

Exam Number: _____

**VILLANOVA UNIVERSITY SCHOOL OF
LAW**

**Patent Law
Risch
Spring 2016**

Final Exam

Exam Number: _____

**VILLANOVA SCHOOL OF LAW
EXAMINATION IN PATENT LAW
8 HOURS**

Professor Risch

Spring 2016

INSTRUCTIONS (READ THEM ALL)

1. **Materials Permitted:** This is an OPEN book exam, with OPEN HARD DRIVE/OPEN NETWORK. **You may not receive help from any person.**
2. This exam consists of 8 pages, including the cover page. Please check to be sure your exam is complete and contains all pages.
3. Time allotted for the entire examination is 8 hours. This is a take-home exam. Thus, 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.
4. 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.
5. **Note that the exam will be held until the 3L cutoff, 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.**
6. **Page three of this exam is a confirmation that you understand this – please print, sign, and turn in to Mira Baric at some point before May 9.**
7. **THIS EXAM INCLUDES A STRICT WORD LIMIT OF 4200 WORDS.** 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. **I will stop reading after the word limit is reached.**
8. 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.
9. Your exam must be typed, double spaced, in legible font, and on 8.5 x 11 paper size.
10. Use **only** your exam number. You may not use your name or anything else that might identify you on these materials, so check your document properties. You may not identify yourself in any way to the professor as the author of an exam until the grades are published. Make sure that your exam number appears on each page, which is most easily done with a header or footer.

Have a great summer!

Patent Law Final Exam, Spring 2016.

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) to aid future students

Please return to Mira Baric in Room 260 by 5PM on May 9, 2016. I cannot give you a grade without it.

Patent Law Final Exam
Spring 2016

The questions are weighted as follows: Question 1, 60 points, Question 2, 27 points, Question 3, 6 points, and Question 4, 7 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.**

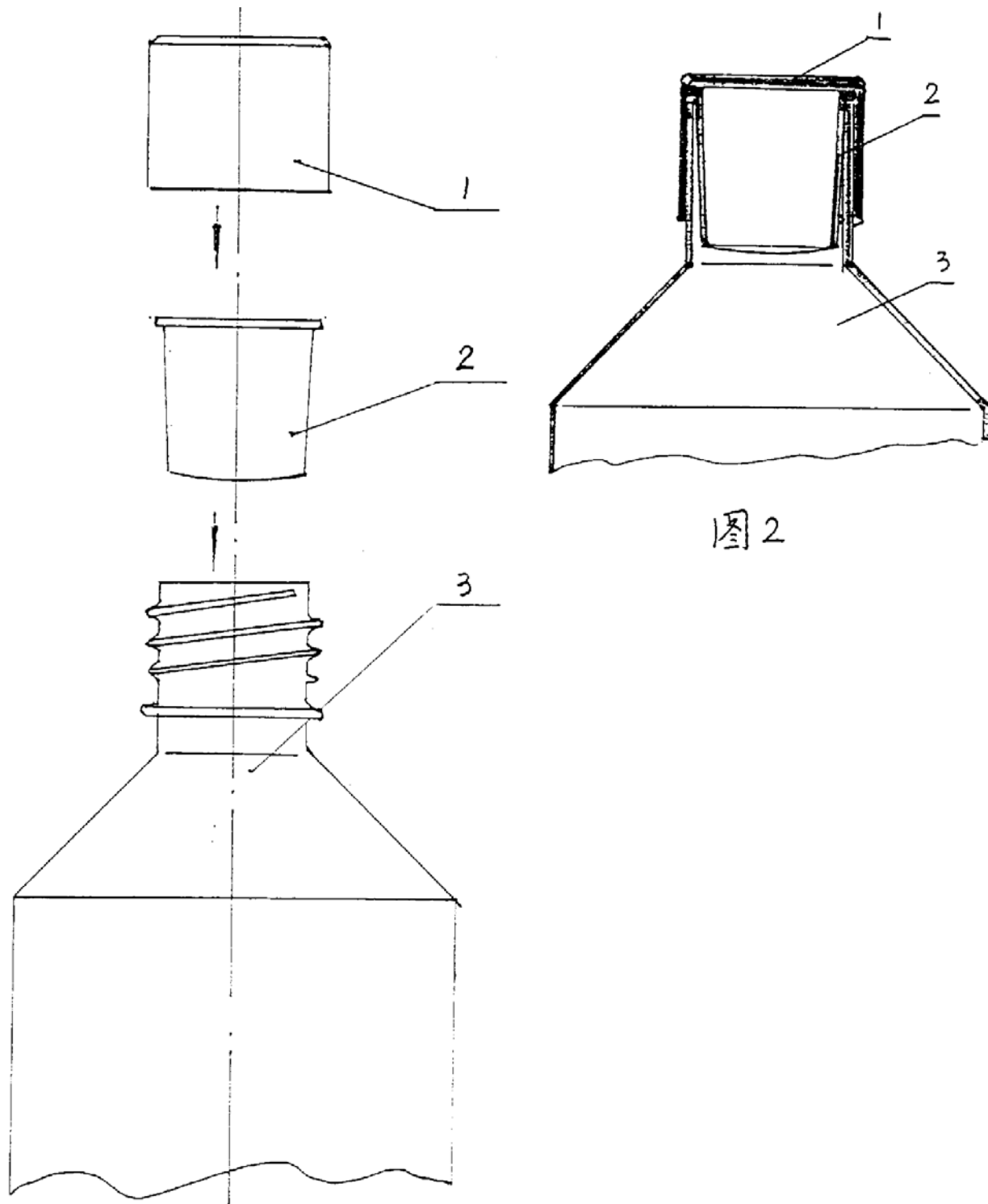
ALL PEOPLE, WEBSITES, AND EVENTS ARE FICTIONAL, EXCEPT THOSE THAT ARE REAL, BUT EVEN THEN DO NOT LOOK OUTSIDE THE FACT PATTERN GIVEN. DO NOT RELY ON ANY CASES, STATUTES, CLAIMS OR OTHER ARGUMENTS THAT ARE NOT BASED ON ASSIGNED READINGS OR CLASS DISCUSSION – YOU DO NOT NEED TO DO RESEARCH TO COMPLETE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

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

Pat Holder

Patent “Pat” Holder loves water. Pat drinks what seems like gallons a day. But the water is so dull and flavorless. So Pat likes to add things to the water, like fruit, Kool-aid powder, and other additives. On Jan. 1, 2008, while fumbling around for a piece of fruit on a long bike ride, Pat had an inspiration. Wouldn’t it be great to carry the fruit and the water in one bottle?

Pat went home and worked on a design, and finally created a prototype on June 1, 2008. The prototype involved an insert into a traditional screw-top water bottle. A drawing of the bottle is below.



Pat discovered that this had some unexpected benefits. First, it kept fruit fresher because the bottle could be sealed. Second, powders were easy to deliver from the small cup (as opposed to from a scoop or plastic bag that was carried separately).

Pat made a reusable insert and used it in water bottles purchased from the grocery store. That is, Pat bought plastic bottles, opened it, put the fruit or powder in the insert, put the insert in the bottle, and then reclosed the bottle. However, Pat always envisioned that the insert would be sold inside new, sealed bottles with fruit already in it. Pat planned to call it "Fruit Water."

Pat continued to use the homemade setup for a few months. During this time, several people saw Pat removing the insert and pouring Kool-aid or squeezing fruit. A couple even asked Pat about it, and Pat showed them how the invention worked.

Pat eventually filed for a patent on Jan. 1, 2010, which was granted on Dec. 31, 2011 (the '123 patent).

The text of the patent is below (and the drawing above was included as well):

I have invented an improved water bottle. A problem in the prior art is the storage and movement of additives to drinks. One solution is to store the additive (such as fruit or flavored powder) in a separate container. This invention solves the problems of the prior art by combining the additive with the liquid carrier.

The invention includes a bottle for holding liquid and an insert to hold the additional materials. One embodiment is depicted in the drawing. The user can remove the insert and add its contents to the liquid. Unexpected benefits of the invention include keeping the additive fresh and easily adding the contents to the liquid.

I claim:

1. A bottle for fluids comprising:

A vessel for liquid;

An insert sized to fit within the opening of the vessel, but not fall within it; and

A cap that covers both the insert and vessel

2. A method of delivering liquids comprising:

Placing liquid in a vessel;

Placing a solid edible in an insert sized to fit within the opening of the vessel, but not fall within it; and

Placing a cap on the vessel.

However, Pat had trouble figuring out how to preserve fruit inside the insert (that is, the seal was insufficient to keep fruit fresh for long periods), and so Pat never sold a product.

Dannon

Dannon yogurt has developed a way to distribute mix-ins with its yogurt. The additive (for example, granola) is distributed in a lid attached to the top of a yogurt container. A picture of the product is below.



Dannon began selling the yogurt in England on July 1, 2007. Dannon began advertising the product in the U.S. on May 1, 2008, took preorders from grocery stores on Dec. 1, 2008, and the product hit supermarket shelves by Feb 1, 2009.

Snackeez

On July 1, 2010, Novelty Brands, Inc. (NBI), released its product Snackeez. The product is a cup that holds snacks in an insert and a drink in the bottom. A straw is inserted for sipping, though the insert may be removed for drinking directly from the cup. Pictures of the product are below.



The product had been in development since May 1, 2008. A prototype was completed on July 1, 2009. Snackeez filed for a patent on September 1, 2009, which was granted on Dec. 31, 2012 (the '789 patent).

On Jan. 1, 2013, Pat sues Snackeez for patent infringement.

ASSUME THAT THE 1952 ACT APPLIES UNLESS THE QUESTION STATES OTHERWISE

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. (60 points)

Q2: You are counsel for Novelty Brands, Inc. Please draft a memo describing the infringement claims by Pat NBI will likely see on the Snackeez, and the responses NBI has to such claims. There is no need to address liability for contributory or induced infringement (see Q3). There is no need to address any defense of invalidity from Q1. (27 points)

Q3: Pat is also considering a claim for infringement against NBI due to infringement by NBI's customers (that is, users of the Snackeez cup). On what basis might such a claim be made and what are the merits? Answer in ten sentences or less. (6 points)

Q4: Assume for a moment that the AIA first-to-file provisions were in effect during all of the relevant times described above (e.g. add 10 years to each date). How might the analysis of the validity of the '123 Patent change at all? Answer in seven sentences or less. (7 points)