**MEMORANDUM**

**THOMAS, THOMAS, AND THOMAS, PLLP**

FROM: [Associate name]

TO: [Senior partner name]

DATE: [Submission date]

**RE: [Give subject]**

[*Instructions to T-Cubed “Associates”:* This is an annotated version of the memo template provided for guidance. There are no longer separate annotated/clean copies. Instead, use this document but remove or replace bracketed portions as context requires; do not leave my brackets in your final draft of this document that you turn in. Retain the headings provided in the order given; however, you may add subheadings if you believe them to be necessary. Regarding memo length, there is no minimum or maximum length. Be reasonable; I do not want a treatise, but I do expect that the tables added in the 2023 version of this template will lengthen your document by necessity and will likely, as it should, lead to deeper discussion of infringement. I suspect that a reasonable memo will be on the order of 9-12 pages in this format.]

[*Audience; formatting.* Your audience is the supervising attorney who is reviewing your lawyering and your work product. This is not a persuasive document; it is reflective and objective. Do not hide the ball. You must use this template and maintain the existing formatting (11 pt. Garamond, single-space within paragraphs, extra space between paragraphs. You must retain the headings provided in the order given. You may, however, add subheadings.]

**INTRODUCTION**

[*What to do here.* In this section, *briefly* identify the name of your client, explain what you have done so far, and what you would recommend to the firm’s client do next. You should also briefly summarize the client’s likelihood of succeeding on the merits. Be careful not to claim you’ve “done” things not yet done, such as drafting or filing a court complaint. That’s for your client to decide in consultation with your supervising attorney.]

**ENFORCEMENT**

[*What to do here.* In this section, explain the nature of the alleged infringement and who seems to be behind it. If you have theories as to why they are doing this and what they might want, share them here. Discuss the approach taken in your C&D letter and why you made the C&D choices you did. Regarding your correspondence and negotiation with your opponent, discuss what you did, and how it worked. If you’ve received responses from anyone besides the infringer, discuss those as well. Most importantly, if you have experienced *any* dilemmas—errors of fact, law, tactic, or professionalism—then you must discuss them as well, discuss and analyze any relevant ethics rules, and you must do so honestly and reflectively. Remember, your supervising partner needs to know what’s going on, so do not hide the ball. **I expect you to be reflective and thoughtful: we learn from doing and we learn particularly well from our mistakes.** So if you’ve made any missteps (and all of you will), I want you to discuss what happened, what you learned, and how you’ll avoid such dilemmas in the future. *Cf.* [Kobayashi Maru](https://youtu.be/IjW8XkqIwzQ).]

**ANALYSIS OF MERITS**

[*Merits.* Discuss the merits of your client’s patent infringement arguments and the likelihood that they will prevail in a patent infringement suit. Address all *relevant* (non-frivolous) patent issues (ownership of an issued patent; violation of one or more 271 rights via direct or secondary infringement; and the applicability of any relevant (non-frivolous) defenses, which may or may not include: non-infringement, invalidity, prior use, experimental use, exhaustion, etc.). This memo should also address any patent remedies you believe your client may qualify for, and why. You should also consider pragmatic matters, such as costs of litigation, likelihood of executing a money judgment, and good/bad publicity for the client. Regarding invalidity as a defense, some of you may need to reconsider your position from the one you took earlier in Project 1. Indeed, you very well may have been confronted by your opponent with invalidity arguments that you had not previously considered; in addressing invalidity, you may repeat, incorporate, or update any of your arguments from your memo in Project 1. But if you do update or revise your position from Project 1, be sure remind the reader of this memo what your previous position was. As always, be honest and do not hide the ball.). And be sure to address all non-frivolous arguments made by your opponent, regardless of whether you ultimately conclude that their arguments are meritless.]

[Similar to the claim construction table for Project 1, below is a template for a consolidated infringement claim construction table. You may need to duplicate the below table or add/delete columns depending on how many of your client’s claims are pertinent, and how many devices or methods used by the opponent may be arguably infringing. An example is shown below, but adapt thoughtfully. I also suggest that here you use a smaller typeface for the table (8 or 9 point) to give you more space. Locate your claim construction table in a portion of the merits discussion where you believe it makes the most sense. If you want to break up your discussion of certain claims or defendant conduct, feel free to break this up into separate tables. The table below is only a starting point and you may adapt to suit the organizational structure you find to be most appropriate to the legal issues presented. Finally, note that this table is mostly pertinent to direct infringement and probably of less utility to other types of infringement such as inducement, contributory, etc.]

|  |  |  |
| --- | --- | --- |
| **Client’s claim [#1, independent]** | **[Opponent product/process #1]** | **[Opponent product/process #2]** |
| [List element by element, add rows as needed] | [What is present, either literally or by arguable equivalent] |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Client’s claim [#2, dependent]** |  |  |
| [Additional element(s) added by dependent claim, add rows as needed] |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Client’s claim [#3, dependent or independent]** |  |  |
| [Additional elements added by dependent claim, or list elements of independent claim, add rows as needed] |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**OTHER COMMENTS & INFORMATION**

[\*\*\*\* *Optional both classes:* This section is optional. If there are other issues you deem worthy of discussion, include them here. Otherwise omit this section. \*\*\*\*]

**CERTIFICATION OF ORIGINALITY,
ATTRIBUTION, and DISCLOSURE,
ALONG WITH PREERENCES FOR *EXCELLENCE IN IP* AWARD**

*[Instructions: fill this out completely and truthfully. Err on the side of disclosure. Add lines as needed.]*

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name printed or typed] certify the following:

Subject to the information in the disclosures below, my submission for this project is *original* to me. I have also fully complied with any restrictions or prohibitions contained in the assignment instructions.

*Copies of templates*. **I have attached and marked up copies** of any and all materials I relied upon in the Project, such as applications, registrations, C&D letters, complaints, memos, or contracts. I have also disclosed, attached, and annotated copies of any ideas or materials deriving from use of any Artificial Intelligence. (FoxIt PDF reader is excellent for PDF annotation.) Those materials are also cited below. I have marked these documents up to indicate any language or materials that I used or otherwise relied upon. Below is a listing (*use actual descriptive citations; do not merely provide a URL*). At the end of this certification I have also attached these documents in the order provided below:

1. [Fill out, even if N/A]
2. [Fill out, even if N/A]
3. [Add lines if needed]

*No outside assistance.* I have not obtained any assistance with this Project from anyone who is not a currently enrolled member of this class from this semester.

*Inside assistance.* I disclose and certify that I received or provided assistance to or from the persons named below **[add lines as needed]**.

|  |  |
| --- | --- |
| Persons providing **assistance to me**: | Nature of assistance, listed in detail |
| [Fill out, even if N/A] | [Fill out, even if N/A] |
| [Add lines if needed] | [Add lines if needed] |

|  |  |
| --- | --- |
| I provided **assistance to**: | Nature of assistance, listed in detail |
| [Fill out, even if N/A] | [Fill out, even if N/A] |
| [Add lines if needed] | [Add lines if needed] |

I have not omitted from this certification any source, person, or any type of assistance, whether given or received. Nor have I changed any of the language from the certification as provided to me from the Professor.

I recognize that this certification is to be interpreted broadly and includes without limitation: forms and preexisting materials used, reading drafts, suggesting edits, discussing issues, sharing sources, and getting tips. I recognize that violation of this certification may lead to a reduced score, a lowered grade, and referral to the academic integrity committee.

**WAIVER: READ CAREFULLY BEFORE SELECTING OPTION**

Additionally, I am aware that work product from this course (projects 1 and 2) might qualify me for consideration for the *Innovations in Intellectual Property* award. By choosing “TO SUBMIT (Option 1), I acknowledge that I am affirmatively waiving my rights, without limitation, under the Family Educational Rights and Privacy Act (FERPA), any other applicable federal or state or other laws or regulations, as well as any university or law school policies that protect the privacy of student information. This waiver is required in order for my work product from this course (namely my submissions for projects 1 and 2) to be considered for the award because final determination of the winner is done by submission of the top work product to outside reviewers.

Accordingly:

\_\_\_\_\_ Option 1: I want to be considered for the award, and therefore choose TO SUBMIT my work product from this course for consideration for the *Excellence in Intellectual Property* award.

\_\_\_\_\_ Option 2: I decline to be considered for the award, and therefore choose NOT to submit my work product from this course for consideration for the *Excellence in Intellectual Property* award.

E-signature signature (put your name down, such as /s firstname lastname/:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX LISTING**

[*Appendix:* This goes after the certification. This is where you put any annotated templates, AI materials you used (again, annotated), and any exhibits to the memo.]

1. List item A here, with meaningful descriptive title.
2. List item B here, etc.
3. Etc.

**[EXHIBITS IN APPENDIX START HERE, with tabs or labels: A, B, C, etc.]**

[*Exhibits:* Attach any exhibits to the end of the document, after the listing of exhibits. Cover pages or PDF annotations on the documents stating “Exhibit A,” “Exhibit B,” etc., will be greatly appreciated.]