

Patent Law
Fall 2016
Prof. Ford

Take-home Midterm Exam

This take-home midterm exam is worth 20% of your course grade. It will be distributed on Monday, October 17, and is due at **9:00 am on Monday, October 24**. 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.** Staple each copy of your responses at the top left corner of the page. 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 every student has turned in his or her exam.** Additionally, I 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 parts**, each worth half of 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 **250 words per part**. Please list your word count for each part after your responses to that part. 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 governing this exam.

Good luck!

Part 1 (250 words maximum)

For each of the following two scenarios, apply 35 U.S.C. § 102 to answer the given questions. (Do not consider obviousness or other doctrines that might affect patentability.) If your answer depends on facts that I haven't provided, explain what those facts are and how they would affect the answer.

Scenario A:

- October 12, 1998: Jimmy conceives of process X, a method of filtering human blood to remove a virus, and performs an experiment to test that process, as documented in a witnessed laboratory notebook.
- October 17, 1998: Gretchen, a rival researcher, files a United States patent application describing process X and claiming device Y, a machine that performs process X. The application does not claim process X.
- October 24, 1998: Jimmy analyzes data from the October 12 experiment and concludes that process X worked. He summarizes his findings in an email to a colleague.
- April 5, 1999: Jimmy publishes an article in the *New England Journal of Medicine* summarizing process X and the supporting data.
- September 1, 1999: Jimmy files a United States patent application claiming process X.
- April 17, 2000: Gretchen's application is published by the PTO.

Can Jimmy receive a patent claiming process X? Why or why not?

Scenario B:

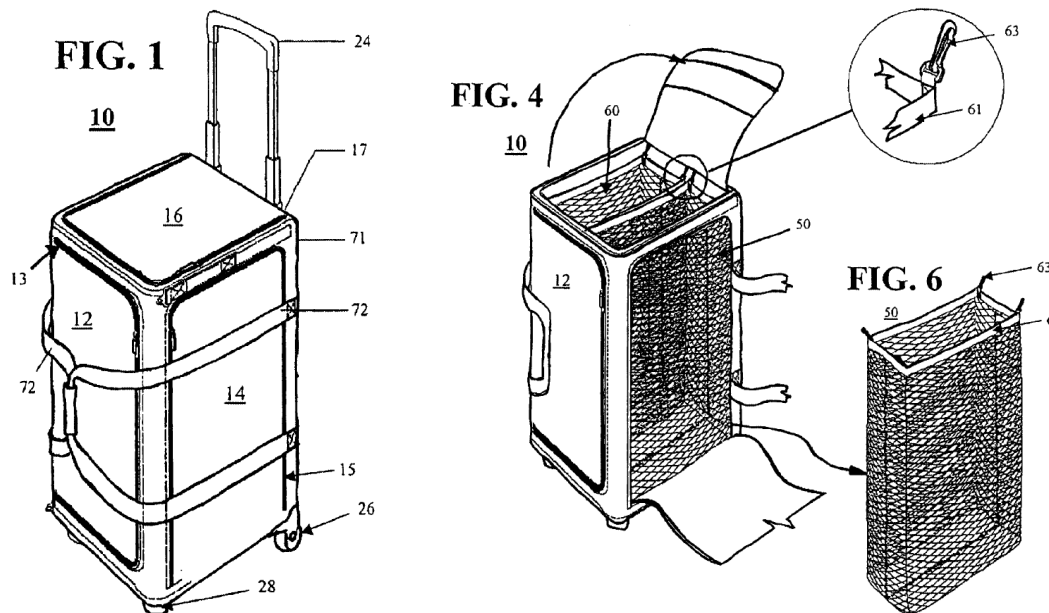
- October 1, 2014: Jimmy publishes an article in the *Journal of Virology* describing a machine, device X, for filtering a different virus from blood.
- March 3, 2015: Gretchen publishes a commentary in the *Journal of Virology* discussing Jimmy's invention, device X, and suggesting an improved variant, device Y.
- September 15, 2015: Gretchen files a United States patent application describing device X and claiming device Y.
- September 28, 2015: Jimmy files a United States patent application claiming device X and device Y.
- March 15, 2017: Gretchen's application is published by the PTO.

Can Jimmy receive a patent claiming device X? Device Y? Why or why not?

Part 2 (250 words maximum)

U.S. Patent No. 6,805,225 was issued to Roberta Freedman on October 19, 2004, based on an original application filed on April 8, 2002. (This is a real patent, but I have changed the facts for this midterm. Please rely on the scenario given here, not the actual patent.)

The '225 patent claims a "combination travel and laundry bag." The claimed invention is shown in the following figures from the patent's specification:



The invention is similar to a standard wheeled duffel bag or suitcase with a retractable handle, with two major differences: (1) it contains two removable mesh laundry hampers, as shown in Figures 4 and 6, that hold dirty laundry and can be used to transport that laundry to a washing machine; and (2) it has flaps on the side and top surfaces (14 and 16, respectively) that open to provide access of the combination laundry and travel bag. The specification explains the benefits of the invention:

Laundry bags, hampers or duffel bags are not easily transportable once filled with laundry. Conventional travel devices such as suitcases or roller duffel bags are not suitable for maintaining dirty laundry such as hampers. Although suitcases and duffel bags are certainly constructed to carry clothing, they are not ideally suited to allow dirty garments to "breathe." Hampers allow garments to breath through vents or holes or by having a wide opening on a top side which helps prevent the growth of mold or other odor causing bacteria.

Folding carts that are used by many to carry laundry have many of the characteristics of a hamper, but are not ideally suited to carry clothes for travel purposes. Folding carts fail to have an enclosed main compartment that would prevent clothes from falling out during transport or prevent clothes from additional accidental soiling during transport. Furthermore, access to clothes or other items in a folding cart is primarily restricted to a top opening, which makes it difficult to fold, sort or even retrieve items from the folding cart. Many folding carts may also fail to provide privacy by exposing dirty (or clean) laundry during transport.

Thus, a need exists for a combined travel and laundry bag or hamper that is easily transportable, provides adequate access to garments and further provides adequate aeration to the garments. Such a bag should enable the use of the bag as a hamper and laundry basket in one mode and the use of the bag as a travel bag in a second mode without the detriments described above.

Claim 1, which was added by amendment during prosecution, reads:

1. A combination travel and laundry bag, comprising:
 - a main compartment having a substantially parallelepiped shape with a first side that is longer and substantially orthogonal to a second side;
 - a first opening on the first side that is selectively closed for providing access to the main compartment as a travel bag; and
 - a second opening on the second side that is selectively closed;wherein a plurality of mesh bags are selectively attached to the interior of the bag using at least one hook configured to attach to at least one ring situated on the interior of the bag and wherein the plurality of mesh bags are configured to hang within the interior of the bag; and
- wherein at least one of said first and second openings is constructed of *opaque semipermeable material configured to permit aeration when closed.*

Does the italicized portion of claim 1 (“opaque semipermeable material configured to permit aeration when closed”) satisfy the written-description and definiteness requirements of 35 U.S.C. § 112? Assume I have provided all relevant portions of the specification. If your answer depends on facts that I haven’t provided, explain what those facts are and how they would affect the answer.