WRITE YOUR EXAM ID NUMBER HERE:

Intellectual Property

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ESSAY ISSUE SPOTTER

30/45 FORMAT PRACTICE FINAL ESSAY EXAM

Pulling Polymers

PRACTICE EXAM NO. 2 FROM "BAD DAYS FOR GOOD CHEER"

GENERAL INSTRUCTIONS:

1. All exam materials (including this booklet and your response) must be turned in at the end of the period. **You will not receive credit unless you return this booklet with your exam ID number written in the box above**.
2. Do not turn the page until instructed to begin.
3. Assume that today's date is the regularly scheduled date for the exam administration.
4. You may write anywhere on the examination materials — e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
5. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
6. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing materials other than your own.
7. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
8. Base your exam answer on the general state of the common law and typical statutory law in the United States, including all rules, procedures, and cases as presented in class, as well as, where appropriate, the theory and history discussed in class, plus any hypothetical laws presented in the facts.

SPECIFIC INSTRUCTIONS FOR ESSAY:

9. You have a total of 1 hour 15 minutes.
10. 30-MINUTE RO PERIOD: The first 30 minutes is a reading-outlining period (RO Period). This is your time to carefully read the exam booklet (that is, the facts and the question or questions), to take notes, to reference your outlines or books, and to outline your response on scratch paper. **During the 30-minute RO Period you may not begin recording the response upon which you will be graded.** That is, if you are taking the exam on computer, you may not type any characters at all into the exam response file on your computer during the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a bluebook (that is, an exam-response booklet, sometimes labeled a "green book") during the RO Period.
11. 45-MINUTE EW PERIOD: **Next you will have a 45-minute exam-writing period (EW Period) during which you will write your response**. For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what is allowed during the RO Period (e.g., refer back to the exam booklet, reference your notes and books, etc., including notes you created during the RO Period).
12. It is appropriate, if you wish, to note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.
13. Within the confines of the questions you are asked, note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
14. Organization counts.
15. Read all exam questions before answering any of them — that way you can be sure to put all of your material in the right place.
16. Feel free to use abbreviations, but only if the meaning is entirely clear.
17. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please use a separate bluebook for each question.
18. **Computers:** Please clearly label each question in your answer.
19. This Part II of the exam is administered on an "open-book basis." You may use any notes and books you like. No electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.
20. This exam will be graded anonymously. You may not waive anonymity. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination ID number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.
21. Good luck!

Pulling Polymers

THE GOOD CHEER GREETING CARD COMPANY HAD FALLEN ON HARD TIMES LATELY. They had been taking a beating lately from arch rival card company Sapindale Sentiments. But a renewed spirit of optimism was taking hold at the firm.

Good Cheer hired a recent college grad – a whiz in chemistry named Carrie Carlyle – to engage in cutting-edge research. While there was skepticism within the company about Carrie's hire, she soon paid off with an exciting new discovery in polymer chemistry. Carrie was able to synthesize hypochromic hyperpolymers, a new kind of silicon-based (silane) polymer that demonstrated curious characteristics of light absorption and reflection linked to mechanical stresses. When hypochromic hyperpolymers are put under tension – that is, when they are pulled or stretched – they darken in color. This is a surprising result. It is common for colored plastics, such as acrylonitrile butadiene styrene, to whiten when deformed by bending or stretching. But darkening under tension had never been seen before. What's more, the darkening immediately reversed as soon as the hypochromic hyperpolymer was relaxed. It was a true breakthrough.

Of course, the Good Cheer wanted a way to use hypochromic hyperpolymer – which they soon dubbed "hylonex" – in a greeting card. They turned to senior designer Dieter Danvar. When he got the assignment, Dieter took a blank sketchbook to Carrie's office and collaborated with her. They soon hit upon what they thought would be the perfect use of hylonex – a get-well card that invited the recipient to "pull"; the pulling then causing text to appear on the inside of the card. This is how it worked: By extending the hypochromic hyperpolymers so that they reached across the fold in the greeting card, the opening of the card exerted tension on the hypochromic hyperpolymer materials, allowing words to appear where the hylonex material was exposed.

Once Dieter and Carrie worked up prototypes, they found that the hypochromic hyperpolymer fibers made the greeting card quite hard to open. But they just worked this effect into a gag. As the user opened the card (des. no. 6026-66), the hylonex fibers were stretched, causing first one line of text to appear ("C'mon, pull!"), and then, after more pulling, two more lines of text to appear ("We know you can pull through! / Get well soon!").

Good Cheer debuted the '66 design at the 70th Annual Greeting Card Association Convention. It was a huge hit. The card even won the Louie award (the Oscar of the greeting card industry) in the Get Well/Feel Better Above $3.50 category. With all the buzz, Good Cheer was able to nab pre-orders for 2 million units. There was controversy, however, when a Sapindale regional sales manager confronted Carrie and Dieter and accused them of plagiarism. It turns out that the '66 card was similar to a card made by Sapindale Sentiments a few years earlier, design no. S5S-55. Neither Carrie nor Dieter had copied it. But once she was shown the '55 design, Carrie realized that she had, indeed, seen it a few years ago. All the same, she hadn't been thinking about it when she was collaborating with Dieter on the '66 card. Besides, the '55 card didn't

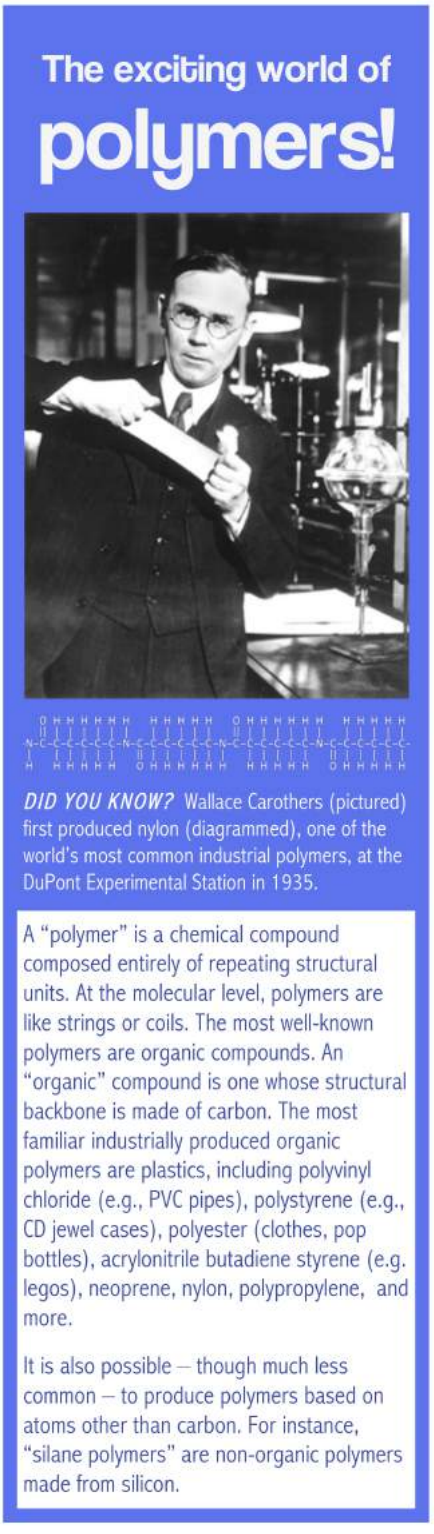

FIG. 2: Don't you want to be a way-cool scientist like Wallace Carothers?

have magically appearing words. All in all, she thought Sapindale's complaints seemed like petty jealousy.

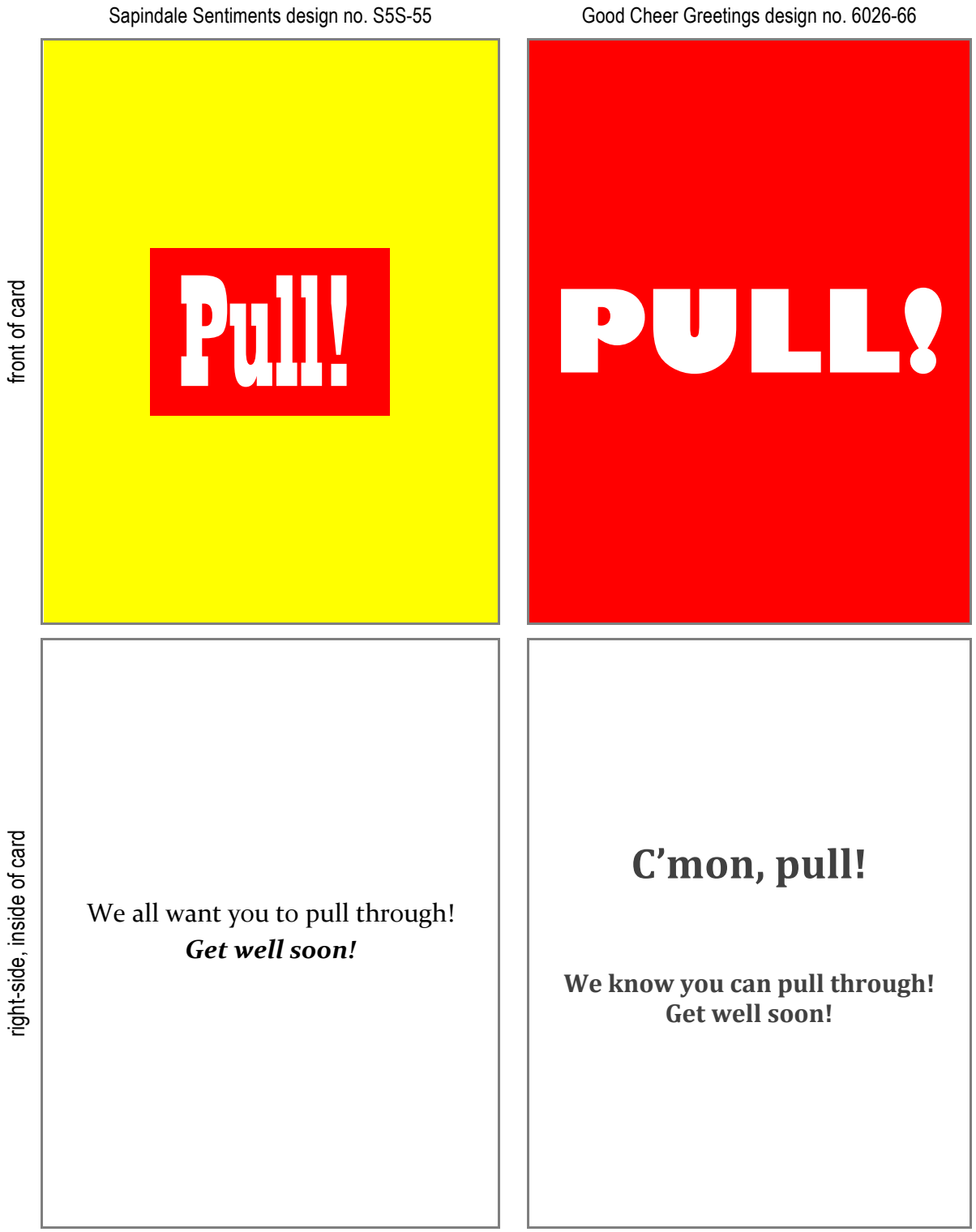

FIG. 3: A comparison of the two greetings cards. Sapindale's '55 card, on the left, has a yellow front with the word "Pull!" in white letters inside a red box. Good Cheer's '66 card, on the right, has a red front with the word "Pull!" in white letters. The inside of the '55 card is printed in black on white. Words inside the '66 card appear as dark-gray on white. The dimensions of both cards are industry standard A1 sizes.

Then things turned downright rude when Good Cheer received a cease-and-desist letter from Sapindale Sentiments. Well, it wasn't actually a letter. It was a card:

Card sent by Sapindale Sentiments

front of card

We've got the perfect suit for you!

right side, inside of card

A lawsuit!

Note inside card

Dear Good Cheer Greetings:

We write to inform you that you are in violation of several of Sapindale Sentiments' intellectual property rights, and we herewith demand compensation and an immediate cessation of wrongdoing.

In particular:

We demand that you immediately cease and desist all manufacture and distribution of the Good Cheer card no. 6026-66. To do otherwise constitutes copyright infringement of Sapindale Sentiments card design no. S5S-55.

What is more, the Good Cheer card no. 6026-66 infringes on the trademark rights of our S77-77 design, which is set to be first unveiled to the public next month.

We welcome the opportunity to exchange further greeting cards regarding this matter or to discuss it in person. It is our intent to demand a large damages payment and a stipulated injunction.

With best wishes,

S.S.

Sapindale Sentiments

FIG. 4: The cease-and-desist card sent by Sapindale Sentiments.

The management at Good Cheer Greetings is very upset. They are hoping you can shed some light on their legal position.

QUESTIONS

Provide analysis as follows. Keep your answer confined to United States law.

1. **Analyze utility patent issues.**
   Include answers to these questions: Can anything be patented here? If so, what?
2. **Analyze copyright issues regarding the '55 and '66 card designs.**
   Include answers to these questions: What aspects of Sapindale's '55 card are protectable with copyright? Could Good Cheer's '66 card infringe? What would be important to deciding such a claim?
3. **Analyze the trademark claim regarding the '77 card design.**
   Can Sapindale protect the '77 card design with trademark? (Note: You should be able to answer this question and provide a rationale with great brevity.)

Note that the questions will not be weighted. Instead, they are cumulative and will be graded together. So divide your time among the questions according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs. Also, do not repeat the exact same analysis over again in a different context (for example, by using copy and paste). If analysis of an issue is similar to but not exactly the same as what you have written previously, then I suggest you note your prior analysis and go on to discuss any differences. Finally, do not provide analysis you haven't been asked for; for instance, do not provide trademark analysis regarding the '55 card or copyright analysis regarding the '77 card.

Some suggested abbreviations for your answer:

55	Sapindale design no. S5S-55	DD	Dieter Danvar
66	Good Cheer design no. 6026-66	GG	Good Cheer Greeting Card Co.
77	Sapindale design no. S77-77	HH	hypochromic hyperpolymer (hylonex)
CC	Carrie Carlyle	SS	Sapindale Sentiments

CREDITS: (Note: These credits are not part of the hypothetical facts of the exam.) The "Good Cheer Greeting Card Co." is an homage to the television series *Leverage*, which features a fictional company of the same name in episode no. 56, "The Office Job," written by Jeremy Bernstein & Josh Schaer. Photo of Wallace Carothers in Fig. 2 by an unknown photographer. See http://en.wikipedia.org/wiki/File:Carothers.jpg. Photograph of man in Fig. 4 distributed by Cosmi Corp.