EXAM NO. _____

MERGERS & ACQUISITIONS
A TOOL FOR ACQUIRING INTELLECTUAL PROPERTY

Professor John Orcutt
Summer Semester 2002

FINAL EXAMINATION

Instructions:

1. This is an open-book examination. You may bring any materials you wish to the examination with the exception of computers, telephones or other electronic devices. Calculators, however, are permitted – although I do not believe they will be necessary.

2. This is a 2 ½ hour examination and is worth 85 points.

3. The examination consists of 2 essay questions and 1 short-answer question. The point distribution for the questions is as follows:

   ►Question No. 1 (essay) will be worth 50 points
   ►Question No. 2 (essay) will be worth 30 points
   ►Question No. 3 (short-answer) will be worth 5 points

   It is your responsibility to apportion your time appropriately amongst the three questions. If you base your time on the number of possible points per question, the time apportionment should be:

   ►Question No. 1 = 88 minutes
   ►Question No. 2 = 53 minutes
   ►Question No. 3 = 9 minutes

4. Do not write your name on the examination or your blue books – only your examination number.

5. ***For Questions No. 1 and No. 2:*** Please use a separate blue book for each answer. Remember to write your examination number on each blue book that you use. The only answers that will be graded are the answers written into blue books. While you are free to use scratch paper, answers written on scratch paper, or anything else other than a blue book, will not be read and will not be counted for any credit. Please write only on the front side of the pages in the blue book.

6. ***For Question No. 3:*** Please write your answer in the space provided in the examination booklet. Your answer may not exceed the amount of space provided for you in the examination booklet. DO NOT WRITE YOUR ANSWER FOR QUESTION NO. 3 IN A BLUE BOOK.

7. Please remember that organization, persuasiveness, neatness and legibility all count in determining your grade on an answer. To improve the organization of an answer, you may wish to quickly outline the answer on a separate sheet of paper prior to writing your full answer in the blue book.

8. Should you find it necessary in answering a question to assume a fact not given in the problem as stated, you may do so. However, you should clearly indicate that you are making an assumption and you should explain why you consider it a reasonable assumption to make.

Good luck on the examination!

DO NOT TURN TO PAGE 2 UNTIL THE PROCTOR TELLS YOU TO BEGIN

QUESTION NO. 1 (50 points possible):

July 11, 2002: Me2, Inc. ("Me2") is a Delaware corporation and is listed on the New York Stock Exchange. Me2 manufactures and sells optical networking equipment for the telecommunications industry. Me2's products consist primarily of specialty lasers that are used in telecommunications networks. Me2's current business is struggling terribly. As a result of the severe decrease in capital spending in the telecommunications industry, Me2's revenues and profits have dramatically decreased in each of the last two years and the company's stock price has tested all-time lows during the last few months. In addition to the poor financial performance, Me2 is also facing two serious liabilities:

1. A $50 million lawsuit by a Mr. Felipe Ruiz (the "Laser Lawsuit"). Mr. Ruiz purchased a Me2X laser from Me2 in 1998 and claims that the Me2X laser was defective and caused him to go blind. Me2 began to manufacture and sell the Me2X laser in 1997 and ended production and sales of this product in 1999; and

2. The property under Me2's manufacturing facilities may have been contaminated by Me2. Me2 has paid for a preliminary survey of the cost for cleaning up the contamination and has received an estimate of between $5 million and $15 million.

Me2's board of directors and senior management are concerned about the future of Me2 and have begun to consider selling the company.

Recently, Vulture Co. ("Vulture"), a Delaware corporation listed on the New York Stock Exchange, has approached Me2 about a possible deal. You are an attorney with Milkem and Bilkem, a leading Wall Street law firm, where you specialize in M&A transactions. Vulture is one of your most important clients and has called you to advise it on a possible deal with Me2.

Vulture specializes in identifying struggling companies with valuable businesses, acquiring those companies and then assisting those companies to bring out the true value of the business. Vulture has met with Me2's senior management on a number of occasions to discuss a possible business combination. Following the conversations, both sides are very interested in pursuing a business combination, but a number of important obstacles threaten to prevent the deal. The current state of the negotiations between the parties is as follows:

1. Vulture would acquire Me2's business for cash;

2. Vulture and Me2 have agreed to value the assets at $250 million.

3. Vulture and Me2 are very far apart on the potential cost of Me2's liabilities as a result of potential liability stemming from the Me2X lasers.

   a. Vulture estimates Me2's liabilities as follows:

      ► Laser Lawsuit = Up to $50 million
      ► Future litigation arising from prior sales of the Me2X laser (Vulture is concerned that additional plaintiffs could surface from prior sales of Me2X lasers) = $150 million
      ► Environmental Clean-up = $15 million
      ► All Other Liabilities = $10 million

      Total Estimated Liabilities = $225 million

b. Me2 estimates its liabilities as follows:

- ►Laser Lawsuit (Me2 argues the lawsuit is completely baseless) = $0
- ►Future litigation arising from prior sales of the Me2X laser (Me2 is not concerned about future lawsuits) = $0
- ►Environmental Clean-up = $15 million
- ►All Other Liabilities = $10 million

Total Liabilities = $25 million

4. Me2 is the owner of a number of patents and copyrights that are critical to Me2's business (the "Me2 IP Portfolio"). Me2 has licensed a number of these patents and copyrights to licensees on a non-exclusive basis. Me2 has not licensed any of the patents or copyrights to anyone on an exclusive basis. Me2's business is also highly dependent on one non-exclusive patent license that Me2 has obtained from JDS Uniphase (the "JDS License"). The license agreement with JDS Uniphase provides that the JDS License is not assignable without the prior written consent of JDS Uniphase. A copy of the assignment clause for the JDS License is attached hereto as **Annex A**.

Vulture would expect to manufacture and sell approximately the same number of products using the JDS License as Me2 currently manufactures and sells. Vulture is not a competitor to JDS Uniphase.

5. Me2's senior management and board of directors (each of whom supports a deal with Vulture) own approximately 45% of the outstanding voting stock of Me2, with the remaining shares held widely by the public. Vulture's senior management and board of directors (each of whom supports a deal with Me2) own approximately 10% of the outstanding voting stock of Vulture, with the remaining shares held widely by the public.

YOUR ASSIGNMENT:

1. Please recommend the optimal structure for the Vulture/Me2 deal;
2. Please provide a diagram of the structure;
3. Please provide a thorough explanation of why you have chosen your recommended structure and describe any issues that Vulture should be informed of. Please include a description of (a) the required shareholder votes and (b) the applicable appraisal rights; and
4. Please discuss your strategy for dealing with the Me2 IP Portfolio and the JDS License.

QUESTION NO. 2 (30 points possible):

July 11, 2002: ABC Company ("ABC") manufactures specialty audio headphones. ABC is a very small company that was only recently formed in 1999. ABC is a privately held company – its only shareholders are the founder and members of her immediate family. The core of ABC's technology is derived from a non-exclusive patent license with ClearSound Inc. ("ClearSound") of certain of ClearSound's most critical wireless headphone technology. ClearSound is the leading developer of audio headphones in the world. In each of the last two years, ABC's revenues from its products that use the ClearSound patent have been approximately $2 million, with ClearSound earning approximately $100,000 in royalties from the patent license with ABC in each such year. Comparatively, ClearSound's revenues in 2000 and 2001 were $1.0 billion and $1.1 billion, respectively. ClearSound's motivation for entering into the non-exclusive patent license with ABC is not to generate licensing royalties. Rather, ClearSound is impressed with the engineering team that ABC has developed and is interested in seeing what ABC is able to develop using ClearSound's core technology. If ABC is successful at developing something special, ClearSound would consider acquiring ABC. At the time of the license agreement, it was important to ClearSound that ABC was a very small company and not a material competitor.

Jive Inc. ("Jive") is a very strong competitor of ClearSound. Over the last three years, much of ClearSound's business strategy has been to defeat Jive and remove it as a credible threat in the audio headphone business. One strategy that ClearSound has used against Jive is to file very broad patents with the intention of impeding Jive from competing against ClearSound in certain headphone markets. Jive, however, continues to fight back against ClearSound. Recently, Jive has considered acquiring ABC as a means of getting access to the key patented technology that ABC is licensing from ClearSound. ClearSound's non-exclusive patent license to ABC is silent as to transferability. Jive's only desire for acquiring ABC is to gain access to the patent license with ClearSound. ABC has informed Jive that it would be interested in being acquired by Jive.

You are an attorney with Milkem and Bilkem, a leading Wall Street law firm, where you specialize in M&A transactions. Jive is one of your most important clients and has called you to advise it on its possible deal with ABC. Jive has asked you whether a deal could be structured that would allow Jive to acquire ABC's patent license with ClearSound. Please advise Jive.

QUESTION NO. 3 (5 points possible):

July 11, 2002: In late June 2002, WorldCom Inc. ("WorldCom"), one of the largest telecom and internet service providers in the United States, announced a $3.8 billion accounting error that has severely damaged the corporation. Since the accounting announcement, rumors have swirled that WorldCom would be purchased by another major telecom service provider. One telecom service provider that may be interested in acquiring WorldCom is China Telecommunication Corporation ("China Telecom"), the leading provider of telecom and internet services in the People's Republic of China. China Telecom believes that acquiring WorldCom would provide China Telecom with an inexpensive means to enter the U.S. market and would provide China Telecom with a powerful portfolio of intellectual property assets.

You are an attorney with Milkem and Bilkem, a leading Wall Street law firm, where you specialize in M&A transactions. China Telecom is one of your most important clients and has called you to advise it on a possible acquisition of WorldCom. China Telecom would like to know whether an attempted acquisition of WorldCom by China Telecom would be subject to Exon-Florio (the Exon-Florio Amendment to the Omnibus Trade and Competition Act of 1988, as further amended). Please advise China Telecom. **PLEASE ANSWER IN THE SPACE PROVIDED ON THIS PAGE.**

ANNEX A:

Clause from JDS Uniphase/Me2 Patent License Agreement

SECTION 12 – Assignment: Licensee [Me2] may not assign this license agreement without Licensor's [JDS Uniphase] prior written consent, which consent shall not be unreasonably withheld. For purposes of this section, a Change of Control shall be deemed an assignment. "Change of Control", as used herein, shall mean: (1) a sale of all or substantially all of Licensee's assets; (2) a merger or consolidation in which the Licensee is not the surviving corporation; (3) a reverse merger in which the Licensee is the surviving corporation but the shares of voting stock of Licensee outstanding immediately preceding the merger account for less than 50% of the combined voting power entitled to vote in the election of directors upon consummation of the merger; or (4) an acquisition by any person or entity of securities of the Licensee representing at least 50% of the combined voting power entitled to vote in the election of directors.