

Intellectual Property  
**THREE HOURS**

Day Division  
Professor Grimmelmann

Thursday, December 4  
9:00 AM - 12:00 PM

Exam No. \_\_\_\_\_

Submitted Electronically? Yes \_\_\_ No \_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

This examination consists of three equally weighted questions. There is a word limit of 1500 words per question. It will be enforced strictly; extra words from one question may not be used on another.

This is an open-book examination. You may use any of the assigned readings for class and any of your own notes or outlines to answer the questions. You may NOT use the Internet during the examination.

Your work on this examination is subject to the Student Honor Code. You may not discuss this examination or your answers with anyone under any circumstances until after the end of the examination period, as some of your classmates may be taking the examination out of sequence. **Your work must be exclusively your own.**

Please pay attention to the specific questions you are being asked to answer and to the roles the questions place you in. Support your answers with detailed analysis, reference to specific statutes and cases as appropriate, and explanations of how you applied the law to the facts. Simple citations (e.g. “Feist.”) are appreciated but not required. Basic headers to organize the different parts of your answer are also a good idea. Spelling, grammar, clarity, organization, and good advice to your client are all parts of the grading.

If anything about a question is ambiguous, say what you think it means and answer it accordingly. If you need to assume additional facts, say what those facts are and how they affected your answer. No reasonable resolution of an ambiguity will be penalized.

The problems in this examination are set in the (fictional) American state of Carrollton. You should assume for purposes of the examination that the America Invents Act has been fully in effect at all relevant times. The names in the problems are fictitious. Please disregard any resemblance to actual persons or institutions, living, dead, or nonexistent.

This examination has **FIVE pages total**, including this cover page and the page of Exam4 and handwritten-answer information that follows.

GOOD LUCK!

## **Exam4 Instructions**

Computers *may* be used on this examination:

Option 2—Open Mode—access to Exam4 and student computer-based notes—no Internet access

If you use a computer on this examination, you must use the Exam4 examination-taking software provided by the law school. You must provide your own computer and must have downloaded a copy of the most recent version of the Exam4 software to your computer. You should have completed this download, tested the software, and made sure the computer is in working order well before the date of this examination.

At the end of the examination, choose the “Submit Electronically” function on the Exam4 software. The software will request your Exam ID (Examination Number). Put the course name on your answer as instructed in the handout, but do not put your name anywhere on your answer. Submit your answer within the time limits for the examination; no allowance for additional time will be given for equipment failure. After submitting your answer electronically, note on your examination questions that you “Submitted Electronically.” The administration will print your Exam4 answers and provide them to me for grading.

***Technological Problems:*** If you experience a technological problem during the examination period, consider the amount of time remaining and decide whether you should continue (or restart) the examination in blue books. No additional time will be provided for technological problems. Responsibility for submitting your answers on time electronically lies entirely with you. The Information Technology (IT) Department will assist in retrieving examination files from your computer, and the Office of Registration & Enrollment will accept an IT-certified copy of an examination file retrieved from your computer as a timely submission, as long as there is no evidence of tampering with either your computer or the examination file.

## **Handwritten Answer Instructions**

If you submit handwritten answers to the examination, both the envelope and your answers should contain your examination number, the course name, and the instructor's name. Do not put your name anywhere on the envelope or on the blue book answers.

Upon completion of the examination, put your answers in the envelope and hand in the envelope to the examination proctor. Be sure to enclose all of your answers in the envelope—you will be graded on only what is inside the envelope. Do not put the examination questions in the envelope. Hand in the questions separately to the examination proctor. You are responsible for ensuring that all of your completed answers and questions are handed in to the examination proctor.

### Question 1: Anger Translator

You represent Meegan Luther, the inventor of a device she calls the Anger Translator. It's a rectangular black box about five inches long and two inches wide. It has a red button on the front and a red exclamation point on the back. The box contains a microphone, a speaker, and a few computer chips. To use it, you push the button and start talking. When you pause at the end of a sentence, the Anger Translator repeats what you just said, but much, much angrier. E.g.,

Please pay attention when I'm talking to you.

becomes

Stop licking that frozen flagpole for one g—d— second, you flaming moron, and pay attention, or I will come over there and personally drive a tractor trailer up your nostrils.

All the hard work is done by the Anger Translator's software. First, it uses voice recognition software to make a list of the words spoken by the user. Second, it uses software to identify significant words from the user's input and replace them with phrases from an extensive list (e.g., "now" could become "NOW NOW RIGHT NOW," or "right now toot suite you m—f—"). Third, the Anger Translator uses voice synthesis software to turn the modified sentence back into audio. Luther wrote the software for the second and third steps herself. But rather than write a voice-recognition program from scratch for the first step, she bought a copy of Mergatroid Dictation (the best-selling voice-recognition program on the market) and copied large portions of it from her computer into the Anger Translator.

Ms. Luther started selling Anger Translators from her website four months ago. Since then, she's sold 20,000 at \$50 each. Playing around with the Anger Translator, you've been struck how much its synthesized voice sounds like famous football announcer Ron Balakay. Luther, who is not a football fan, was surprised to hear this. She says she did not base the voice off of anyone in particular.

In the course of your research, you've discovered U.S. Patent No. 5,482,200, with filing date December 8, 2006, claim 1 of which reads:

A process for automatic translation, comprising receiving a first audio signal in a first language, transforming the first audio signal into a second audio signal in a second language on a computer device, and emitting the second audio signal audibly.

You have also discovered The Insult Box, a novelty device sold in party stores for \$5 since 2011. The Insult Box is a rectangular white box about five inches long and two inches wide, with a red button on the front and a red exclamation point on the back. Push the button and it speaks one of a dozen pre-recorded insults in an angry tone of voice. Finally, you recall that people have been translating from one language to another for centuries. For example, interpreters at the United Nations translate all speeches into the six official languages used by the U.N.

Ms. Luther is concerned about her potential liability. *What forms of intellectual property risks does she face?* [You DO NOT need to discuss her own IP rights.]

## Question 2: Tackle and Grapple

You have been retained by Doug Duggart, who has developed what he believes is a revolutionary new martial arts system based on Brazilian Jiu Jitsu.<sup>1</sup> He would like your advice on securing appropriate intellectual property protections.

The system, which he calls Doug Duggart's Brazilian Tackle and Grapple (or "Tackle and Grapple" for short), emphasizes quick takedowns and strong holds. According to Duggart, Tackle and Grapple system differs from previous martial arts in two key ways. First, he believes that most fighters, regardless of their training, instinctively overprotect their chests. The core of Tackle and Grapple, therefore, consists of feints designed to make the other fighter twist to protect their chest, followed by blows to the hips to knock them off balance. Second, he trains fighters in Tackle and Grapple by having them perform a standard sequence of poses and motions. (E.g., step 23 is "From a crouch with the right foot in front, rise to a standing position while bringing the left foot and right arm forward.") There are sixty-six distinct steps in the sequence, which takes about three minutes from start to finish when performed smoothly. A standard workout consists of twenty repetitions of the sequence, followed by an hour of practice bouts.

Mr. Duggart developed Tackle and Grapple gradually over the last five years. As he worked out the different principles, he gradually incorporated them into the sequence of motions he teaches at his studio in Calvert City, Carrollton. In 2012, he had one of his students, Wendell Sanders, take pictures of Duggart doing the various steps. Duggart assembled the pictures, together with captions and a 10,000-word essay (written by Duggart) explaining Tackle and Grapple, into a booklet which he now gives each student who starts training with him.

In addition, Duggart has developed a stick (the "Grapple Stick") which he thinks will be especially effective in throwing other fighters off balance. It looks like a black plastic rod about two feet long, but it's unevenly weighted (one end is heavier than the other). Duggart hasn't started trying out the stick with his students yet, but he's optimistic that it will work.

Duggart would like to turn Tackle and Grapple into a national chain of martial arts schools, and to sell Grapple Sticks and instructional books and videos. He is concerned that other martial arts instructors will quickly try to cash in on the success of Tackle and Grapple once word gets around how effective it is. Counsel him on his intellectual property options. *What kinds of intellectual property protection are available to Duggart, what if anything will he need to do to take advantage of them, and how effective will they be in deterring copycats?*

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<sup>1</sup> Wikipedia: "Brazilian jiu-jitsu is a martial art, combat sport, and a self defense system that focuses on grappling and especially ground fighting."

### Question 3: Linkaholics

You are clerking for Judge Elapses Corter, who has been assigned a particularly ugly dispute between Pegasus LLC and Neesons Corp. Both companies operate advertising-supported websites that post hundreds of links a day to cute cat videos, conspiracy theories about the Federal Reserve, pictures of celebrities tripping over their shoelaces, recipes for grapefruit-flavored cupcakes, et cetera, et cetera, et cetera. Each link consists of a short sentence which links to some (already existing) webpage created by a third party.

In 2009, Pegasus put up an empty website featuring a blank page and the words “Linkaholic Is Coming Soon.” It also filed a federal intent to use registration for the mark LINKAHOLIC in connection with entertainment services. In 2010, Neesons put up a website and began posting links. Its design features a dark blue webpage with a white-and-yellow logo at the top. The logo consists of the words “Neesons Presents Linkaholic” in the Zapfino font in a rounded rectangle (pictured below). In 2012, Pegasus redesigned its site and started posting links. Its new design features a dark blue webpage with a white-and-yellow logo. The logo consists of the word “Linkaholic” in the Bickham Script font in a rounded rectangle (pictured below)<sup>2</sup>.

Almost immediately, Neesons objected that thousands of its links also appeared on Pegasus, sometimes a few hours later, sometimes weeks later. Neesons also alleges that in some cases links that its staff was preparing to post instead appeared first on Pegasus. Neesons takes this to mean that someone on its staff was leaking to Pegasus information about what links were about to be posted. Pegasus responds that these are examples of Neesons stealing from it. The parties disagree on how similar the wording of the links was. They have stipulated that they will treat one example as representative of the rest. Neesons's version (posted first) was “How long can this cat hang in there?”; Pegasus's version (posted second) was “Hang in there, Mr. Cat!” Both linked to the same picture of a cat hanging from a branch.

In 2013, Pegasus posted a notice reading, “!00% original links you will not find anywhere else on the Internet.” Neesons responded by adding to its site a cartoon of a drooling circus clown whose hat reads “Pegasus.” The caption read, “We have better links than those clowns at the other Linkaholic.”

Judge Corter has asked you to outline the IP issues in the case. ***What IP claims can the parties bring against each other?*** Do your best to distinguish the weak claims that can be dismissed early from the strong ones that will need to be set for trial.



<sup>2</sup> Both Zapfino and Bickham Script are widely available fonts. You can assume that they were properly licensed from the relevant copyright owners.