

**Final Examination  
Patent Litigation  
Professors Beck and Morrill  
Spring 2008**

1. You have two (2) hours to complete this exam.
2. This is an open book, open materials exam.
3. This exam consists of **five (5)** essay questions based on a common fact pattern, assigned points as indicated on the exam. Please write your response clearly in the blue books provided. Write on every other line to permit instructor comments.
4. Write your exam number on your exam envelope. Put the course number and exam # at the top of this page, each page of questions and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, scratch paper and this exam packet, to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

**GOOD LUCK!**

### Fact Pattern

John David Stanley Stanier worked in the movie production business and became aware of the high cost of assembling and controlling extras for crowd scenes. “Handling extras is like herding cats” he used to say. The studios had tried to cut the cost of extras by using two dimensional cardboard cutout figures, but these had many disadvantages: They were heavy, inflexible, difficult to transport, required large amounts of storage space and were not useful in wet or windy conditions. More importantly, cardboard figures were often obvious, since they reflected light differently than three dimensional figures, and if the scene called for shots from the side or rear of the figures, they had to be reconfigured.

Stanier came up with the idea of using inflatable mannequins similar to those used for modeling wearing apparel or as toys to give the impression of crowds in movies and videos. Stanier applied for and obtained the ‘538 patent, which contains the following claim and figure:

1. A method of using a plurality of inflatable life-sized humanoid figures for simulating a crowd of real people **seated in a stadium or auditorium style seating** and viewing a particular event in a foreground scene, **at a cost affordable to the average movie producer**, the simulated **stadium or auditorium** crowd for use in a background scene captured on a visual recording media, comprising:
  - a. providing said plurality of inflatable life-sized humanoid figures at said background scene,
  - b. inflating said plurality of inflatable life-sized humanoid figures at said background scene,
  - c. placing said inflated plurality of inflatable life-sized humanoid figures **in said stadium or auditorium style seating** in said background scene, and
  - d. situating said inflated plurality of inflatable life-sized humanoid figures such that said inflated plurality of inflatable life-sized humanoid figures simulates said **stadium or auditorium** crowd of real people when visually recorded in a manner that does not capture a sharp image of the inflatable humanoid figures as compared to the foreground scene.

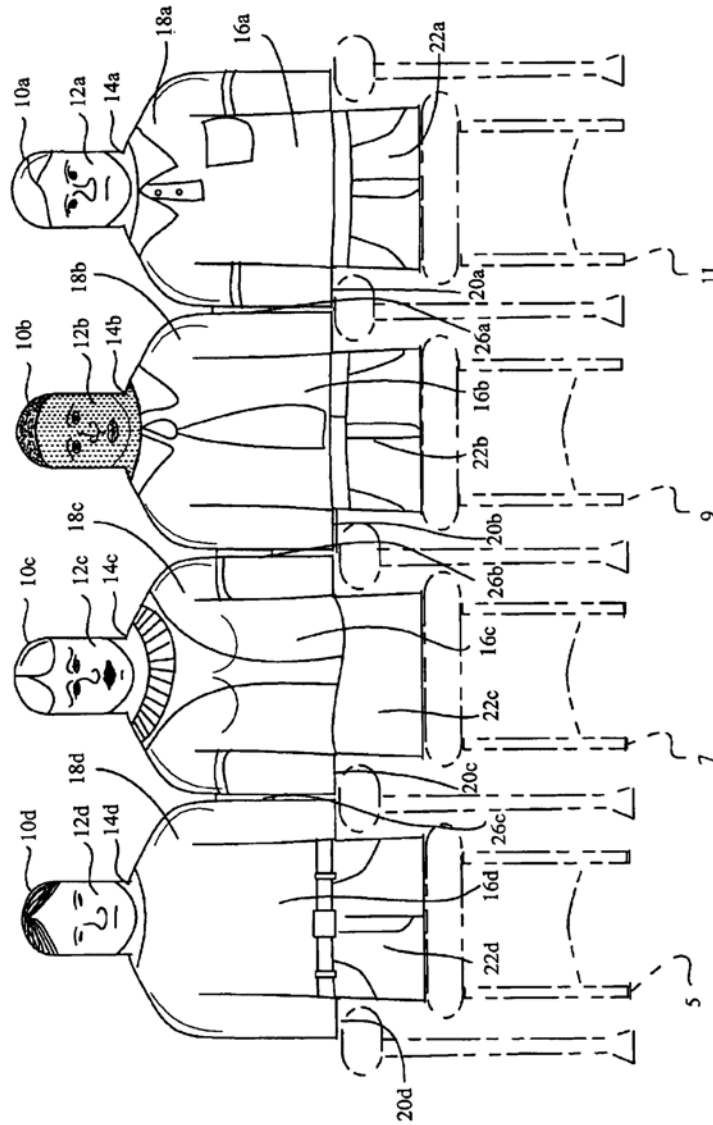


Fig. 1

The **boldface** material in claim 1 above indicates additions during prosecution. As originally filed, claim 1 read:

1. A method of using a plurality of inflatable life-sized humanoid figures for simulating a crowd of real people and viewing a particular event in a foreground scene, the simulated crowd for use in a background scene captured on a visual recording media, comprising:
  - a. providing said plurality of inflatable life-sized humanoid figures at said background scene,
  - b. inflating said plurality of inflatable life-sized humanoid figures at said background scene,
  - c. placing said inflated plurality of inflatable life-sized humanoid figures in said background scene, and
  - d. situating said inflated plurality of inflatable life-sized humanoid figures such that said inflated plurality of inflatable life-sized humanoid figures simulates said crowd of real people when visually recorded in a manner that does not capture a sharp image of the inflatable humanoid figures as compared to the foreground scene.

**The following are prior art to the '538 patent:**

1. The movie "Around the World in Eighty Ways" ("80 Ways"), which used inflatable dummies filmed in focus. The plot of 80 Ways involved a doddering 90-year old man of failing eyesight taken by his two sons on a trip around the world, without ever leaving home, by the use of props, smells and sound effects, including inflated dummies to convince the weak-eyed old fellow that he was on an airplane or in the crowds of Las Vegas, Hawaii, Rome or Tokyo. Thus, from the viewpoint of the principal character of 80 Ways, but not from the viewpoint of the audience, the dummies simulated real people.
2. The movie "The Natural," which used cardboard cutouts to simulate a crowd at a baseball game, seated in "stadium-style seating" in the background, out of focus to conceal their true nature.
3. The movie "Legends of the Fall," which used inflatable dolls filmed out of focus to simulate dead or wounded World War I soldiers.
4. The movie "The Life and Death of Colonel Blimp," which showed a crowd of sitting soldiers, made of plaster, filmed so as to appear less sharp than the foreground figures.
5. The Movie "Safe-T-Man," which used an inflatable figure filmed out of focus to simulate a car passenger.

“80 Ways” and “The Natural” were cited to the examiner who allowed the ‘538 patent. “The Legends of the Fall” reference was discovered by the examiner who issued an office action, rejecting original claim 1 as anticipated by that reference. “Colonel Blimp” and “Saf-T-Man” were not cited either by Stanier or the examiner.

In response to the rejection, Stanier amended claim 1 as indicated in boldface on page 2 and told the examiner that the dummies used in “80 Ways” sought to achieve the opposite result from his claimed invention, since the movie viewer saw the inflatable dummies in focus and was not deceived. He also argued that the dolls in “Legends” did not show the stadium or auditorium aspects of his claimed invention. Amended claim 1 then issued.

Stanier has obtained statements from movie directors and producers concerning the use of his inflatable humanoids. The director of “Seabiscuit” said humanoids interspersed with real actors as used in his crowd scenes “had never been done before” and that “none of the earlier movie solutions to crowd scene problems was perfectly suited to the task of simulating a background crowd.” Another director said the dummies were “a revolutionary approach to the problem of crowd scenes.” A Hollywood producer said that Stanier’s invention “Will allow the making of an ‘Epic on a Shoestring.’”

Stanier formed Crowd In A Box Co., Inc. (“Crowd”) to rent inflatable humanoids to the studios and built a highly successful business. Crowd had no competition until The Inflatable Crowd Co., Inc. (“Inflatable”) entered the market. Joe Biggins, the president of Inflatable, is on record as stating that his use of inflatable dummies was a “new idea” and that he “can’t believe that no one thought of them before.”

Both Crowd and Inflatable have been highly successful in renting their inflatable dummies/humanoids. They normally charge \$1 per dummy per day. Crowd and Inflatable are the only companies in the inflatable dummy/humanoid rental business.

Inflatable recently supplied 5,000 inflatable dummies for ten days, at \$1 per day, to Cosmic Pictures for the movie “The View From The Stadium” in which they were filmed out of focus to simulate a stadium crowd. Joe Biggins, the president of Inflatable, testified that he did not know how the dummies would be used when he rented them for “The View From The Stadium,” although he was aware of the name of the movie and did provide the dummies to Cosmic at a local stadium. Cosmic handled inflation and placement of the dummies after they were provided by Inflatable at the stadium.

### Essay Questions

**Question 1 - 24 points.** Should Crowd sue Inflatable, Cosmic or both regarding the use of dummies in A View From The Stadium? Discuss both possible defendants, and whether there is a case for direct infringement, inducing infringement or contributory infringement against them.

**Question 2 - 24 points.** Do the prior art references render Claim 1 obvious? Give arguments on each side.

**Question 3 - 24 points.** The defendant(s) in the lawsuit argue that the reference to costs in the preamble is a limitation and that claim 1 is indefinite because of the reference to costs (“at a cost affordable to the average movie producer”). Give the arguments for and against whether the reference to costs is a limitation and whether it renders the claim indefinite.

**Question 4 - 18 points.** Stanier acknowledges that dummies are typically rented at \$1 per day. However, he claims that, had Inflatable not been in the business, he would have insisted on 0.5% of the gross profits on The View From The Stadium, which would have amounted to \$1 million, far more than the \$1 per day dummy rental. Since the cost of providing dummies for this job would have been only \$10,000, Stanier claims that his profits from a gross profits deal would have been \$990,000. Stanier admits that he has never before entered into a gross profits deal for inflatable humanoid rental, but claims that such deals would be normal if Inflatable would just respect his patent. Should Stanier recover his lost profits of \$990,000, or lost profits of some other amount? Give arguments for and against.

**Question 5 - 10 points.** Stanier testified that he sent his first letter bringing the ‘538 patent to the attention of Inflatable after The View From The Stadium was made. Joe Biggins admitted that he was aware of the ‘538 patent prior to the making of The View From The Stadium. Cosmic Pictures was at all times blissfully unaware of the ‘538 patent. How do these facts affect Crowd’s potential damages claim against each?

**END OF EXAM**