

## Intellectual Property Fall 2019 Writing Assignment

*This assignment is 4 pages long. You can confine your answer to the areas we've discussed so far in class: undeveloped ideas, trade secret, patent, and copyright. You are allowed to consult written and electronic sources beyond those presented in class and in the coursepack (including those linked in the problem), but if you find anything that contradicts this problem, treat the problem as authoritative.*

*You may work on this assignment in groups of up to four members. Each group must submit a single answer and will receive a single collective grade. Do not discuss this assignment with anyone except other members of your group until after the due date.*

**Your answers are due by noon on Monday, November 4. Please submit your answers by emailing a PDF to Angy Altamirano ([aaltamirano@cornell.edu](mailto:aaltamirano@cornell.edu)). The PDF should not contain your name or any other identifying information. The email should identify all members of the group who worked on the answer together, and they should all be cc:ed. Angy will anonymize the files for my grading.**

## #Resistance

**To:** A. Torney, Torney Law LLC

**From:** Arnold Franz, Co-Founder and CEO, Uplift Exercise

**Re:** IP Strategy

Thanks for talking earlier. I'm glad we were able to connect. We've put off nailing down our IP strategy for far too long.

Like I said, here at Uplift Exercise, we're developing a new line of exercise equipment. Here's what that means. In a traditional [weight machine](#), the part the user pushes or pulls is connected to a vertical bar that lifts a weight. You can change how much weight you want (usually by attaching different weights to the bar with a heavy metal pin) but while you're pushing or pulling, the force is constant because the weight doesn't change.

Back in 2016 and 2017, while I was working as a trainer in the weight room at the Implosion Chamber gym, I had the idea that you could get a more effective workout faster if the force you needed to exert *increased* as you pushed or pulled further. I don't have a degree in this, and I haven't seen anything published on it other than some random yahoos spouting off on bodybuilding forums online, but the idea is your body gets more feedback about how hard it's working, so you subconsciously adjust to the right intensity for you.

I didn't do much with this until one day in March of 2017 I was talking to one of the regulars, Jean Sandow. She said she was a mechanical engineer, so we got to talking about exercise equipment and I told her the idea of making a weight machine that increased its resistance. She said there were already machines like that, like the Catapult line from Jones Fitness, which uses large springs. Jean didn't know about any that used a weight stack, though. She said she'd think about it, and next time she came in she said she had a way to do it with a set of "nested cam pulleys," whatever those are. She said they're common in construction robots, which is where she learned about them.

We started working weekends in her garage and in May and June we made a prototype [pulldown machine](#) that started from any weight the user wanted and then smoothly increased the force. I asked the manager at Implosion if we could try it out in the weight room and he said yes, so we put it in in August of 2017 along with a little stack of comment cards

and left it there until December. I'm guessing a couple hundred people tried it, and we got about 30 comment cards on it. I can give you copies if you want.

Based on the feedback, Jean built an improved prototype in January and February 2018 that had a built-in limiter to keep the user from pulling too far. We kept this one in her garage and emailed everyone who'd submitted a comment card to ask if they wanted to visit and try it out. We got eight people to try it and their reactions now that it had the limiter were really positive. We were kind of busy with other things, so this ran from about March until mid-September. Everything looked good, so there weren't any further changes to the pulldown design after that.

Jean had a gym buddy, Charlene Atlas, a orthodontist who got into investing. We showed her the two prototypes and also the design sketches for an initial range of eight machines: [leg press](#), bicep curl, the works. They all used the nested cam pulley mechanism and the built-in limiter. Atlas liked what she saw, so she put up some seed capital and the three of us founded Uplift. I think the documents we signed just talk about who owns the company; I didn't see anything in there about IP but I can get those for you too if you want. We signed all of that in January of this year.

We've been working on designing and testing prototypes of the initial eight machines. Well, really Jean and the two other engineers she's hired have been doing that. Atlas and I have been lining up the business plan and getting ready to start marketing to gyms and equipment distributors. So far, four of the designs seem basically ready to go to production, two are progressing well, and two have hit unexpected snags that might take until early next year to work out. After that, it will probably take another six months to set up a factory before the first completed machines will be ready.

Something that wasn't obvious to me at first is that the Uplift increasing-resistance machines will require a different workout style. You shouldn't do the usual weight-machine routine of sets of repetitions with breaks in between. Instead, you should use each machine for about five minutes and switch up how far you push. It sounds weird, but it feels really natural after a couple of days. I've got a nice set of workout plans for the full eight-machine cycle written out for people at all levels of fitness.

I've also got a longer manuscript, a couple hundred pages or so, explaining the benefits of the Uplift system. We've talked about hiring a photographer to take a series of photographs of people using the machines properly, and then making a slick, glossy book and website about how it works and how to use the machines for a new exercise routine. If the initial roll-out goes well, we'll get another round of funding and then scale up. More machines, more books, maybe set up our own line of gyms.

Here's where you come in. The question is how long we'll have this market to ourselves and what we should do to prevent the established players in the exercise-machine space from just muscling in on us, ha ha. You know, duplicating our designs, undercutting us on price, and then having people do the exercise routines we invented on their own machines. I was thinking we could keep the technical details secret by hiding the pulleys beyond a sealed plastic cover, get a bunch of patents on the pulleys and the different machine designs, and copyright the book and the photographs so no one can do the exercises in them without our permission. Maybe make everyone we sell a machine to sign an NDA too as part of the sale? Do you think that will work? If not, what should we do?

Thanks so much! I'm looking forward to seeing what you come up with.

Sincerely,  
Arnie

*Write a memo to your client of 2000±250 words explaining the intellectual property (IP) considerations that should inform Uplift's strategy going forward. Describe the types of IP protection Uplift should plan to rely on, what will be necessary to secure those protections, and the risks that those protections will and will not be able to guard against. Tell Uplift if there is anything it should do, not do, or do differently for IP reasons. Remember that your client's officers do not have law degrees and are not familiar with IP law. They are also very smart and exceedingly busy. It is fine to tell them you will provide them with appropriate legal instruments – patent applications, NDAs, etc. – without going into the details as long as you identify the strategic choices they involve and the reasons for your recommendations.*