Michael Pritchard's Commentary on "New Technology - Who Is the Designer?"

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Part 1

Part 2

Part 3

Part 1

It is difficult to determine precisely what contributions each of the parties made in this scenario. Since everyone seemed quite satisfied until Fabio sought a patent, it seems that they had a satisfactory division of labor. Edgar, Doris and Mac co-authored papers on the advantages of their innovative sampling approach, and Fabio developed improved models of the sampling machine and began marketing the technology.

However, upon learning that Fabio was applying for a patent for the sampling machine, Edgar argued that his contributions warranted his name being included in the patent. He claimed that most of the ideas that went into the sampling machine were his. It is not clear what he could mean by this assertion. Edgar's role seemed to be to let Fabio know what his sampling needs were, review Fabio's drawings, and refine performance specifications. Fabio, in turn, designed and produced the sampling machine. Admittedly, without Edgar's input, Fabio would probably not have come up with the sampling machine he did, since the machine was designed to satisfy Edgar's research needs. But that, in itself, doesn't seem to warrant Edgar being listed in the patent. On the face of it, Edgar seems to be exaggerating the

significance of his input. What could he mean by saying that "most of the ideas that went into the sampling machine" were his. Why, then, did he need Fabio? Is he suggesting that Fabio had virtually no creative input, that he was simply carrying out Edgar's design? Still, it is possible that Edgar provided enough input to warrant being included. We simply cannot tell from the scenario described so far.

Part 2

The first part of Part 2 seems to fall in line with the response outlined in Part 1. The significant addition in this segment is the reference to Edgar's "files." They might provide some support for Edgar's position. Unfortunately, they are neither signed nor kept in a notebook. Whether the contents of the "files" will ethically support Edgar's position depends on what they contain. Whether they provide legal support may depend on their being signed and in notebooks. If that is so, then the colleague may be sympathetic to Edgar's position but feel it is pointless to help him press his case legally. This segment points to the need for careful documentation of one's work.

Part 3

This is a case in which all parties would have been well advised to have a clear understanding from the outset of directions in which their work might go, how the work would be credited, and so on. It is unrealistic to think that all potential difficulties might have been anticipated. But it is not unrealistic to think that, as time passes, Fabio would want to move ahead without Edgar. If Edgar thinks he might have some stake in how Fabio proceeds, he should discuss this issue at the very beginning; the discussion of possible patents should occur earlier than a year after they have completed their work together.

What about the ethics of the case, as distinct from the legal questions? Here, it seems to me, a candid discussion of mutual expectations, possible future work and the like is important from the outset. Fabio is a vendor; he is in a business. Edgar is a university researcher. He may not have been ready to see himself in a business relationship with Fabio. However, once he tries to enter the world of patents, he is entering into the business realm. He would be well advised to give some attention to

these matters earlier rather than later. This approach is fair both to himself and anyone with whom he enters into a business relationship.

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