Patent Law
Spring 2014 – Michael Risch
Final Exam

This is a take-home exam. You have eight (8) hours from the time you download the exam to complete and upload the answer. If you experience technical difficulties, please follow registrar office directions or contact the registrar. I recommend that you do not download the exam at a time when the due time will be outside of business hours of the law school.

You may use any written materials you desire for the exam, but you may not receive help from any person. Note that the exam will be held during the first week, but there may be make-up exam days. You must be careful not to disclose any details of the exam to your classmates, or discuss any aspect of the exam (or your answer!) until after I post a Blackboard announcement notifying you that you may do so. Page two of this exam is a confirmation that you understand this – please print, sign, and turn in to Mira Baric at some point before May 10.

Make sure that your exam number appears on each page, which is most easily done with a header or footer.

THIS EXAM INCLUDES A STRICT WORD LIMIT OF 4200 WORDS, which is approximately 13-15 pages of a proportionally-spaced font. I am grading each exam all at once, so feel free to refer to a prior answer if relevant. NOTE: You do not have to use all of the words available – the questions can be answered in less space than allotted.

Do not rely on page counts; you should count words using your word processor's "properties" menu item or in the bottom bar of your word processor. You may divide the word limit among the different questions however you wish. **Note, though, that I will stop reading after the word limit is reached**.

Your exam must be typed, double spaced, in legible font, and on 8.5 x 11 paper size. Please begin the answer to each question at the top of a new page.

Patent Law Final Exam, Spring 2014.

I _____, confirm that I abided by the instructions of this exam and have obeyed and will obey the Villanova University School of Law Code of Conduct with respect to the above exam, and that I have not discussed and will not discuss any part of the exam, its contents, or my answer with any of my classmates until after I am notified that I may do so.

Dated:_____ Signed: _____

___ Initial here if Prof. Risch may publicly post some or all of your answer (without your name associated with it)

Please return to Mira Baric in Room 260 by 5PM on May 10, 2014. I cannot give you a grade without it.

Patent Law Final Exam
Spring 2014

The questions are weighted as follows: Question 1, 56 points, Question 2, 26 points, Question 3, 8 points, and Question 4, 10 points for a total of 100. If any of your answers depend on facts not stated in the problem, feel free to identify which facts would be helpful, and how they would affect resolution of the issue. You may refer to answers to prior questions. Remember your word limit. **I WILL STOP READING WHEN I REACH THE LIMIT**.

ALL PEOPLE, WEBSITES, AND EVENTS ARE FICTIONAL, EXCEPT THOSE THAT ARE REAL, BUT EVEN THEN DO NOT LOOK OUTSIDE THE FACT PATTERN GIVEN. DO NOT RELY ON ANY CASES, STATUTES, CLAIMS OR OTHER ARGUMENTS THAT ARE NOT BASED ON ASSIGNED READINGS OR CLASS DISCUSSION – YOU DO NOT NEED TO DO RESEARCH TO COMPLETE THIS EXAM.

DO NOT ASSUME THERE IS ANY PRIOR ART OTHER THAN THAT DISCLOSED (IF ANY) IN THIS EXAM.

Pat Holder

Patent "Pat" Holder is an audiophile of sorts. Pat enjoys listening to music on a mobile device through small earbuds. But those darn earphone cables keep getting tangled.

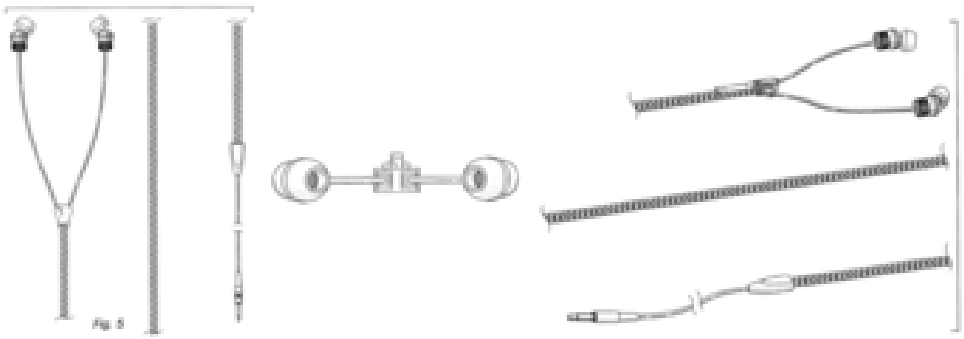
On July 1, 2008, Helpful Friend told Pat about a cool product she saw in France in 2007. They were zippered shoelaces. Rather than tying shoes together, the shoes would be held shut by running a zipper down a shoelace. Helpful Friend didn't have a picture of them, but described them relatively well.

That gave Pat an idea – why not use a zipper to keep the headphone wires together? The zipper could be lowered to spread the earbuds apart, but then raised to put the wires together when the earphones were not in use. Pat was pleased at the idea, but put it on the back burner when Pat returned to a full time job.

Only July 1, 2009, Pat picked up the idea again and started working on prototypes. Three months later, on Oct. 1, 2009, Pat had a working prototype.

The Patent

On Jan 1, 2010, Pat filed for a patent. Key drawings, the specification, and two claims are below. The patent application published after 18 months and the '123 patent issued on June 1, 2013.



The figures depict a preferred zipper earphone cable assembly comprising first and second cables that include means for releasable attachment with one another. Each cable can be operably coupled to an earphone at a first end and a headphone jack suitable for connection to an audio playing device at the other end. The head phone jack can be any suitable jack including a 6.35 mm jack, 3.5 mm miniature jack, or a 2.5 mm subminiature jack, for example.

More specifically, each of the two cables can include an outer layer or over-mold that is made of rubber or other flexible material which can be incorporated using any suitable method including cast or injection molding, for example. The over-mold makes it simpler for manufacturing the assemblies herein as it can easily encapsulate the wires. Other suitable flexible materials for the over-mold include fabric, plastic, and foam. The headphone wires operably couple a jack to the earphones such that audio can be transmitted. A majority, but not the entire length of the cables can include means for releasable attachment together, such as a zipper.

According to additional embodiments, the cable management systems herein are not necessarily used with earphone wires and can be used to prevent entanglement of additional type of cables. These

assemblies are useful to prevent entanglement of speaker wires, A/V wires, gaming wires, computer wires, and the like.

I claim:
1. A cable assembly comprising:
a first electrical wire;
a second electrical wire;
a thermo-resistant material that is molded around the first electrical wire and around the second electrical wire; [EXAM NOTE: that is, the shielding around the wires – usually rubber. Don't worry about "thermo-resistant" properties; you only need to know that the electrical wires (which are usually metal) are covered with something, and the zipper teeth attach to that, rather than the electrical wires themselves]
zipper teeth that are molded to the thermo-resistant material of the first electrical wire and the second electrical wire; and
the zipper teeth molded to the first electrical wire being releasably attached to the zipper teeth molded to the second electrical wire.

2. The cable assembly of claim 1, wherein:
the cable assembly is a headphone assembly and the first and second wires are configured to transmit audio sound from a jack to headphones.

The Zippered Jumper Cables

Meanwhile, Another Inventor ("AI") was working on an invention: zippered jumper cables (for car batteries). On June 15, 2009, AI had a great idea for managing jumper cables – put zipper teeth on them and put them together. It was a bit difficult to do, because jumper cables are thick electrical wires with thick rubber shielding. Working diligently, however, AI completed a prototype by Sept. 1, 2009. The prototype had zippered teeth on each side that could be connected by pulling a central "pull" like any zipper. But the ends were not earphones – they were alligator clips for car batteries.

AI filed for a U.S. patent on Dec. 1, 2009, and the application published 18 months later. However, AI was unable to raise funds to manufacture the jumper cables, and had to abandon the patent application.

The Zippered Speakers

In July of 2013, Big Stereo ("BS") released a new product: ZipSpeakers. On one end were full size speakers (they wouldn't fit in your ears). This end of the shielded electrical wires connected directly to the speakers and could not be disconnected without

disassembling the speaker. The wires could be zippered together by a set of metal zipper teeth connected to rubber shielding.

ZipSpeakers offered two choices for the other end. The first choice connected two plugs (+ and -) to put into the stereo to the end of the two shielded wires. The second choice contained no plug or jack, but instead removed some of the shielding to expose the electrical wires that could connect to metal speaker clamps in the back of a stereo. Pictures of both end choices are below (but without the zipper). The plugs are not the same as the jacks described in the patent specification, and Big Stereo offers no option for headphone jacks.

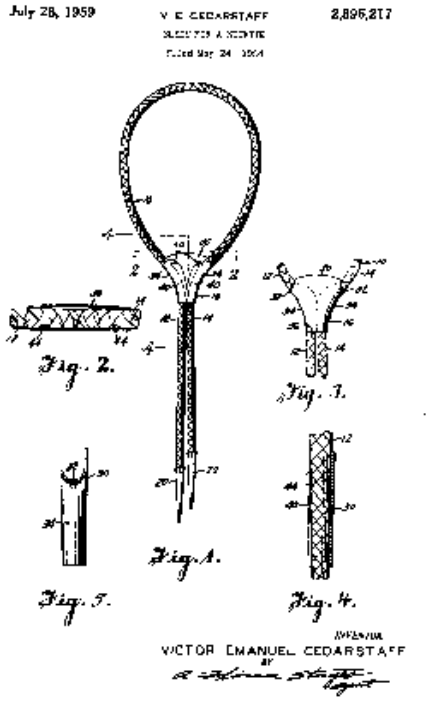
On Jan. 1, 2014, Pat sued Big Stereo for infringement of the '123 patent.

Prior Art

In preparing the case, Big Stereo found two pieces of prior art.

First, Big Stereo found a Dec. 1, 2008, French magazine ad showing a picture of the zipper shoelaces. It simply shows a picture of two shoelaces with teeth, half zipped together and said (translated from the French): "Never tangle your shoelaces again."

Second, Big Stereo found a patent claiming a zippered necktie from 1954. The drawings below show teeth, when in the zippered position, holding a "bolo" style necktie in place.



QUESTIONS:

Q1: You are counsel for Pat Holder. Please draft a memo describing the challenges to the validity of the '123 Patent that Holder might see, and the responses Holder has to such challenges. (56 points)

Q2: You are counsel for Big Stereo. Please draft a memo describing the infringement claims Big Stereo will likely see, and the responses Big Stereo has to such claims. There is no need to address contributory liability. (26 points)

Q3: Assume that many users put a headphone jack on to the zippered speaker using a simple converter that can be purchased in any electronics store (picture below). Are users liable for infringement? Assuming so, is Big Stereo's liable for such infringement? Answer in six sentences or less. (8 points)

Q4: Assume for a moment that Pat filed on December 1, 2013, after the AIA first-to-file provisions were in effect. How might the analysis of the validity of the '123 Patent change at all? Is the conclusion any different? Answer in ten sentences or less. (10 points)