Toward the end of 1995, Patricia Indigo was hired by Seafloor Drilling to develop a better design for an offshore rig. On February 2, 1996, Indigo discussed her ideas with Cornelius Linnet, a patent attorney for Seafloor. Linnet immediately began work on a patent application incorporating Indigo’s ideas, which the two discussed further as Patricia continued to work on her design. On May 3, 1996, an application for a patent covering Patricia’s design was filed with the United States Patent and Trademark Office. A patent on Indigo’s claimed invention has since issued.

As it turned out, Patricia was not the only person working on such an improved design at about that time. Njal Hedin, a Norwegian engineer, had come up with substantially similar ideas, and these ideas had been memorialized in a promotional brochure completed on February 8, 1996. On February 9, 1996, Njal gave a copy of the brochure to a representative of Trygvason Corp., a Norwegian company. He delivered an additional copy to Vinlander Inc., another Norwegian firm in late February. From March 10 to 19, 1996, Njal was in Houston, Texas, where he provided additional brochure copies to Seafloor and a couple other drilling companies.

Seafloor has asked you to look into whether there are any concerns about the validity of Patricia’s patent claims. You have spoken to Patricia, and she has said that, by February 2, 1996, she certainly had the general idea for the invention but could not recall precisely which elements of the claimed invention she had discussed with Cornelius on that date. She continued to work on developing her plans for the improved rig afterwards, using a computer to produce design drawings and keeping handwritten track of her progress in a notebook.

Could the Njal brochure present a problem for the claims of the Indigo patent? What additional information would you like to obtain from Patricia? From Cornelius? About the Njal brochure? About the Indigo patent?

Would your answers differ if post-AIA law on novelty applied?