

Hypothetical Fact Pattern for IP Colloquium

ABC (a U.K. company) manufactures brand-name watches and sells them in Europe, Asia and North America. Most of the watches bear trade marks owned by ABC and registered throughout those regions (including various Community Trade Mark and Madrid Protocol filings). Some of the marks are also registered in South American countries in which ABC currently does little business. ABC also uses various slogans in its advertising that have not been registered anywhere.

ABC has entered into royalty-producing licenses of certain of its trade marks with another company, under which the licensee manufactures watches bearing such trade marks and sells them in Asia.

ABC is also the licensee of various trade marks owned by third parties, which marks are registered throughout Europe, Asia and North America. The license agreements grant ABC the right to manufacture watches bearing the marks and to sell them in those regions.

ABC also acts as a distributor, in Europe, of various brands of watches manufactured by others.

ABC owns various patents, and is the licensee of a number of other patents. Also, ABC periodically develops new products giving rise to patentable inventions and brand names.

ABC also owns substantial instructional and other sales literature protected by copyright.

ABC is seeking working capital financing. A Dutch lender has offered to extend to ABC a €100 million senior secured credit facility, comprised of (i) a €70 million revolving line of credit based on the value of ABC's receivables and inventory and (ii) a €30 million term loan based on the value of ABC's portfolio of owned patents and trade marks (including the revenue stream under its royalty-producing licenses), which intellectual property has recently been appraised at €40 million. All obligations under the facility would be secured by all existing and future tangible and intangible personal property of ABC, including all existing and future intellectual property.