

Intellectual Property Fall 2025 Midterm Exam

This assignment consists of **one question** and **six pages**, including this cover page. Your answer has a limit of **2,000 words**, which will be strictly enforced. It is due by **11:59 PM on Monday, October 27**.

Submit your answer by uploading a PDF to the Midterm assignment on Canvas. Because the exam is blind-graded, keep your **name and other identifying information** out of the PDF you submit.

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 Wednesday, October 22.

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 Feist*") where appropriate. I include **spelling, grammar, clarity, and organization** in my grading, but unless they interfere with my ability to understand the substance of your analysis, you are better off focusing your time on the substance of your answer. I appreciate the use of 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.

You can focus on the IP issues. If you need to make assumptions about other areas of law, it is fine to write “I assume that ...” rather than giving a detailed explanation. **You can limit your answer to the material from the first three units: Ideas and Trade Secret, Utility Patent, and Copyright. You do not need to discuss anything covered in class on or after October 20. Please especially disregard anything you may know about plant patents or plant variety protections.**

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. For example, “I input the question to Claude to generate ideas. I used ChatGPT to help clean up the answer.” If you did not use any generative-AI tools, you can write “I did not use generative-AI tools in writing this answer,” or words to that effect. (This appendix does not count against the word limit.)
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. **YOU HAVE BEEN WARNED.**

Don't Feed the Patents

Your client, Seymour Moranis, is a plant biologist who is employed at Mushnik's Flowers, a large commercial nursery headquartered in New York that provides decorative and functional plants to the entertainment and landscaping industries. Moranis's job responsibilities include breeding plant strains that are hardier and more attractive; optimizing growing conditions; and working with customers to identify plants that Mushnik should grow.



Seymour Moranis and Vincent Mushnik with a Begonia etheldreda plant

Moranis and his spouse, Audrey Greene, went on a vacation trip to Cleveland to view total solar eclipse on April 8, 2024. Shortly after the eclipse, Greene noticed a remarkably large green-and-orange plant with pretty red flowers growing by the side of the field they were in. Moranis was intrigued, so he took several cuttings from the plant.

When he returned to work the next week, Moranis used the microscopes, centrifuges, and genetic sequencer in the Mushnik offices to ana-

lyze the cuttings. He identified them as a previously unknown species of begonia, and named it *Begonia etheldreda* in Greene's honor. ["Etheldreda" is one of the Latin forms of "Æðelpryð," the Old English name from which "Audrey" derives.] He took the largest cuttings home with him and planted them in his small backyard greenhouse. Over the next few months, Moranis adjusted the lighting, temperature and soil conditions in the hopes of producing a commercially viable plant, but without success. Then, on September 2, Moranis accidentally cut his finger, releasing several drops of blood onto one of the plants. Within hours, it had blossomed into a beautiful display of flowers. Further experiments over the next few weeks confirmed that small quantities of human blood consistently caused a mature *B. etheldreda* plant to blossom an. Moranis has continued to experiment and study the phenomenon, but has not yet been able to identify the specific biological mechanism.

Moranis was eager to see whether the public agreed with him and Audrey that *B. etheldreda* was an appealing flower. Starting on October 10, he approached several local businesses, offering to let them display his flowers for free, as long as they promised to tell him whether any customers commented on them. A local dentist, Orin Scrivello, agreed, and Moranis placed three *B. etheldreda* plants in pots in Scrivello's waiting room on November 8. While no one else was looking, Moranis placed a few drops of blood on each plant.

Moranis heard nothing further about the plants until December 2, when he received a phone call from Patrick Belushi at World Botanical Enterprises, another commercial nursery. Belushi explained that his friend Bill Denton had seen the plants in Scrivello's office in mid-November and thought they were striking. Belushi had asked Scrivello about them, and Scrivello gave him Moranis's name and number. Belushi said that WBE would be interested in commercializing the *B. etheldreda* and wanted to discuss terms. They negotiated an exclusive option agreement, under which WBE provided \$10,000 in development funding in exchange for an agreement that Moranis would not license "the plant species known as *Begonia etheldreda* or any associated intellectual property rights, now in existence or later acquired" to anyone but WBE for a period of one year. The agreement was signed by Moranis and WBE on January 12, 2025.

On February 22, Scrivello called Moranis to say that one of his dental technicians, Crystal Margolyes, had developed a serious rash after handling one of the plants. Apparently, *B. etheldreda* produces a chemical known as Ashman-Menken enzyme (or AME) that causes severe allergic reactions in about 25% of people (not including Moranis or Greene). Moranis asked Scrivello if there were any other customer reactions, and Scrivello said, no, this was the first time anyone had remarked on the plants.

In March and April, Moranis read numerous books and articles in Mushnik's physical library. One book in particular—*Plant Physiology Desk Reference Volume 3: O to Z*—was so useful that he photocopied 200 pages from it and brought the copies home with him. Another book he wanted to consult—*Begonia Biology*—wasn't in the Mushnik library, was out of print, and cost \$250 and up on online used book stores. Moranis downloaded a PDF copy from Skid Row, a "shadow library" whose users upload scanned copies of millions of books for free download. He consulted both books extensively while conducting his research on the *B. etheldreda*.

On July 30, Moranis saw that a draft of Mushnik's spring 2026 catalog advertised a "blood begonia" with an elegant colored-pencil drawing of a plant that was clearly *B. etheldreda*. Moranis asked Vincent Mushnik, the CEO of Mushnik's Flowers, about the illustration. Mushnik replied that one of the other staff biologists had found an unfamiliar cutting in the lab facilities and had planted it out of curiosity. Mushnik had admired the plant's appearance when it had grown and named it "blood begonia" after its bright-red leaves. Ronette Stubbs, a freelance illustrator who draws plants for Mushnik's catalog at a flat rate of \$100 per illustration, had made the drawing.

Moranis made two printouts of the draft catalog. He sent one to Belushi at WBE on August 3 with the blood begonia circled. On August 5, Belushi sent Moranis an email acknowledging receipt of the catalog, and saying "Thanks. Let me look into this." He has not followed up since then, and has not replied to any of Moranis's emails seeking to discuss licensing terms. On September 28, however, he received an email from WBE's marketing department, sent to everyone on its publicity list, announcing "COMING SOON: OUR SPRING 2026 CATALOG." The catalog images in

the email were blurry, but one of the table of contents showed that WBE had switched from its previous arrangement—organizing plants by families (flowers, fruits, vegetables)—to an alphabetical arrangement by common biological name (e.g., so “apricots” came before “asters”), the same arrangement, with mostly the same common biological names used in Mushnik’s catalogs (including both the spring 2026 catalog and previous already published ones).

Moranis gave the other printout, also with the blood begonia illustration circled, to Chiffon Corman, a long-time artist friend of his. He asked Corman to “make something beautiful for Audrey.” Corman executed a 2’ by 3’ oil painting of the drawing, replacing one of the blossoms with Greene’s face. Moranis was delighted, and gave it to Greene for her birthday on August 14.

Greene was especially happy with the gift because she is a talented artist herself. Many evenings while Moranis was conducting experiments, Greene sat nearby with a sketchpad, drawing the increasingly enormous *B. etheldreda* plants. With Greene’s permission, Moranis has pasted many of her smaller sketches into his laboratory notebook, where he records his experiments and their results, along with his speculations about the plant’s biology and poems he has written about it. Greene has suggested displaying the notebook at an upcoming gallery exhibition.

Suddenly, Seymour was concerned. He came to you on October 15, 2025 for advice. The end of his one-year agreement with WBE is coming up, and Mushnik’s spring 2026 catalog will go out to customers shortly after New Year’s. Moranis still has not nailed down the mechanism by which blood causes *B. etheldreda* to blossom more fully, but he thinks he is getting close, and it has something to do with the iron content of blood.

Advise Moranis on his legal and strategic options. Your memo to him should discuss the following issues, but you are free to organize it however you think best.

- (1) *What intellectual-property rights does Moranis have (or could have), and are there any steps he should take to secure those rights?*
- (2) *Has Moranis infringed on anyone else’s intellectual-property rights, has anyone else infringed on his, and what should he do about it?*
- (3) *What are Moranis’s best options for commercializing his rights?*