**FINAL EXAMINATION**
**INTRODUCTION TO INTELLECTUAL PROPERTY**
Paul Ohm
December 14, 2010

**Instructions:**

Please read these instructions carefully before proceeding.

1. The examination consists of three (3) pages, including this one. You will find three questions. Please make sure that your copy is complete and that you answer all three questions.

2. You have three hours (180 minutes) to complete the exam, and the exam is worth 180 total points. You should devote approximately one hour to each question. Each question is worth 60 points or one-third of the total score.

3. Answers will be graded based on their content, clarity of expression, and organization. I suggest that you spend time outlining your response before you start to write. Where information is not provided that would be relevant to the analysis, feel free to explain how different facts would lead to different outcomes.

4. Assume that all cases that were pending when we discussed them in class are still undecided. If any cases have been decided or statutes have been changed during the course of the semester, you are not responsible for knowing the final rule, result or reasoning, and you will gain nothing by talking about the new decision or statute.

5. Since this is a class about entertainment and invention, some of the fact patterns may be based on real creative content, technology, and products. You will not be rewarded or penalized for facts about the actual content, technology, and products that are not presented in the exam questions. Feel free to add these types of details if you think they improve the readability of your answer.

6. In answering these questions, you may consult any written materials you wish.

7. Please type your answers or write them neatly. Mark your answers with your exam number, not your name. If you are handwriting the exam, please write on only one side of each page.

8. Please take care not to reveal details about the exam with classmates who have not yet taken it. Some students have rescheduled the exam.

9. You must turn in these questions with your answers.

10. Good luck!
**PROBLEM ONE** (One Hour; 60 Points)

After you pass the bar exam, you open a solo law practice downtown. One day, a woman named Polly walks into your office, carrying a stack of dinner plates. Polly is an entrepreneur who owns a small company which designs and sells innovative plastic products. This dinner plate is the company’s latest creation, one Polly hopes will be a big seller.

The secret to the plates is in the stacking. When stacked, the plates lock to one another through an ingenious series of lips and catches that look merely decorative but actually provide a solid connection. “Think of the applications,” Polly brags, “from camping to cruise ships to houses with toddlers.”

Polly has two intellectual property questions about the plates. First, earlier this year, a man named Eric, the head designer of the plates, left Polly’s company to work for her company’s fiercest competitor. Polly worries that Eric will reveal the secret behind the inter-locking design to his new employer, and she has heard rumors that Eric’s new employer is about to release a stacking, locking plate similar to hers. Unfortunately, Eric never signed an employment contract. Polly wonders whether she might be able to get an injunction prohibiting Eric from sharing the secret design or an injunction prohibiting Eric’s employer from selling a competing product.

Second, Polly wonders whether the plates might qualify for a utility patent. When you ask her about prior art, she points to four things that might qualify: (1) Interlocs, a plastic brick toy for children which uses an almost identical locking mechanism as the plates; (2) stacking cups; (3) techniques used in the fabricated housing industry for joining massive, pre-fab rooms to one another; and (4) a recently-rediscovered but very old industry magazine article which suggests using the Interlocs mechanism to join frying pans together. None of your subsequent research turns up any additional relevant prior art.

Write a memo to Polly providing detailed answers to her questions.

**PROBLEM TWO** (One Hour; 60 Points)

Friend-o-rama is the most popular social networking website on the Internet, with more than 500 million users. On Friend-o-rama, users “friend” one another to mark social connections. Users can upload pictures or post status updates—short text posts typically describing an activity or merely sharing stray thoughts—to their Friend-o-rama profile pages. A user’s friends can see her photos and status updates but non-friends cannot.

The look-and-feel of Friend-o-rama’s website is, by now, instantly recognizable to millions of people. The top of every Friend-o-rama page contains a prominent red logo. The logo includes the word “friend-o-rama” in an unusual white font. The rest of a Friend-o-rama page is spare, with status updates and photos appearing amidst lots of white space. Some have described the site as having a “clean” appearance.

Recently, Donald, an out-of-work computer programmer and avid Friend-o-rama user who has called himself Friend-o-rama’s biggest fan created a website he calls “Lame-o-rama.” The point of Lame-o-rama is to let people share the dumbest, funniest postings they see on Friend-o-rama. People send Donald status updates, and Donald posts them for the world to see. Visitors to Lame-o-rama have no way of posting directly to the
site; only Donald can do that. Already, more than a thousand people have contributed to the site and hundreds of thousands of people visit Donald’s site daily. Very recently, Donald began running ads on Lame-o-rama, and he has started to receive a few thousand dollars each month in ad revenue.

Donald intentionally designed the Lame-o-rama site to look like Friend-o-rama. At the top of the home page is a logo that mimics Friend-o-rama’s logo. It has the same shape and size and uses the same unusual white font on a background colored the same shade of red, with the only difference being the word “lame” where “friend” appears. Like Friend-o-rama, Donald’s website embraces a spare look-and-feel with a clean appearance.

Friend-o-rama sues Donald in federal court alleging three causes of action: (1) copyright infringement; (2) trademark infringement; and (3) trademark dilution. You are the law clerk to the judge assigned the case.

The parties have submitted cross-motions for summary judgment. Write a memo to your judge, advising him how he should rule. Discuss all three causes of action and any defenses that might be relevant. Earlier in the litigation your judge ruled that Friend-o-rama possessed valid trademarks and/or trade dress in both the Friend-o-rama logo and website. You are asked NOT to discuss trademark or trade dress validity in your answer.

PROBLEM THREE (One Hour; 60 Points)

Should you be allowed to protect a patent using copyright law? In other words, will a court give the author of an issued patent a legal remedy to prevent another person from infringing the copyright in that written document? To help you answer this problem, you may want to address three separate sets of questions: First, who would want to enforce a copyright in a patent, against whom, and for what reasons? Second, focus on the specifics of copyright doctrine: what copyright rules might a court consider as it tries to answer this question? Third, and most importantly, what are the policy arguments for or against this use of copyright? As you answer these questions, be sure to state a clear conclusion to the original question—should you be allowed to protect a patent using copyright law?—and defend it.