera operator who works for R ♥ J Productions on *The Lovelorn*. On April 27, 2009, he needed to film a shot where the camera moved steadily from side to side. The standard way to do this is to use a camera dolly, a setup where the camera is mounted on a

frame that moves on a track. (A typical camera dolly is shown on the left.) But the show was shooting in Costa Rica, away from Guzmán's usual rental contacts, and the local providers happened not to have any dollies available.

Since the production had no time to wait for a dolly to become available, Guzmán rigged up a substitute that day. He used zip ties to attach a small digital camera to a skateboard that he found lying around. He then attached a rope to one end of the skateboard and, when shooting the scene, slowly pulled the skateboard toward him, trying hard to keep the movement consistent. It worked, and shooting was finished in time to make it to the next location.

Guzmán filed a patent application on June 8, 2010, describing and claiming a new kind of camera dolly consisting of a platform on wheels, a connection to hold a camera on the platform, and a rope or other pull means to move the platform in the direction in which the wheels are oriented.

For each of the following, explain whether the reference qualifies as prior art to Guzmán's application, for the purposes of (pre-AIA) 35 U.S.C. § 102(a) or § 102(b). (In other words, explain whether it falls into one of the categories of prior art covered by those subsections and whether the timing makes it relevant prior art; do not consider whether it discloses each element of a patent claim. Evaluate each item under both § 102(a) and § 102(b).) For each, explain why the reference does or does not qualify as prior art.

- a. The camera dolly shown in the top right of this page, which was sold in the United States on October 2, 2005.
- b. A talk given by Joseph V. Mascelli, a cinematographer, at the annual meeting of the American Society of Cinematographers, on May 8, 2009.
- c. An article by Mascelli, based on his talk, published in *American Cinematographer* magazine on August 15, 2009.
- d. Guzmán's use of his invention on the set of *The Lovelorn* on April 27, 2009.