

**FINAL EXAMINATION
INTELLECTUAL PROPERTY LAW SURVEY
PROFESSORS BOB MORRILL AND WILLIAM GALLAGHER
FALL 2006**

1. You have three (3) hours to complete this exam.
2. This is an **open** book exam. You may use any written materials.
3. This exam consists of three (3) essay questions. You should outline your response to each question before writing the response. We recommend that you spend 15-20 minutes outlining each question before responding. There are 100 total points available for this exam, with each question having the following points:

Question 1: 33 points

Question 2: 40 points

Question 3: 27 points:

4. Please answer these questions in the blue books provided to you. Write only on the right hand side of the page (skipping a page each time) and double-space your work. Please write legibly.
5. Question 1 pertains to patent law. This question will be graded by Adjunct Professor Morrill. **YOU MUST ANSWER THE FIRST (PATENT) QUESTION IN A SEPARATE BLUE BOOK AND WRITE "PATENT QUESTION" ON THE BLUE BOOK COVER.** If you need more than one blue book to answer Question 1, each blue book you use must be labeled "Patent Question."
6. Write your **exam number** on your exam envelope. Put student exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number, Social Security Number, or in any other way identify yourself on any exam materials.
7. At the conclusion of the exam, return all exam materials to the exam 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!

QUESTION NO. 1: Patent Question. (33 points) (Please note that there are subparts to this question, with points indicated for each subpart).

Please be sure to read the Parts of the question at the end of the statement of facts before you respond.

Larry Nichols had been interested in puzzles since he was a child, when his mother gave him a number puzzle consisting of a two-dimensional square frame in which 15 numbered and interlocking smaller squares were fitted. One space was left free so the 15 squares could be slid about. The objective was to rearrange the numbered squares without removing them from the frame. This puzzle was invented by Noyes Chapman in 1880.



Chapman 1880 Sliding Number Puzzle

Larry had always felt that a three-dimensional version of the puzzle was possible and in 1957 it occurred to him that eight small cubes stacked in a 2x2x2 arrangement to form a large cube, with each of the 6 faces of the large cube being a distinguished by a different color, would work. Each of the eight smaller cubes could be rotated in sets of four around one of the three perpendicular axes and placed in a variety of arrangements.

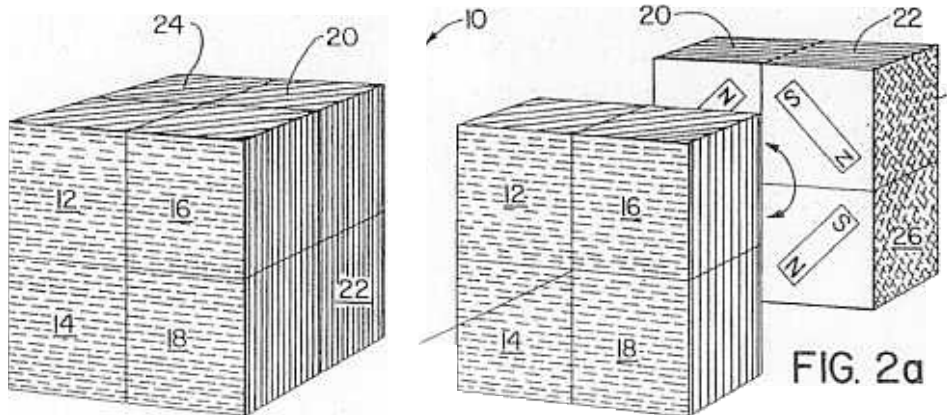


FIG. 1

Larry Nichols's Idea for a Three Dimensional Puzzle

Larry recognized that magnets could be used to hold the cubes together, but he had great difficulty in translating his idea into a working model. He worked on models of his idea for many years while he was a graduate student, but was unable to make a version that worked. Finally in 1968 he located some small, strong magnets and made a working wooden model of his puzzle in June, 1968.

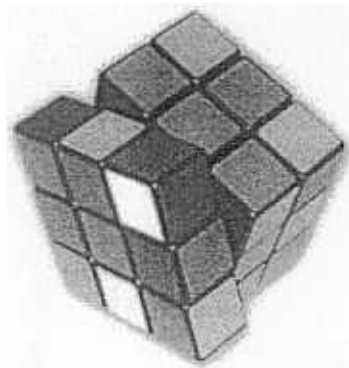
In July 1968 Dr. Ober, the president of Larry's employer, was in Larry's office, saw the model on his desk and began to play with it. Dr. Ober asked if he could buy one of the puzzles. Larry told him that it was not available commercially, but he could take it home to play with it. Dr. Ober did take the model home, and returned it in a week.

Larry filed a patent application on his puzzle on September 12, 1969 and the '201 patent issued to him on October 8, 1971. Claim 1 of the '201 covers any three dimensional cubic puzzle formed of small cubes which move in relation to each other, and is not limited to the use of magnets to hold the puzzles together.

Larry never attempted to commercialize his puzzle.

In February, 1981 Larry became aware of a puzzle made by the Ideal Corp called the Rubik's Cube, a 3x3x3 cube composed of smaller rotating cubes painted in six different colors. Larry contacted Ideal to inform them of the patent, and was told by Ideal's attorney that Ideal got the idea of the Rubik's Cube from one of its marketing agents who had seen Hungarian children playing with a traditional folk puzzle of this type during a trip to Hungary. The Hungarian folk puzzle has been used since at least 1850.

The agent brought one of the Hungarian puzzles back to the United States in 1978 and Ideal decided to take it to market. Ideal's Rubik Cube was a copy of the Hungarian folk toy, which Ideal had renamed "Rubik's Cube." The Rubik's Cube hit the stores in June, 1980 and immediately became a huge success, selling many million. There is no dispute that Larry's patent claims cover the Rubik's Cube.



The Rubik's Cube, a Version of a Traditional Hungarian Folk Puzzle

After being contacted by Larry, Ideal located the Gustafson '401 patent. The Gustafson patent was applied for in March, 1961 and issued in March, 1963. The Gustafson patent discloses a ball-shaped puzzle which has the markings of a globe. The Gustafson puzzle pieces can be "scrambled" in relationship to one another, and then reassembled as a proper globe, much the same as Larry's puzzle or the Rubik's cube. The only significant difference between the Gustafson puzzle and Larry's puzzle is that the Gustafson puzzle is round, while Larry's is square.

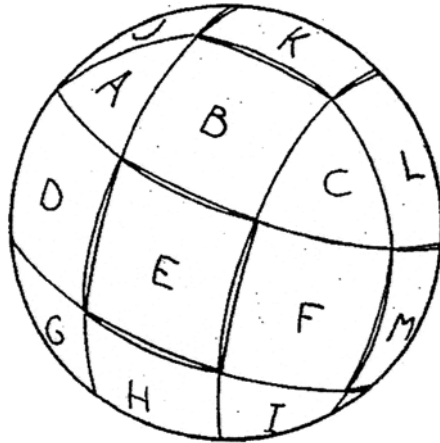


FIG. 1

Puzzle Described in Gustafson '401 Patent

Please answer the following Parts. You may use any of the facts stated above in your answer to each Part.

Part A (13 points)

Do the Chapman puzzle or the Gustafson puzzle, separately or together, make Larry's patent invalid as obvious under section 103? Please discuss and give reasons why or why not.

Part B (3 points)

Does the Hungarian folk art puzzle anticipate Larry's invention under section 102 (a) or (b)? Please discuss and give reasons why or why not.

Part C (3 points)

Does the use that Dr. Ober made of Larry's model puzzle raise any validity issue(s) for Larry under section 102 (a) or (b)? Please discuss and give reasons why or why not.

Part D (3 points)

If Ideal decides to continue selling its Rubik's Cube after its attorney's discussion with Larry, what steps, if any, should Ideal take to protect itself in the event of a future lawsuit?

Part E (11 points)

Larry decided to sue Ideal for infringing his patent, and at the end of the trial the jury found that Larry's patent was valid and infringed by Ideal's Rubik Cube. Will Larry be able to obtain a permanent injunction against Ideal? Why or why not?

END OF PATENT QUESTION

QUESTION NO. 2 (40 points)

Your client, Mobilgas Corporation (“MOBIL”), has asked you to determine whether it will likely be successful in a lawsuit against a new company called “PEGASUS CAR WASH”. MOBIL is in the business of providing gasoline and petroleum products nationwide (and worldwide). Since 1954, MOBIL has used as a trademark/service mark in connection with its various petroleum products and related services a logo consisting of a flying winged horse over the word “Mobilgas” (depicted below). MOBIL obtained a federal trademark registration for this logo in 1967 and has used this mark continuously nationwide since that time. The flying horse in the registered logo is not named, but MOBIL based the horse image on Pegasus, the flying winged horse of Greek mythology. MOBIL also believes that most consumers recognize the horse in its logo as representing the mythological Pegasus. MOBIL is one of the world’s leading petroleum products companies, and, since 1967, has spent more than \$50 million annually in the U.S. to advertise its products and services under its registered mark.



Recently, MOBIL learned from its consumer relations department that at least 16 customers in five different states have called MOBIL representatives to ask whether a new chain of car washes, doing business under the mark “PEGASUS CAR WASH”, is affiliated with MOBIL. The PEGASUS CAR WASH chain operates car washes in seven western states. It has been doing business using the word mark “PEGASUS CAR WASH” since 2001, although it has never applied for a federal registration for its word mark. MOBIL is worried that its rights are being infringed by the PEGASUS CAR WASH chain and has asked you to determine whether it would likely be successful if it brought claims against the PEGASUS CAR WASH Company for violating any and all of its applicable IP rights. What is your answer?

QUESTION NO. 3 (27 points)

Rome Hyatt (“Rome”), a celebrity socialite, was dancing at the “A-LIST CLUB” one evening. While improvising some dance moves, Rome recorded her dancing on her cell phone’s video recorder. The recording lasted 10 minutes, and it included several shots of Rome’s dance partner, actor Dean Dillard (“Dean”), taken when Rome turned the camera lens towards him once or twice during the recording. Unfortunately, Rome partied late into the evening and left her cell phone behind at the “A-LIST CLUB” when she departed.

Alan, the owner of the “A-LIST CLUB” found Rome’s camera, viewed the video dance sequence, and downloaded the entire recorded sequence to his laptop computer. He then returned the cell phone to Rome by taxi. The next day, Alan made a print of a single frame from the recorded dance sequence that depicted Rome and Dean dancing together. (It showed their faces only, since Rome was holding the cell phone camera at arm’s length as she captured the images at the time.) Alan sent a copy of this print to 20 friends by e-mail, inviting them to view the entire recorded dance sequence on a big-screen T.V. in an “invitation-only” showing at his club that evening. Because he is such a big fan of Rome, Alan also announced that all drinks purchased by anyone attending this event would be sold at half-price. Eight of the invitees attended the club to see the recording. One of the attendees told Rome about the event, and Rome became furious and threatened litigation. After making this threat, Rome also obtained a copyright registration for her video from the U.S. Copyright Office.

Alan has sought your legal advice to determine whether he might be liable for any intellectual property violations due to his use of Rome’s recording. What is your analysis?

END OF EXAM

HAPPY HOLIDAYS!