TECHNOLOGY LICENSING
FINAL EXAMINATION

December, 2005

Professor Jorda

Instructions:
This is a two-hour (more for certain foreign students) open-book exam. You may consult the course materials as well as any other materials.

Write your answers in the blue books supplied, but please use only one side of the page and observe the margins. Please write or print as legibly as possible.

Grading will be anonymous; please do not put your name on anything you turn in.
BE SURE YOUR EXAM NUMBER IS ON EACH BLUE BOOK YOU TURN IN.

PROBLEM I

A. Facts

A licensee paid the licensor $150,000 plus an advance on royalties of $100,000 for a nonexclusive license under three patents. Subsequently the licensee exercised his option to convert the nonexclusive license to an exclusive license by paying a second $150,000 fee and a second advance against royalties of $100,000. Seven years later the licensor brought suit against the licensee on the grounds that it had breached the contract by not fulfilling an obligation to use the best efforts to exploit the patents on the basis that although the license did not contain a best efforts clause, it must be implied because the contract contemplates the payment of royalties.

B. Question

1. How should the court decide this issue? In your answer discuss also the rationale behind a "best efforts" clause and at least three (3) examples of better alternatives for accomplishing the same. **[15 points]**

PROBLEM II

A. Facts

Red Maple Restaurant, Inc. sued Red Maple, Inc. for trademark infringement. The Plaintiff owned two registrations: "RED MAPLE" and "RED MAPLE and DESIGN" for restaurant services, while defendant had no registration but operated under the name RED MAPLE RESTAURANT. Plaintiff had leased the restaurant to one of its key employees, including exclusive use of its two marks for a term of one year. The defendant claimed that plaintiff had therefore abandoned the mark by granting a naked license, inasmuch as there was no control by plaintiff of the nature and quality of the restaurant's services. Evidence adduced at trial by plaintiff showed that the lease provisions granted plaintiff