

考試科目	微積分 41912 4194A	所別	科技管理與 智慧財產研究所	考試時間	2月27日(六)第一節
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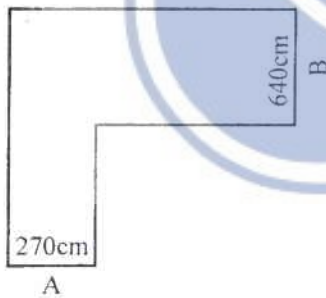
- 注意事項：** (1) 請將算式以及推導過程臚列清楚，若無顯示過程則不予計分。
 (2) 禁止使用計算機。
 (3) 配分權重如各題後所示，請注意應答時間分配。

1. 已知 $y^x = x^y$ ，試求 $\frac{dy}{dx}$ 。(10%)
2. 設 $y = \sin(a \sin^{-1} x)$ ，求證 $(1 - x^2)y'' - xy' + a^2y = 0$ 。(10%)
3. 已知 $y = f(x) = \frac{\ln(x^2)}{x^2}$ ，且 $x \neq 0$ ，試求 $y = f(x)$ 的垂直漸進線與水平漸進線。(15%)
4. 令 X 為連續隨機變數，其機率密度函數如下：

$$f(x) = \begin{cases} \frac{3}{4}(1 - x^4), & 0 \leq x \leq 1 \\ 0, & \text{其他} \end{cases}$$

試求 X 的期望值與變異數。(15%)

5. 有兩條走道，其一走道寬 270 公分，另一走道寬 640 公分，兩條成直角交會，如下示意圖。若欲將一條鋼筋水平拿著由 A 處走到 B 處，求鋼筋最長可通過之長度。(15%)



6. 某代工廠的生產函數為 $P(C, L) = 100C^{2/5}L^{3/5}$ ，其中 C 與 L 分別代表資本財與勞動力的單位數量。每單位的資本財成本為 300 元，每單位的勞動力成本為 150 元。若每小時所能使用的資本財及勞動力限制為 7500 元，求資本財與勞動力的配置數量使產能為最大。(15%)
7. 請出一題具有程度鑑別度與挑戰性的微積分考題。請說明該考題欲鑑別何微積分基礎能力，並給予詳解 (本題給分依據題目之挑戰性與詳解之正確性為基準)。(20%)

考試科目	生命科學 4194B	所別	科智所智財組	考試時間	2月27日(六)第一節
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第一題 (40 分)

Dr. Kary Mullis 於 1983 年發明 polymerase chain reaction (PCR) 技術，將分子生物學與基因工程之發展帶入新的紀元，他也因此榮獲 1993 年諾貝爾化學獎。請依據您對生命科學之知識與學養回答下列問題：

- (1) 請詳述 PCR 技術，包含其原理與操作步驟；(20%)
- (2) 請您從生命科學學術與產業發展之角度，論述 PCR 技術是否應該准予專利？(20%) (此小題無標準答案，您可以論述如果對於像 PCR 技術這般的實驗方法准予專利，對生命科學之發展有如何之助益，或有如何之阻礙。)

第二題 (20 分)

請詳述遺傳訊息由 DNA 轉錄成 RNA，再由 RNA 轉譯成蛋白質之過程。
(20%)

第三題 (40 分)

美國第 4,736,866 號專利之專利範圍第 1 項 (Claim 1) 如下：“1. A transgenic non-human mammal all of whose germ cells and somatic cells contain a recombinant activated oncogene sequence introduced into said mammal, or an ancestor of said mammal, at an embryonic stage.” 請依據您對生命科學之知識與學養回答下列問題：

- (1) 請您依據題示訊息，從生命科學角度描述此專利技術；(20%)
- (2) 請您從生命科學發展之角度，論述此項技術是否應該准予專利？(20%) (此小題無標準答案，您可以論述如果此項技術准予專利會有什麼問題，或不予專利會有什麼問題。)

備註	一、作答於試題上者，不予計分。 二、試題請隨卷繳交。
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4112, 41212, 4122A, 41713, 41822, 41922, 4194C, 42112, 42122.

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Multiple Choice (1 point each)

Identify the letter of the choice that best completes the statement or answers the question.

1. Assume that the price elasticity of demand for good X is constant and equal to -0.5 , and the price elasticity of demand for good Y is constant and equal to -2 . Assume that goods X and Y have identical upward-sloping elastic supply curves. If a per-unit excise tax of the same amount is levied on good X and on good Y , which of the following would be true?

- A. The percentage decrease in the quantity of good X demanded would be greater than the percentage decrease in the quantity of good Y demanded.
- B. The tax share paid by consumers of good X would be relatively higher than that paid by consumers of good Y .
- C. The tax share paid by consumers of good Y would be relatively higher than that paid by consumers of good X .
- D. The tax share paid by sellers of good Y would be relatively lower than that paid by sellers of good X .

2. If the income elasticity of demand for good X is negative and the cross-price elasticity of demand between good X and good Y is negative, which of the following must be true of good X ?

- A. X is a normal good and is a substitute for Y .
- B. X is a normal good and is a complement to Y .
- C. X is an inferior good and is a substitute for Y .
- D. X is an inferior good and is a complement to Y .

3. If an industry ignores the external costs it generates in its production, which of the following will be true at the competitive market equilibrium output?

- A. Price will be greater than the marginal social cost.
- B. Price will be less than the marginal social cost.
- C. Price will be equal to the marginal social cost.
- D. Marginal private cost will be greater than the marginal social cost.

備註	一、作答於試題上者，不予計分。 二、試題請隨卷繳交。
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4. Karen works part-time at a local convenience store and earns \$10 per hour. She wants to spend next Saturday afternoon attending a music concert. The full price of a concert ticket is \$75, but Karen was able to get a discounted price of \$50 from a friend who purchased the ticket but has become unable to attend. If Karen took 4 hours off from her job to attend the concert, what was her opportunity cost of attending the concert?

- A. \$40
- B. \$50
- C. \$90
- D. \$125

5. Which of the following is true of the substitution effect of an increase in the price of a normal good?

- A. It works to offset the income effect.
- B. It works to reinforce the income effect.
- C. It is less than the income effect.
- D. It causes an increase in the quantity demanded of the good.

6. A firm employs unskilled and skilled labor in a cost-minimizing mix at its manufacturing plant. The marginal product of unskilled labor is considerably lower than skilled labor. The equilibrium wage of the unskilled labor is only NT\$90 per hour. The government passes a law that mandates a minimum wage of NT\$120 per hour. Equilibrium wages for skilled workers exceed this minimum wage and therefore are not affected by the new law. The firm will most likely respond to the imposition of the minimum wage law by:

- A. employing fewer skilled workers and allocate their salaries to unskilled workers.
- B. keeping the mix of unskilled and skilled workers the same.
- C. employing more unskilled workers at its plant.
- D. employing fewer unskilled workers at its plant.

7. The short-term shutdown point of production for a firm operating under perfect competition will most likely occur when:

- A. price is equal to average total cost.
- B. marginal revenue is equal to marginal cost.
- C. marginal revenue is less than average variable costs.
- D. price is less than the marginal cost.

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- 一、作答於試題上者，不予計分。
- 二、試題請隨卷繳交。

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8. Which of the following might cause a monopoly to exist?

- I. Economies of scale
 - II. A single firm owning a key resource
 - III. A firm owning a patent on a product
 - IV. A firm being a price taker
 - V. Price discrimination
- A. I, II, and III only.
 - B. II, III, and V only.
 - C. I, II and IV only.
 - D. II, III and V only.

9. Which of the following events could cause an increase in the production of labor?

- I. Office workers receive faster computers.
 - II. Wages for textile workers rise.
 - III. More useful tools are given to a construction crew working on a house.
 - IV. The minimum wage law is enforced.
 - V. Bank clerks take a training course.
- A. I and III only.
 - B. I, III and V only.
 - C. I, II, and IV only.
 - D. II, IV, and V only.

10. Companies most likely have a well-defined supply function when the market structure is

- A. oligopoly.
- B. monopoly.
- C. perfect competition.
- D. monopolistic competition.

11. Suppose that a country produces only two goods, x and y . In year 2012, the price of x is $P_x = 5$ and the production level is $Q_x = 5$. The price and production level of y are $P_y = 5$ and $Q_y = 5$. In year 2015, they are $P_x = 10$, $Q_x = 2.5$, $P_y = 10$, and $Q_y = 2.5$. If the base year is 2012, how the nominal and real GDP change between 2012 and 2015.

- A. The nominal GDP does not change. The real GDP decreases.
- B. The nominal GDP increases. The real GDP increases.

備註	一、作答於試題上者，不予計分。 二、試題請隨卷繳交。
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- C. The nominal GDP decreases. The real GDP decreases.
 D. The nominal GDP does not change. The real GDP increases.
12. In the Keynesian model, the output is more sensitive to the change of money supply if
 A. investment is more elastic to changes in interest rate.
 B. the unemployment is high.
 C. the country trades more with rest of the world.
 D. the country has been operating on the production possibility frontier.
13. If the central bank purchases government bonds from the public,
 A. supply of money increases.
 B. interest rate increases.
 C. the discount rate increases.
 D. the price of bond decreases.
14. The natural rate of unemployment is the unemployment rate when the country
 A. has zero growth rate.
 B. has no inflation.
 C. has only cyclical and structural unemployment.
 D. operates on the production possibility frontier.
15. When the central bank increases the money supply, according to the short-run Philips curve, which of the following is true?
 A. Both the unemployment rate and the inflation rate will decrease.
 B. Both the unemployment rate and the inflation rate will not change.
 C. The unemployment rate will decrease but the inflation rate will increase.
 D. Both the unemployment rate and the inflation rate will increase.
16. Which of the following will decrease U.S. net capital outflow?
 A. capital flight from the United States
 B. the government budget deficit increases
 C. the U.S. imposes import quotas
 D. None of the above is correct.

備

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- 一、作答於試題上者，不予計分。
 二、試題請隨卷繳交。

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17. An economic contraction caused by a shift in aggregate demand remedies itself over time as the expected price level

- A. rises, shifting aggregate demand right.
- B. rises, shifting aggregate demand left.
- C. falls, shifting aggregate supply right.
- D. falls, shifting aggregate supply left.

18. The term *crowding-out effect* refers to

A. the reduction in aggregate supply that results when a monetary expansion causes the interest rate to decrease.

B. the reduction in aggregate demand that results when a monetary expansion causes the interest rate to decrease.

C. the reduction in aggregate demand that results when a fiscal expansion causes the interest rate to increase.

D. the reduction in aggregate demand that results when a decrease in government spending or an increase in taxes causes the interest rate to increase.

19. Given a nominal interest rate of 20 percent, in which case would you earn the highest after-tax real interest rate?

- A. Inflation is 5 percent; the tax rate on interest income is 20 percent.
- B. Inflation is 4 percent; the tax rate on interest income is 30 percent.
- C. Inflation is 3 percent; the tax rate on interest income is 40 percent.
- D. The after-tax real interest rate is the same for all of the above.

20. If output is above its natural rate, then according to sticky-wage theory

A. workers and firms will strike bargains for higher wages. This increase in wages shifts the short-run aggregate supply curve right.

B. workers and firms will strike bargains for higher wages. This increase in wages shifts the short-run aggregate supply curve left.

C. workers and firms will strike bargains for lower wages. This decrease in wages shifts the short-run aggregate supply curve right.

D. workers and firms will strike bargains for lower wages. This decrease in wages shifts the short-run aggregate supply curve left.

備

註

- 一、作答於試題上者，不予計分。
- 二、試題請隨卷繳交。

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Problems and Short-essay Questions

Please answer the following questions IN SEQUENCE. All questions may be answered in either Chinese or English.

1. Assume that sugar production in the U.S.A. was 15.6 billion pounds, and sugar consumption in the U.S.A. was 21.1 billion pounds in 1995. In the same year, price of sugar in the U.S.A. was 21.9 cents per pound, while the world price was 11.1 cents per pound.

a. (5 points) With a -0.3 price elasticity of demand, derive the demand function of the sugar in the U.S.A. in 1995. (Assume that the demand function of sugar is linear.)

b. (5 points) With a 1.5 price elasticity of supply, derive the supply function of the sugar in the U.S.A. in 1995. (Assume that the supply function of sugar is linear.)

c. (5 points) Compute the loss of consumer's surplus caused by the higher sugar price in the U.S.A.

d. (5 points) Compute the changes in producer's surplus caused by the higher sugar price in the U.S.A.

2. The processing of payroll for the workers of a major corporation can be done to varying degrees by clerks and computers. Suppose that we can represent the trade-offs between labor and capital by the following production function $Q = K^{3/4}L^{1/4}$. Q is measured in thousands of payment processed, K is measured in hours of processing time and L is measured in man-hours.

a. (5 points) Does the production function exhibit constant, increasing, or decreasing returns to scale? Please show your result with a simple demonstration or proof.

For the remainder of the question you may assume that the wage rate is NT\$160 per man-hour and the rental rate of capital is NT\$30 per hour.

b. (5 points) Given the prices of the inputs and the production function, find the compensated factor demands for labor and capital.

c. (5 points) What is the variable cost curve of the firm? If fixed costs are 100, then what is the total cost curve of the firm.

d. (5 points) Without calculating the derivative, are marginal costs constant, upward sloping, or downward sloping? Briefly explain your answer.

備註	一、作答於試題上者，不予計分。 二、試題請隨卷繳交。
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3. Suppose in an economy, the autonomous consumption equals 100, the marginal propensity to consume equals 0.8, the net taxes are fixed at 100, the planned private-sector investment is fixed at 100, the government purchases are fixed at 100, and the net exports are fixed at 100. Answer the following questions.

- (10 points) What is the equilibrium output in this economy?
- (10 points) Suppose the government increases its expenditure to 200, which is financed by the fixed taxes. What is the equilibrium output in this economy?

4. In the summer of 1986 the *Economist* magazine conducted an extensive survey on the prices of Big Mac hamburgers at McDonald's restaurants throughout the world. Since then it has periodically updated its calculations. The following table reproduces the results of the *Economist's* January 2015 survey report with slight modification to make the calculation easier.

Country	Price of a Big Mac	Predicted Exchange Rate	Actual Exchange Rate
Taiwan	80 NTD	_____ NTD/USD	32 NTD/USD
Japan	360 JPY	_____ JPY/USD	120 JPY/USD
USA	4.8 USD	1 USD/USD	1 USD/USD

- (6 points) Suppose that purchasing power parity (PPP) holds. For Taiwan and Japan, compute the predicted exchange rate of local currency per U.S. dollar.
- (4 points) According to PPP, what is the predicted exchange rate between the Japanese Yen and the New Taiwan Dollar? What is the actual exchange rate?
- (4 points) Given the actual nominal exchange rate, what is the real exchange rate between Japan and Taiwan?
- (6 points) Suppose that the actual exchange rate between Japan and Taiwan will converge to the PPP predicted exchange rate over the next ten years. Which of these two countries will experience a higher rate of inflation over this period? Which country will likely have a higher nominal interest rate? Why?

備註	一、作答於試題上者，不予計分。 二、試題請隨卷繳交。
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考試科目	民法 1194D	所別	科技管理與智慧財產研究所/智慧財產組	考試時間	2月27日(六)第1節
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以下內容摘自智慧財產法院 103 年度民營上字第 4 號民事判決，請根據摘錄內容與附帶的法條作答。(建議先看清楚問題，再進行判決閱讀。)

上訴人 星炫股份有限公司

法定代理人 張尹

訴訟代理人 吳志勇律師

廖晏崧律師

被上訴人 許凱捷

訴訟代理人 羅明宏律師

上列當事人間營業秘密損害賠償等事件，上訴人對於中華民國 103 年 8 月 21 日臺灣臺北地方法院第一審判決提起上訴，本院於 104 年 2 月 12 日言詞辯論終結，判決如下：

主 文

...
被上訴人自民國一〇二年十一月八日起至民國一〇四年十一月三十日止於中華民國台灣省宜蘭縣全境內不得販賣如附表所示之產品。

事 實

三、兩造不爭執事項：

(一)被上訴人於 101 年 12 月 10 日登記，於 101 年 10 月 29 日與上訴人簽訂加盟契約，加盟金為 110 萬元。

(二)兩造於 102 年 11 月 8 日簽訂系爭協議，終止前揭加盟契約。

(三)系爭協議之 SOP 手冊，被上訴人未返還予上訴人。

(四)被上訴人於 103 年 1 月 19 日開設紙飛機咖啡店，販賣咖啡、果茶、義大利麵及附帶販售鬆餅。

(五)上訴人於 103 年 1 月 21 日寄發存證信函通知被上訴人停止使用上訴人一切技術資料等營業知識。

四、整理與協議簡化爭點

本件經依民事訴訟法第 463 條準用同法第 270 條之 1 第 1 項第 3 款規定，整理並協議簡化爭點，兩造同意就本院 104 年 1 月 26 日準備程序期日協議簡化之爭點為辯論範圍（本院卷第 194 頁）。兩造爭執事項如下：

(一)系爭協議之法律性質為何？

(二)被上訴人有無違反系爭協議第 3 條、第 6 條約定？

五、得心證之理由：

(一)系爭協議具有民法和解之法律性質：

1. 上訴人主張：兩造簽訂之系爭協議係基於對等地位、各退一步而成立之和解契約等情。被上訴人則以：依系爭協議前文與第 2 條至第 8 條文義，係上訴人對被上訴人課以作為或不作為之義務，並無任何讓

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步條件，系爭協議性質非和解契約等語。

2.按稱和解者，謂當事人約定，互相讓步，以終止爭執或防止爭執發生之契約；是和解有使當事人所拋棄之權利消滅及使當事人取得和解契約所定明權利之效力，民法第 736 條、第 737 條分別定有明文。次按「和解之範圍，應以當事人相互間欲求解決之爭點為限，至於其他爭點，或尚未發生爭執之法律關係，雖與和解事件有關，如當事人並無欲求一併解決之意思，要不能因權利人未保留其權利，而認該權利已因和解讓步，視為拋棄而消滅（最高法院 57 年台上字第 2180 號判例、95 年度台上字第 2437 號民事判決參照）。依此，和解契約之成立並非以單方面讓步為要件，而係以終止爭執或防止爭執發生相互讓步之契約；又和解成立以後，其發生之法律上效力，在消極方面，使當事人所拋棄之權利消滅，在積極方面，則使當事人取得和解契約所訂明之權利。

3.查兩造於 101 年 10 月 29 日簽訂加盟契約，於第 2 條約定由被上訴人向上訴人採購店內使用設備及裝潢施工設備、器具、耗材與輔銷品等，被上訴人支付 110 萬元加盟金等，於第 3 條約定合約有效期間自合約簽訂日至 104 年 11 月 30 日止，有上訴人提出之加盟契約可按（見原審卷第 42 至 57 頁），惟因被上訴人加盟後，有未合於加盟契約之約定要求，經上訴人評核發現，經雙方協商，於 102 年 11 月 8 日簽訂系爭協議書，於協議書之前文明約定終止上揭加盟契約，並於第 1 條至第 8 條約定被上訴人應返還合約書、SOP 手冊、被上訴人不得再使用 Waffle Waffle 將鬆餅廣告文宣等、被上訴人不得洩露上訴人營業秘密、被上訴人不得經營相同或類似性質業務及被上訴人違約後願支付違約金等條款，有上訴人提出函請被上訴人協商書函影本及系爭協議書可證（見原審卷第 58 至 60 頁）。由簽訂系爭協議之前因與約定文義可知，上訴人就加盟契約原所約定至 104 年 11 月 30 日為止之合約效期提前終止，其原可自加盟契約中獲得被上訴人應向其購買器材、耗材與食材等期限及經濟利益拋棄，而被上訴人則不得經營相同或類似性質業務，因之，上訴人以提前終止加盟契約換取被上訴人於契約終止後不得為相同或類似性質之鬆餅業務，使被上訴人經營同類業務之權利受到限制，此係兩造共同約定相互讓步，以防止違約爭執發生，而達成簽訂系爭協議之合意，核認系爭協議具有民法上和解契約性質，因兩造係單純以無因性債務約束方式，替代原有之加盟契約法律關係，故為創設性之和解。

4.被上訴人雖否認系爭協議書具和解契約性質，而認係兩造各自基於商業成本考量，合意提前終止加盟契約，系爭協議與和解要件不符等語，惟解釋契約雖須探求當事人立約時之真意，不能拘泥於契約之文字，但契約文字業已表示當事人真意，無須別事探求者，即不得反捨契約文字更為曲解。本件系爭協議雖未記載雙方達成和解之明文約定，惟雙方於契約文字上記載終止兩造間原訂立之加盟契約，已有提前終止之意思，則上訴人就原契約所享有之期限與經濟利益，均已消滅，而被上訴人因其簽訂協議即負有返還 SOP 手冊與不得競業等相關之不作為義務，自有互為讓步之意思在內，與民法第 736 條之和解契約要件相符，應認系爭協議為和解契約。被上訴人稱非和解契約，並不足採。是被上訴人依協議書第 6 條約定有不為競業義務。

(二)被上訴人未違反系爭協議第 3 條約定：

1.上訴人主張：其所販售之鬆餅，其配方、製作及佐料搭配等 Know-how 為上訴人投入大量時間、勞力及金錢研發，屬於營業秘密法第 2 條所稱之營業秘密，故兩造簽訂之系爭協議第 1 條、第 3 條要求被上訴人返還 SOP 手冊及不得洩漏調理技術等營業秘密，被上訴人另設立紙飛機咖啡店販售與上訴人產品口感極為相似鬆餅，構成營業秘密侵害，造成上訴人營業秘密受有重大且無法回復之損害云云。

考 試 科 目	民法 4194D	所 別	科技管理與智慧財產研究所/智慧財產組	考 試 時 間	2 月 27 日(六) 第 1 節
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2.惟按營業秘密法第 2 條規定：「本法所稱營業秘密，係指方法、技術、製程、配方、程式、設計或其他可用於生產、銷售或經營之資訊，而符合左列要件者：一非一般涉及該類資訊之人所知者。二因其秘密性而具有實際或潛在之經濟價值者。三所有人已採取合理之保密措施者。」。依此，營業秘密之要件，須「用於生產、銷售或經營之資訊」須符合非一般涉及該類資訊之人所知，其秘密性具有實際或潛在之經濟價值，而所有人已採行合理之保密措施等要件，故營業秘密之保護不限定於技術資訊，非技術之商業資訊亦包括在內。

3.查兩造原簽訂之加盟契約係以定型化契約條款訂立，該契約僅於第 15 條約定，被上訴人就「有關加盟店營運方式、商品調理技術、特定商品之購入價格、主要商品之製法及其他一切關於加盟店營業知識等各項資料、手冊不得洩漏予第三者」外，並無以何類具體事項作為營業秘密條款約定，且上開約定為概括性內容，將加盟店營運方式、商品調理技術及購入價格及商品製法，均涵括在內，是其內容僅能認屬一般保密條款，於涉及爭執時，上訴人仍須就其內容具體判斷。

4.嗣兩造提前終止加盟契約，於系爭協議書第 3 條始有營業秘密之記載。該第 3 條內容為：「乙方（即被上訴人）不得洩漏或使用所有甲方（即上訴人）所教授商品調理技術及其他一切關於加盟店營業知識等各項資料、手冊、技術等甲方之營業秘密。」。又上訴人係以其加盟契約簽訂時所交付予被上訴人之「SOP 操作使用說明書」即 SOP 手冊（見原證 3，附於卷外），因之，任何欲從事鬆餅販賣之人均可因支付加盟金後，取得手冊內容，而上訴人亦僅以上開加盟契約第 15 條之概括條款要求保密。觀察該 SOP 手冊係將各式鬆餅如：69 元系列之切達起司鬆餅、鮭魚蔬菜鬆餅等、59 元系列之新鮮香蕉巧克力鬆餅等、49 元系列之糖霜原味鬆餅等及各式咖啡製作方式記載，並無任何註明係秘密文件與限制閱覽之文字，非涉及該類資訊之人始應接觸使用之要求之註記，並無合理之保密措施，又該鬆餅與咖啡製作方式有何特別之處，是否非習知、非一般涉及該類資訊之人所知悉，上訴人亦未提出證明，是該 SOP 手冊內容，與上開營業秘密法保護營業秘密之要件，並不相符。上訴人謂其為營業秘密，自非有據。另上訴人就被上訴人因使用 SOP 手冊內容，如何有造成上訴人之客源流失等，亦未舉證，是難謂被上訴人有違反系爭協議第 3 條情事。

5.上訴人雖謂其在系爭協議第 1 條約定，要求被上訴人返還 SOP 手冊，符合營業秘密法所要求之合理保密措施云云，惟如前所述，上述 SOP 手冊之外觀無任何限制閱覽要求，而上訴人亦未證明其交付手冊前作保密要求之證明，因此，在系爭協議書作返還 SOP 手冊約定，不能認係屬營業秘密法所定之合理保密措施。上訴人此部分所述，並不足採。

九、據上論結，本件上訴為一部有理由、一部無理由，依民事訴訟法第 450 條、第 449 條第 1 項、第 79 條、第 463 條、第 389 條第 1 項第 5 款、第 392 條第 2 項，判決如主文。

中 華 民 國 104 年 2 月 26 日

智慧財產法院第一庭

審判長法 官 陳忠行

法 官 林洲富

法 官 李維心

民法條文

第 736 條：「稱和解者，謂當事人約定，互相讓步，以終止爭執或防止爭執發生之契約。」

考試科目	民法 4194D	所別	科技管理與智慧財產研究所/智慧財產組	考試時間	2月27日(六)第1節
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第 737 條：「和解有使當事人所拋棄之權利消滅及使當事人取得和解契約所訂明權利之效力。」
 第 738 條：「和解不得以錯誤為理由撤銷之。但有左列事項之一者，不在此限：一、和解所依據之文件，事後發見為偽造或變造，而和解當事人若知其為偽造或變造，即不為和解者。二、和解事件，經法院確定判決，而為當事人雙方或一方於和解當時所不知者。三、當事人之一方，對於他方當事人之資格或對於重要之爭點有錯誤，而為和解者。」

問題：

一、基本閱讀測驗（共 10 小題，各小題 5 分；本大題佔 50 分；簡答題）

- | | |
|-------------------------|----------------------|
| (1) 本案一審法院為何？ | (7) 系爭協議書和加盟契約的關係為何？ |
| (2) 本案一審原告為何？ | (8) 系爭協議書第 6 條之約定為何？ |
| (3) 本案涉及之智慧財產類型為何？ | (9) 兩造為何終止加盟契約？ |
| (4) 兩造何時簽訂加盟契約？ | (10) 本案二審判決執筆法官為何？ |
| (5) 兩造何時簽訂系爭協議書？ | |
| (6) 系爭協議書規範營業秘密事項者為第幾條？ | |

二、請問何謂「和解契約」？（本大題佔 20 分）

三、(1) 請問法院認為何者為和解契約？（佔 5 分）(2) 理由為？（佔 15 分）

四、請問系爭加盟契約應有何內容以使上訴人對系爭 SOP 手冊有採合理之保密措施？（本大題佔 10 分）



備註	一、作答於試題上者，不予計分。 二、試題請隨卷繳交。
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