

FALL '02

15.615/15.647

LAW FOR THE ENTREPRENEUR AND MANAGER

SECOND TAKEHOME EXERCISE

**Material Covered:**

From Class 11 (“Introduction to US Patent Law”)  
Through Class 21 (“Bankruptcy and Reorganization II”)

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INSTRUCTIONS AND ADVICE

- 1. Schedule and timing.** Make arrangements with the TA to have the exam e-mailed to you at a mutually convenient time, and then within **three hours** e-mail back to the TA the completed exam. Keep a hard and computer-readable copy of your exam.
- 2. Sources and communication among students:** During the period the exercise is available, students may not consult with each other about the course. For the exercise, you may consult the text, the readings, and any notes prepared by you, but no other sources. (Since your answers will be evaluated in terms of the course readings and the lectures, especially the readings, consulting other sources would not likely do much good.)
- 3. Weighting and strategy:** There are two questions. Answer both. They will be weighted equally. Each particular point you should address appears in a sentence ending with a “?” Don’t neglect to respond to each “?”
- 4. Format and submission of answers:** Your answer should have a cover sheet which includes your name, “ESL” if English is your second language, and the exact word count for the entire document. Start the answer to each question on a fresh sheet. **Your entire submission should not exceed 1,000 words.**
- 5. Some general advice (READ THIS CAREFULLY):** You are not supposed to be a lawyer, and I don’t expect you to have definite answers to legal questions. You are supposed to be a manager with the ability to make a **preliminary** assessment of legal problems. Each question will ask you to address legal issues in a business context from the point of view of a manager. It doesn’t matter much if I don’t agree with your judgment as to how serious a risk or problem is, so long as you spot it and understand the legal and managerial implications of it. Your answers should demonstrate your understanding of and ability to express broad legal concepts, and your ability to spot where and how the law will have an impact on a business problem and the individuals involved. It will not be necessary to cite specific cases or statutes. **Make sure that your answer focuses on how general legal principles apply to the facts you have been given.** To the extent that the facts are not as specific as you would like them to be for your assessment, point that out. You shouldn’t concern yourself with implausible possibilities. I don’t try to “trick” people in these exams. Look for the main issues suggested by the facts, and get right to them. **Be responsive in your answer; that is, answer the specific questions that have been**

**asked from the perspective you have been asked to assume.** (For example, if you are asked to provide some alternative courses of action, do so. If you are asked to assess risk from the perspective of a particular party, do that.) Your answers should be well-organized and clearly written. The length limit is tight, so you will probably have to edit your answers carefully to cover the necessary points in the limited space allowed.

**6. Grading:** If your exam is over the length limit, or submitted late, there will be a downward adjustment to your grade.

## QUESTIONS

**Question 1.** You are still Smarty Aleck, but it is ten years since the first take home exercise. You used to work in the medical device industry in the US, but for the last eight years you have been a partner at The Wiseguy Group (“TWG”), a business consulting firm with an international clientele. One of your clients at TWG is Blondie, a Swedish company which manufactures software used in the healthcare industry.

Blondie is working on a new technology related to CT scans. A CT scanner is a powerful medical diagnostic tool which produces cross-sectional images (“scans”) of a human body. These images are analyzed by radiologists (physicians who specialize in analyzing diagnostic images). The new technology would make it possible for a radiologist to use the Internet to draw upon a large data-bank of CT scans and the medical records of the patients who had been scanned. The technology would also permit images to be matched, similar to the way a police department matches fingerprints, except that Blondie’s technology would permit very complex forms of matching. For example, if a patient has a brain tumor with an unusual location or shape, Blondie’s technology would permit the radiologist to scan the data-bank to find cases which most closely matched features selected by the user, which could include the tumor’s location or shape or other features of the scans. By consulting the associated medical records, the radiologist could find out how these other cases had been treated and how the patients had responded to different treatments.

Blondie has always been primarily a software company, and software is at the heart of this new technology, but Blondie is also working on some related hardware, including a screen designed to display and compare up to a dozen CT scans at a time with certain comparative features highlighted.

This new technology is going to be very expensive for users. Blondie has never marketed in the US before, but Blondie has decided that its ability to sell the new technology in the US market will be key since the US is the biggest market for expensive new medical technologies.

Blondie is hoping that this technology will prove so powerful as an aid to diagnosis that it will soon become required as “good medical practice” in the US for many conditions, in which case the market for the product will be enormous. In fact, even under only moderately optimistic projections, this product could generate revenues one hundred times greater than the revenues generated by all of Blondie’s other products, and comparable profits as well.

As a result, the Blondie board is thinking seriously about putting all other product development on hold in order to push ahead as fast as possible on this one technology. Big Cheese is

Blondie's CEO. He has put together a committee which, over the next two months, will try to evaluate the risks and benefits of that strategy.

One problem for Big is that no one at Blondie has in-depth knowledge about the US healthcare industry. You have such knowledge, and Big has told you that he wants you to attend committee meetings and serve as a general advisor.

Against that background, you receive the following memo from Big. Please summarize the advice you will give him.

To: Smarty Aleck  
From: Big Cheese  
Re: Next meeting of the committee

Smarty –

I want to give over the next few meetings to a preliminary analysis of some of the major risks associated with the new technology. We aren't going to bring in any outside consultants or advisors at this point except you. Once we have our own thinking focused, we will call in the lawyers, the marketing consultants, etc.

At this next meeting, I want to think about intellectual property (IP). Obviously, if we have any significant success in the US market a lot of big players will be out to attack us every way they can. No one on the committee is an expert on IP protection in the US, but the general feeling seems to be that the US is very friendly towards software-related IP protection. I'd like your preliminary thoughts on the following points:

- A. As relates to our technology, are there any areas of IP protection where the US is different from Europe, and, if so, in general terms what are these differences?
- B. I'm worried that we may be too confident about the extent to which we can protect our IP in the US. I want to make sure that when we call in the lawyers and the other experts we are ready to question them very closely on the probable weaknesses of our IP protection. What do you think are the main potential weaknesses we have to worry about?
- C. One potential weakness that especially worries me is this: My guess is that this technology is going to evolve very fast, especially if we have any early success. As you know, the whole diagnostic imaging field is advancing quickly, and the Internet is racing along even faster. If I'm right and the technology is going to move very quickly, what does that imply for the strength of our IP protection?

Thanks for your help. Big

**Question 2.** A few years ago, Blondie made a substantial investment in a new US software company called StartUp Inc. Blondie owns 30% of the company. The rest of the shares are held by two other investors and a few of the top managers. There has been no trading in the shares.

Top Banana is a senior VP at Blondie. When Blondie made its investment in StartUp, Top took a seat on StartUp's board of directors. Most of StartUp's board is StartUp's executives. There are only two other people on the Board – Top, and a computer science professor from a local university. Since the professor has no business experience, Top is the person on the board who plays the role of the outside senior advisor on business matters.

StartUp Inc. makes software related to health care insurance billing, which has no relevance to the technology discussed in Question 1. Blondie at first made this investment with a strategic partnership around certain possible new products in mind, but Blondie abandoned those plans two year ago. Now it views its holdings in StartUp primarily as a financial investment. In fact, StartUp has been doing very well and is planning to go public. The investment bankers want assurance that Top is planning to stay on the board until after the public offering.

Top and Big both have some concerns about Top continuing on as director of StartUp once StartUp becomes a publicly-traded company. They have asked you for advice on the following:

- A. Assuming StartUp goes public, Blondie may want to sell its shares in StartUp as soon after the public offering as possible. What legal problems may be created for Blondie as a shareholder because of Top's seat on StartUp's board?
- B. Top is also concerned about exposure to liability that comes with being a director of a US publicly-traded company. What are the general areas of concern and why?