

Intellectual Property Fall 2024 Midterm

This assignment consists of **one question** and **five pages**. It is due by **11:59 PM on ~~Wednesday, October 16~~ Friday, October 18**.

Submit your answer by uploading a PDF to the Midterm assignment on Canvas. Your answer has a limit of **1,500 words**, which will be strictly enforced. Because the exam is blind-graded, keep your **name and other identifying information** out of the PDF you submit. Your answer has a limit of **1,500 words**, which will be strictly enforced. Please write the **word count** of your answer at the end of the PDF.

This is an **open-book** examination. You should not need to consult anything beyond the casebook, the slides, and your notes, but you can if you wish. You are free to discuss the general legal principles we have covered with anyone, including each other.

You are free to post general questions about the material covered in the course or clarifying questions about the *facts* (not the law) in the problems on the exam in the designated discussion area on Canvas. I will answer all questions posted there before 11:59 PM on Friday October 11.

Aside from that, **you may not discuss the question** with anyone else until after I have returned your grades. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

Please make your answer as **specific** to the facts of the question as you can. Generic statements or suggestions, such as "Make sure that all employees follow proper security practices," will receive few or no points. Your answer should assume that I am already familiar with the facts of the problem and relevant law, and dive directly into your analysis. Use **simple citations** (e.g. "*see KSR*") where appropriate. I include **spelling, grammar, clarity, and organization** in my grading; I appreciate the use of basic headings to organize your answer, but they're not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that present-day law has been fully in effect at all relevant times. Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions, unless they are specifically incorporated into a question.

Policy on the use of Generative AI Systems

You are **allowed** to use **generative-AI** tools in researching and writing your answer, subject to four conditions:

1. The tools must be **entirely automated**. You may not circumvent the rule against discussing the question with anyone by using a hybrid human/computer system, asking someone to help you with your prompts, or doing anything else that puts a human in the loop.
2. The tools you use must be **freely and publicly available**. You may not use any tool for which you paid a usage or subscription fee (or someone else paid it on your behalf), or use any tool that has not been released to the general public.
3. You must **disclose** which tools you used and give a brief description of how you used them in an appendix to your answer. (The appendix does not count against the word limit.) For example, "I input the question to Claude to generate ideas. I used ChatGPT to help clean up the answer."
4. Any use of generative-AI tools is entirely **AT YOUR OWN RISK**. You are fully responsible for anything you submit; I will not accept "the computer did it" as an excuse for mistakes of fact or law. Large language models are well known to confidently make blatantly false assertions, cite non-existent cases, and inaccurately summarize legal doctrines. In my experience, they are also bad writers; their outputs are often bland and wordy. **YOU HAVE BEEN WARNED.**

Behold the Invent-Inator!



The Doofenshmirtz Engineering building is one of the landmarks of the Tri-State area.

Your client is Doofenshmirtz Engineering, which designs, manufactures, and sells a wide range of industrial and consumer devices under the “Inator” family of trademarks. The company’s founder and CEO, Dr. Heinz Doofenshmirtz (“call me Dr. D.”), has asked for your advice on the IP issues raised by a number of new products that DE is considering bringing to market.

- The Media-Erase-Inator is designed for use by recycling companies that need to securely remove personal and confidential data from magnetic tapes. It is working well and uses a clever combination of magnets to produce precisely targeted magnetic fields. Unfortunately, during testing, a Doofenshmirtz Engineering employee accidentally used it on the company’s only copy of the detailed development log.

Dr. D. came up with the idea and the arrangement of magnets, but he is concerned that it may be unpatentable now that the development log is gone. He has also heard rumors that a competing firm, Fletcher and Flynn, is developing its own magnetic media eraser and may be planning to patent its design or bring it to market.

- The Bread-Inator is a machine for making homemade bread. Its main innovation is to bake the bread at high pressure. The resulting bread has a rubbery texture, but it bakes twice as quickly. People have been making bread in pressure cookers for a long time, but the recipes mostly call for using them at normal pressure (the pressure cooker basically cooks the loaf with steam). When you asked, Dr. D. said that it's possible some people may have put their pressure cookers on high-pressure mode to make bread, but he has done the research to confirm that no one has ever sold a device specifically designed or marketed for cooking bread at high pressure.
- The Mustache-Inator uses infrared lasers to stimulate hair growth. Dr. D. reports that it doesn't work yet, but he's hopeful that he'll make a breakthrough any day now. He would like to start selling it now, however, to recoup some of the development costs.
- The Sculpt-Inator uses a drill and saw to carve 3D shapes out of various materials. So far it works with ice, wood, marble, and firm tofu. The only 3D shape it has been tested with is a miniature version of [Mount Rushmore](#). Dr. D. is thinking that he could commission artists to design additional sculptures, and then sell versions of the Sculpt-Inator customized to make those sculptures.
- The Whale-Translator-Inator translates whale songs into English. Dr. D. admits that the translations are arbitrary and may not bear any relation to what the whale might have been communicating. But, he points out, the Whale-Translator-Inator is consistent: it always gives the same translation for the same whale song. Dr. D. is concerned that someone calling themselves "Agent Perry" from the animal-rights group OWCA broke into the development lab and stole a large collection of design documents. He thinks that OWCA might try to release the documents

as part of a public-relations campaign to criticize Doofenshmirtz Engineering and the Whale-Translator-Inator.

- The Evaporator-Inator uses a system of fans to evaporate water into the surrounding air quickly and efficiently. The Evaporator-Inator has been under development for the past five years, and the first successful test was two weeks ago. Yesterday, Dr. D. had a meeting with an independent inventor named Francis Monogram, who pitched a device using a system of fans to evaporate water. Dr. D. told Monogram that Doofenshmirtz Engineering was probably not interested, but if the company did use the idea, “naturally we will pay you for it.”
- During her lunch break, Candace Johnson, a Doofenshmirtz Engineering employee, recorded a video at her desk of herself performing of an improvised song called “There’s a Platypus Controlling Me.” She posted the video to TikTok, where it has gone viral. Dr D. wants to know what rights, if any, DE has in the song and video.

Advise Doofenshmirtz Engineering on an appropriate IP strategy in relation to the these various products and media. Discuss any IP-related risks of bringing them to market, and any steps the company should take to reduce those risks. Also discuss any IP rights that company can obtain (including any necessary steps it needs to take), and whether they will be useful in making further development and commercialization worthwhile. In view of these IP risks and rights, which projects should the company proceed with?

You can limit your answer to the material we have discussed on undeveloped ideas, trade secrets, utility patents, and the copyrightability portion of copyright. Do not discuss copyright infringement.