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BAUM  
SPRING 2009

FINAL EXAMINATION  
691-001 INTELLECTUAL PROPERTY LAW

This is a three-hour examination. There are two questions worth a total of 350 points. Each question is worth 175 points. You should allocate your time based on the point value per question.

This exam is open-book/open-outline/open-code. You may refer to the following print materials ONLY: your casebook, your statutory supplement, and the course outline you prepared yourself. **YOU MAY NOT USE ANY OTHER MATERIALS OR ELECTRONIC OR HUMAN RESOURCES.** The law in your jurisdiction in each problem is that found in your casebook and statutory supplement.

In your answers, you are to apply the law to the facts and to provide specific citations to and analysis of relevant provisions of the statutes, uniform acts and/or Restatement and relevant case law to demonstrate your reasoning and to support your conclusion. References to case names and code sections are sufficient as citation.

If you find any ambiguities in the facts or questions posed, identify the assumptions you make to resolve the ambiguities and then proceed with your answer.

**Your answers are to be concise and directly applicable to the problems presented. If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages.**

You are to return your exam questions with your answers.

## QUESTION ONE

A, an anthropology professor at the University of Northern California (UNC), has spent years studying a remote tribe in inland Papua New Guinea. Over the years, and from studying medical records of the tribe, A makes a startling discovery: while members of the tribe get cancer at about the same rate as people elsewhere, no member of the tribe has ever died of cancer. Intrigued, A persuades one of the tribal cancer patients to give up a sample of the cancer tissue and a blood sample, explaining that the samples “may help people everywhere.”

A returns to the United States in June 2007, where he shares his discovery with his friend B, a molecular biologist at UNC. B takes the samples to her lab at the university and begins analyzing them. After 6 months of constant work, B and her team of graduate students isolate a gene sequence in December 2007 which they believe is responsible for inhibiting the malignant growth of the cancer cells.

In the meantime, A has published an article on his discovery in the November 2007 issue of the Journal of Medical Anthropology. The article, which was actually mailed in mid-August 2007, discloses A’s discovery, but does not discuss any of B’s work on the cancer tissue. A signed an agreement with the journal assigning copyright in the article to the journal. A then begins a book about his trip to Papua New Guinea, which includes a chapter on his discovery; A so liked the phrasing he used in the article that he repeats much of it in his book chapter. A’s contract with the book publisher includes an indemnification clause, holding A liable for any copyright infringement.

G, one of the graduate students on B’s team, completes his degree in May 2008 and goes to work for Pharmacom, a multinational pharmaceutical company. Pharmacom assigns G to work on developing an anti-cancer treatment based on the information disclosed in A’s article. G discloses to Pharmacom his prior work with B’s team, and tells Pharmacom that B has isolated a gene sequence, but does not tell them what the gene sequence is. When questioned about the procedures at UNC, G explains that the lab in which he worked was open to any member of the department, and that there were no special security precautions taken with respect to B’s experiments. G did, however, sign an employment agreement with UNC agreeing to assign “all interest whatsoever in any intellectual property rights, whenever created, if directly related to any work you do while at UNC.”

Without G’s direct participation, and based on A’s article, Pharmacom returns to Papua New Guinea and obtains blood samples from other members of the tribe. After analyzing those samples, Pharmacom discovers that there are in fact three different gene sequences which have the same cancer-inhibiting effect. After G identifies the gene sequence that B’s team produced, Pharmacom abandons work on that sequence and begins work on a means of injecting the other two sequences into human tissues. All three sequences share about 80% of the same base pairs, and all three have very similar (though not identical) functional characteristics.

In December 2008, UNC receives a patent covering the human gene sequence B’s team identified in the lab. In the patent specification, UNC discloses the location of the gene sequence, and describes it in detail according to its functional characteristics, but does not list the

actual base pairs in the sequence, making the patent claims broad enough to cover the different gene sequences found by Pharmacom.

You are an attorney in the UNC general counsel's office. You have been asked to review and analyze the intellectual property issues which arise as a result of A's and B's pursuits. You are to draft a memo discussing and providing conclusions on the various issues you have identified.

## QUESTION TWO

Maggs and Jake have belonged to a series of bands over the years and have spent their careers creating cutting edge musical sounds. They have been using the name “Cutting Edge” in their advertisements in Peoria, Illinois and Indianapolis, Indiana on and off since 1975, generally taking a 3-4 month break every couple of years. The ads also include images from the Texas Chainsaw Massacre movie poster (seen below) with popular icons like Barbie, Marilyn Monroe, Elvis Presley, and Tom Brokaw inserted as the targets of Leatherface, the film’s main character. (The movie was released in 1974 and is based on a real serial killer from Wisconsin.) The band sells its advertising posters at its concerts. Apparently, a poster found its way to Mattel; Maggs and Jake have gotten a letter from Mattel’s legal counsel about the use of Barbie in the poster. This has raised some concerns for “Cutting Edge” about their use of all of the iconic images in their ads.



Following the band's posting of new advertisements for this summer's concert series, they also received a cease and desist letter from an Illinois company called "Cutting Edge" which uses the following logo, company name, and URL on its website and on all advertisements, correspondence, and sales forms. The company "Cutting-Edge" sells musical instruments and recording equipment.



*"Everything you need to make music"*

**1-847-398-5444**

Maggs, a composer, has written a new musical piece that is in the style of The Cribs, a British indie band whose album reached #9 on the UK charts. She has sought out the winner of the national poetry slam competition to use his poem as the lyrics for the musical score that she has completed. The poet has agreed to undertake the creative work, which will require some minor modifications to the original prize-winning poem, but he has not yet started. Maggs told the poet that she wants to have exclusive rights to use the lyrics in the future. But, all this lawyer correspondence about the band name and the ads and posters has Maggs concerned about intellectual property. She wonders if she is going to get sued by The Cribs for copying their style and if she can be sure that she won't get in trouble over the use of the poem as her song lyrics.

Jake also has some IP concerns. He is a performance musician who designs new instruments and techniques for creating musical sounds. His latest venture is a technique for creating a unique sound using an old-fashioned egg-beater, a comb and a piece of paper. When he is on stage, he sets up the items in a box that he can reach into to make the sound as needed without anyone else being able to see what he is doing. He never lets anyone, not even Maggs, see how he makes the sound and has never even allowed anyone to see the items he uses. One of the roadies, who gets the locked box to the stage for Jake before a concert, was approached by a member of a competing band who said she would pay him to find out the technique and share it with her. The roadie has gotten the box open and is about to send a photo using his cell phone when Jake catches him.

As Maggs' and Jake's lawyer, you've just gotten a frantic phone call from Jake. He wants to know if there is any way to stop the roadie, who is now sitting on the box with his finger on the send button, or the other band. While Jake is talking to you, Maggs grabs Jake's phone and begins to ask questions about the posters and the band name and her concerns about her musical composition. You need to give Jake some immediate advice and then deal with Maggs' questions.

1. What specific advice/instructions do you give to Jake? Set out the instructions that you will give Jake over the phone. In a separate essay, explain any actions that you will take as his lawyer. Discuss fully the legal basis for your advice and action.

2. After you have dealt with Jake's problem, you need to answer Maggs' questions. You have had her send over the various letters along with a copy of the poster and the URL for the online music store "Cutting-Edge" and have gathered information from her on her other IP concerns. You need to prepare a memo about the various issues that arise from these facts. Be sure you state a firm conclusion on each issue, supported by full analysis and legal authority.