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FINAL EXAMINATION – PART TWO

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**Open-book. Two hours.**

**All exam materials (including all scratch paper, this booklet, and your response) must be turned in at the end of the exam period.**

**Do not turn the page until instructed to do so.**

*Notes and Instructions*

**General Notes and Instructions**

1. Answer the questions based on United States law, rules, procedures, and cases as presented in class, as well as, where appropriate, the theory and history discussed in class. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
2. Unless otherwise explicitly stated, all references to patents or applications are to be understood as being in and of the United States, nonprovisional in nature, and of the utility kind (as opposed to plant or design).
3. All facts take place in the United States, unless otherwise noted. Assume that today's date is May 4, 2006, unless indicated otherwise.
4. Where the terms "USPTO," "PTO," or "Office" are used in this examination, they mean the United States Patent and Trademark Office.
5. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
6. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing student examinations or materials other than your own.

**Specific Notes and Instructions For PART TWO :**

- a. Bluebooks: Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please use separate bluebooks for each of the three sections.
- b. Computers: Start a new page for each section.
- c. This portion of the exam is "open book." You may use any written material drafted before the exam's start by you or anyone else. Materials cannot be shared in any way with any other student once the exam begins.
- d. It is recommended that you divide your time among the sections in this part roughly in accordance with their corresponding worth in terms of the overall examination grade.
- e. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- f. Organization counts.
- g. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.
- h. Feel free to use abbreviations, but only if the meaning is entirely clear.
- i. Do not write your name on any part of the exam response or identify yourself in anyway, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum result in a lower grade and may result in disciplinary action.

## PART TWO

NOTE THE FOLLOWING FOR QUESTIONS ONE AND TWO:

### **“The Energy of Struggle”**

Paula is an administrator at Medfield College in Costa Mesa, California, but her true passion is fine-art ceramics. As an employee, she takes advantage of tuition waivers to take ceramics classes through the art department. On May 1, 2004, Paula started a new piece she called “The Energy of Struggle.” To represent how our society struggles under the evils propagated by the oil companies, the Hollywood media, the cosmetic-surgery industry, and the banking conglomerates, Paula mixed into her clay 10W30 motor oil, pulverized television picture tubes, Botox fluid, and Panflidex, a special kind of ink used in \$20 bills. She fashioned the material into a disc 36-inches across and fired it at 1275 degrees Celsius for three hours – a uniquely long time, which she felt was symbolic of “the people’s long struggle.”

Preparing to display her piece at a gallery exhibition, she asked her boyfriend, Rick, an electrical engineer, to hook the disc up to electrodes and run a high-voltage current through the disc to complete the “circuit of painful energy that shocks us into inaction against the culture of greed and power.” Rick had the idea, which Paula loved, to pulse the current at approximately 3,399 Hz, corresponding to 293,656,842 cycles per day – one pulse for each member of the U.S. population.

On the night of the gallery exhibition, May 21, 2004, nearly everyone ignored Paula’s heartfelt artwork. One tipsy art professor, Umberto, carelessly stumbled into the table that “The Energy of Struggle” was sitting on. But then, Rick noticed something incredible. When the table was jarred, the disc bumped up slightly into the air, and it stayed there. It hovered about an inch over the table, finally settling back on to the table surface after several minutes. Other than Rick, only Umberto noticed the floating disc. Umberto elbowed Rick and said, “I don’t get the floating. What does that have to do with the symbolism of struggle? Well, another worthless lump of clay under some track lighting! Such is my life.” Umberto staggered off toward the hors d’oeuvres.

But Rick was impressed. Very impressed. He understood that he was looking at something that could reflect the very force of gravity itself – something not explained by the current laws of physics – an anti-gravity machine.

At Rick’s enthusiastic urging, Paula made more discs at the college in the same manner so that Rick could experiment with them in his garage. By varying the voltage, amperage, and pulse frequency (3,321 Hz was perfect), in October 2004, Rick found the ideal parameters to provide as much upward thrust as possible. Rick hypothesized the discs contained a hitherto unknown chemical, which Rick dubbed “struggulium,” that caused the gravity-reflecting effect. On November 2, 2004, Rick sent material from one of the discs to a close friend of his, Matt, a materials engineer, to see if Matt could identify the struggulium. Matt called on December 15, 2004 to tell Rick he was able to chemically identify, diagram, and describe the unique compound – his report was in the mail. Matt asked Rick how the struggulium was made, but Rick said he didn’t know, an answer that mildly irritated Matt.

Over the winter, Rick worked on installing the disc under the chassis of a 1975 Ford Pinto hatchback. Rick fashioned a mechanism for getting the car to move forward, back, left, and right by using pulleys and levers controlled by a joystick situated between the front seats. By gimbling (i.e., pivoting) the disc, he found he could provide directional thrust.

Rick covered the car's undercarriage with a tough nylon fabric to disguise the disc and steering mechanisms from the people he would be flying over.



FIG 1. - 1975 Ford Pinto hatchback

When the vehicle was finished on April 22, 2005, Rick took Paula for a ride on the 405 San Diego Freeway during morning rush hour. When the traffic stopped entirely, Rick cranked up the power to the disc, and they floated up above the traffic. Motorists gasped in astonishment as the Pinto floated 30 feet above the cars, trucks, and SUVs. The only problem was that the vehicle was very unstable. Rick had to constantly adjust the joystick to keep the vehicle from flipping over. It took all of Rick's hand-eye coordination (earned from years of video-game playing) to stay in control. Rick wrote in his lab notebook that night: "Made the Pinto fly! Awesome! Very hard to keep upright, though!"

The flying Pinto was a huge news story, but Rick and Paula hid their identity. They kept the Pinto locked away in the garage and told no one what they had done. On April 25, 2005, however, Matt published a tell-all piece in *Newsweek* that revealed Rick and Paula's identity as well as the chemical structure of struggulium. Rick and Paula were very mad. On April 26, 2005, they took the Pinto out of the garage to fly it over to Matt's house to confront him. Unfortunately, while on their way, the Pinto flipped out of control and crashed on the research campus of Astro-Cyber-Electro Corp. Rick and Paula were rushed unconscious to the hospital, where they both remained comatose for the next 12 months. In the meantime, Astro-Cyber-Electro said it was "keeping the wreckage safe" until Rick or Paula could claim it.

Early this morning, Thursday, May 4, 2006, a nurse read aloud an *Aeronautics Daily* article (see inset) to Rick and Paula at their bedside. The news was such an irritating stimulus that Rick and Paula both stirred from their comas. Within hours, they were fully awake, and they asked for an attorney. You have been summoned to their bedside.

from *Aeronautics Daily* – Friday, April 28, 2006

Aerospace giant Astro-Cyber-Electro Corp. yesterday unveiled its application to patent flying cars that use struggulium. Responding to questions of whether coma-victims Rick and Paula had actually invented the flying car first, a spokesperson said, "Ours is the first flying car that is stable and useful. Therefore, we will be awarded this very valuable patent."

The "ACE 3000," as the car is called, cleverly uses an array of three struggulium discs instead of one, and the gimbling of the discs is controlled by a computer capable of making hundreds of subtle adjustments per minute to keep the ACE 3000 stable. Astro-Cyber-Electro hailed the work of its engineers as "brilliant." Just as a tripod provides stability to a camera or a lamp, the three-disc array is an inherently stable structure. With the addition of computer control – a technology used in rockets and jet aircraft for decades – Astro-Cyber-Electro has pioneered what most are calling the greatest advance in the history of transportation.

Astro-Cyber-Electro said it could not yet make production cars, because the company's only technique at present for making struggulium yields extremely small quantities of the substance, at a cost of nearly one million dollars an ounce. The company would not disclose its process except to say that it involves radiation bombardment, laser heating, and more than two dozen refinement steps.



FIG. 2 - Artist's conception of Ford Pinto over Newport Beach, California



FIG. 3 - The wreckage of the flying Pinto on April 26, 2005

**Question One (approximately 35% of overall exam grade)**

Rick and Paula have come to you for advice. They would like to protect their technology and profit from it. Evaluate their legal position. What are their options? How should they proceed? What do you tell them?

NOTE THE FOLLOWING ADDITIONAL FACTS FOR QUESTION TWO:

A family friend comes into the hospital room with some mail. "This looks important," she says, handing you this letter:

**Luong & Lopez LLP**  
ATTORNEYS AT LAW  
43 Law Court  
Costa Mesa, California 92626

April 26, 2006

Dear Rick and Paula:

It has recently come to our attention that you have infringed claim 5 of U.S. Patent No. 6,678,707, issued January 13, 2004 to our client, Thomas Townsend, a renowned electronics-components engineer.

Claim 5 is "An article of manufacture consisting essentially of a disc made of plastic, ceramics, or any similar non-conductive material, and means for electrifying said disc with a current pulsed at a rate of between 3,250 Hz and 3,500 Hz."

Although the disclosure of the '707 patent concerns a disc just 5 millimeters in diameter to be used in reducing Johnson-Nyquist thermal noise in the electronic circuits of certain highly sensitive scientific measurement equipment, the claim nonetheless covers the struggulium-disc device you constructed and used.

We hereby demand that you cease-and-desist the manufacture and use of any infringing articles. The damages for your infringement clearly run to the hundreds of millions of dollars. We hope to sit down with you or your representative in the amicable spirit of resolving this matter, so that we can agree on the exact amount owed. Thus, we hope to avoid the unpleasantness of a lawsuit. We send best wishes for a speedy recovery from your respective comas.

Warm regards,

**Laura Lopez**

Laura Lopez

**Question Two (approximately 12% of overall exam grade)**

How do you advise Rick and Paula with regard to the letter from Laura Lopez?

NOTE THAT THE FOLLOWING QUESTION USES NONE OF THE ABOVE FACTS:

**Question Three (approximately 18% of overall exam grade)**

Identify a policy goal, of your choosing, for patent law. Argue that the law should be changed to better meet the goal you identified. Propose three (and no more) specific changes to the law.