

Intellectual Property
Fall 2017
LL.M. Final Examination

This examination consists of **two questions** and **four pages**, including this cover page. The questions have suggested answer lengths that total about 4,000 words. Submit your answer by email to Christina Ko by the deadline of **5:00 PM on December 14**. Please make sure that your answer contains **no identifying information**.

This is an **open-book** examination. You should not need to consult anything beyond the coursepack and your notes, but you can if you wish. You are free to discuss the general legal principles we covered this semester with anyone, including each other. But **you may not discuss the examination questions** with anyone else until after the examination period. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

The question puts you in a role, but the genre for your answer should be **"law school examination."** Use **simple citations** (e.g. "*see Feist*") where appropriate. I include **spelling, grammar, clarity, and organization** in my grading. I appreciate the use of headings to organize your answer, but they're not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

To help ensure uniformity in my grading, please use the following **formatting**: 13-point Palatino, 1-inch margins, double-spaced, bold for any major headings and italics for any minor headings. I will provide Word and Pages templates you can use if you wish.

The problem is set in the fictional American state of Roosevelt. Assume for purposes of the examination that present-day law has been fully in effect at all relevant times, that Roosevelt has enacted the Uniform Trade Secrets Act, and that it recognizes a common-law right of publicity.

Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions—living, dead, or nonexistent.

Question 1: Math is Hard

We have read numerous cases in which judges applied existing intellectual property doctrines to new technologies. Examples include player pianos, wireless communication systems, VCRs, keyword advertising on search engines, video games, and smartphones. Sometimes courts do a good job understanding the technology, explaining it clearly, and applying the law to it in a sensible way. Sometimes they don't.

What should entrepreneurs and their lawyers do to navigate a legal system whose technological competence is sometimes outstanding and sometimes embarrassing? Are there examples in the cases we've read where one of the parties did an especially good (or especially poor) job helping the legal system deal with a new technology?

Write an essay of about 2,000 words answering these questions.

Question 2: 3 ... 2... 1... Lunch

Your client, ReadyToLunch, is building an app and service that lets people order food for delivery from takeout restaurants by choosing menu items rather than restaurants. In areas with high restaurant density at times of high demand (e.g. in busy downtowns during lunch hour) there are numerous restaurants offering common menu items like a hamburger or a spinach salad. The ReadyToLunch app lets customers simply pick “hamburger” from the menu, and ReadyToLunch then dynamically routes each order to a restaurant or several nearby restaurants that can provide all of the requested items in the order. ReadyToLunch doesn’t charge separate delivery fees: it simply posts a listed price for each item and then pockets the difference, if any, between that listed price and the restaurant’s actual price. The choice of which restaurant is made through a complex machine learning process that optimizes based on price, distance, customer reviews (per restaurant and per item), a restaurant’s historical speed at preparing each item (adjusted for time of day), and over 50 other factors. The algorithm is designed to trade off the other factors against the restaurant’s price—i.e., trade off long-term expected customer satisfaction against immediate cost reduction..

ReadyToLunch is scheduled to enter private alpha testing in New York and Seattle in six weeks. You have identified the following potential intellectual property obstacles to ReadyToLunch’ ability to launch:

- There is an existing food-delivery-app startup named LunchingPad. It is not currently operating (so far as you know), but it has a federal intent-to-use registration for LunchingPad, with filing date March 20, 2017. LunchingPad’s principal feature is that it delivers only using bicycles, skateboards, and other human-powered means of transport and delivers food only from organic vegan restaurants.
- There is *another* food-delivery-app startup named LunchLaunch. According to its website, it has been operating in Los Angeles since 2015. LunchLaunch uses a reverse auction mechanism: ready-to-go meals are posted on its site with prices that decline until someone orders them.

- There is apparently someone named Reed Tolunche living in Seattle. So far as you know, he is entirely unconnected with and unaware of ReadyToLunch.
- U.S. Patent No. 7,222,202, which is directed to an “improved method for fulfilling customer orders,” claims, in relevant part, “... a plurality of item sources, wherein the selection of source is made on the basis of a first selection criterion, ... wherein the first selection criterion is ... price.” The ‘202 patent has a filing date of May 10, 2010, and issued on February 2, 2012.
- ReadyToLunch’s founder, Pat deMelt, got the idea from a friend, Sam Mich. The two of them were part of a group of eight friends out to dinner and were talking about the crowded food-delivery-app space when Sam said, “You know what would be cool? An app that just combines all the menus so you don’t have to worry about where to order from, just what you’re getting?”

Write a memo of about 2,000 words discussing the potential IP risks facing ReadyToLunch. What if anything should ReadyToLunch do to reduce those risks? Is there anything ReadyToLunch should do now, before the alpha, to obtain its own IP protections or to preserve its ability to obtain those protections in the future?