

Exam No. _____

PATENT LAW AND POLICY

Professor Crouch

Fall 2011

This examination consists of four pages. There are two questions (with sub-parts). The examination count for 35% of your final grade. The remaining 65% of your final grade comes from projects and class participation during the term

Instructions: This is a **1 hour short-answer examination**. It will be available for pickup in Room 203 at 8:30 am on December 8, 2011 and must be returned by 9:45 am on that same day. The examination covers concepts derived from the assigned reading and in-class discussions. The best answers will rely upon those concepts to provide a full explanatory answer to each question presented.

Materials allowed. This is an open book, open note, and open computer examination. You may use class notes or outlines, commercial outlines, the Internet, or any other material. You may not rely on contemporaneous communications with any other person (either via local or remote communication). The honor code applies to this take-home examination. You must perform all work on your own and abide by the instructions on this page. <http://law.missouri.edu/students/policies/conduct.html>

Avoid Plagiarism. Please take steps to avoid plagiarism or even the appearance of plagiarism.

Write your blind examination number in the space indicated above on this page. Do not put your name on anything in connection with this examination. **At the end of the exam, you must return this paper as well as your answers.**

GOOD LUCK!

Directions: For Question 1, please *handwrite your answers in the boxes provided for each question. A brief explanation of your answer should only take 1-2 sentences.*

Question 1 (30 minutes) (SHORT ANSWER)

NEAL’s patent issued December 1, 2011 with the following two claims:

1. A tablet comprising: an inner core containing an effective drug treatment and an outer layer of a saliva-inducing compound to aid in swallowing of the tablet.
2. The tablet of claim 1, where the saliva-inducing compound comprises citric acid.

NEAL had conceived of the idea for the tablet in January 2002, but did not file for patent protection until March 2007. During that time, NEAL *did not* publicly disclose the invention and he *did not* make a working model. NEAL was spurred to file the patent application after seeing a television commercial from the PATEL CO. in January 2007 advertising a tablet coated with maltose to induce salivation. It turns out that PATEL CO.’s first public disclosure of its pill was the January 2007 commercial. Also in January 2007, PATEL CO. filed for patent protection on its pill. The PATEL CO. application was published in August 2008. The USPTO examiner looking at NEAL’s application never saw or considered any information about the PATEL CO. invention and therefore issued NEAL’s patent. Now, PATEL CO. would like to invalidate NEAL’s patent.

- a) Under which provisions of 35 U.S.C. 102 (if any) would the PATEL CO. *patent application* qualify as prior art against NEAL’s invention? (Please limit your consideration to Sections 102(a), 102(b), 102(e), and 102(g).

- b) Under which provisions of 35 U.S.C. 102 (if any) would the PATEL CO. *television commercial* qualify as prior art against NEAL’s invention? (Please limit your consideration to Sections 102(a), 102(b), 102(e), and 102(g).

c) PATEL CO. can prove that citric-acid *does not* aid in swallowing of a tablet. What result?

d) Assume for this sub-part that NEAL's claim 2 is *valid* and that maltose is *not* citric acid. Can PATEL CO. rest assured that it does not infringe NEAL's claim 2?

e) Assume for this sub-part that PATEL CO. manufactures its pills in Italy and only distributes its pills in Europe, *not in the US*. Can PATEL CO. rest assured that it does not infringe?

Directions: For Question 2, please either (i) type and print your answer or else (ii) handwrite your answer in a bluebook.

Question 2 (30 minutes) (SHORT ESSAY)

A startup venture, ADCO discovered that people who drive faster also tend to make quicker purchase decisions. ADCO's pending patent application (filed in 2008) claims a method of using traffic violation records to differentiate its marketing strategy. The claims include a limitation that more "in-your-face" ads are served to known speeders while slower "story-line" style ads are served to the rest of the population.

Traffic violation records have been published in newspapers for many years and have been used for other purposes such as calculating credit scores. The patent examiner has also uncovered a 20-year-old student thesis that is now available online. The thesis reports the results of a study finding that individuals who make quicker purchase decisions tend to be more influenced by "in-your-face" advertisements. Google recently digitized the thesis. Up until 2009, the thesis was only available in the Princeton University Library, which is only open to Princeton University students/faculty and others by appointment. The thesis included a statement that its result was of little practical importance unless someone could regularize the method of determining whether someone tends to make quicker purchase decisions.

Discuss whether the patent examiner should reject the claimed invention as obvious under 35 U.S.C. 103(a).

END