OCEAN TOMO

INTELLECTUAL CAPITAL EQUITY

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Michael J. Lasinski is a Managing Director at Ocean Tomo and is responsible for the company's valuation practice. Mr. Lasinski is a recognized expert in the area of intellectual property (IP) centric transactions and valuation. His work has focused on IP-based business transactions, including IP portfolio analysis, target/partner selection, strategic due diligence and other financial advisory services such as negotiations and transaction/deal structuring and closure. Post deal, Mr. Lasinski has been involved in several royalty audits.

Mr. Lasinski has been the financial negotiator for IP-centric transactions and matters dealing with IP valuation issues. Mr. Lasinski has represented his clients in arbitration proceedings, litigation, tax matters as well as other regulatory issues. Industries in which he has experience include automotive, health care, pharmaceuticals, consumer products, chemicals, food, software, computer hardware, telecommunications as well as others.

Mr. Lasinski has helped companies strategically manage their IP by creating global corporate organizations designed to maximize current and future intellectual property value. This has included the development of global corporate IP management companies, IP development and filing strategies and licensing groups.

In addition to intellectual property valuation matters, Mr. Lasinski has performed appraisals for corporate mergers, acquisitions, tax and financial reporting purposes.

Education; Professional Affiliations

M.B.A., Finance and Accounting, The University of Michigan, with High Distinction

B.S.E.E., Electrical Engineering, The University of Michigan, Summa Cum Laude

Licensed CPA, State of Illinois

A.I.C.P.A., Illinois CPA Society

Licensing Executives Society, Treasurer (former Valuation and Taxation Committee Chair)

Intellectual Property Owners Association, Former Vice Chair, Valuation and Taxation Committee

Intellectual Property Valuation

July 20, 2006

Franklin Pierce Law Center

Advanced Licensing Institute



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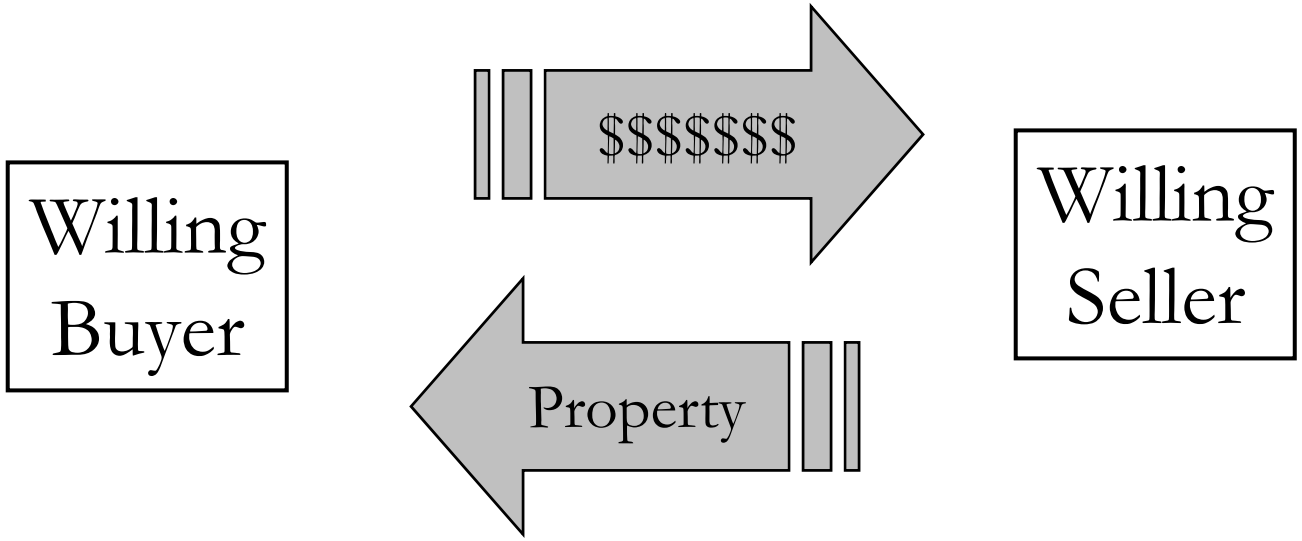
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Agenda

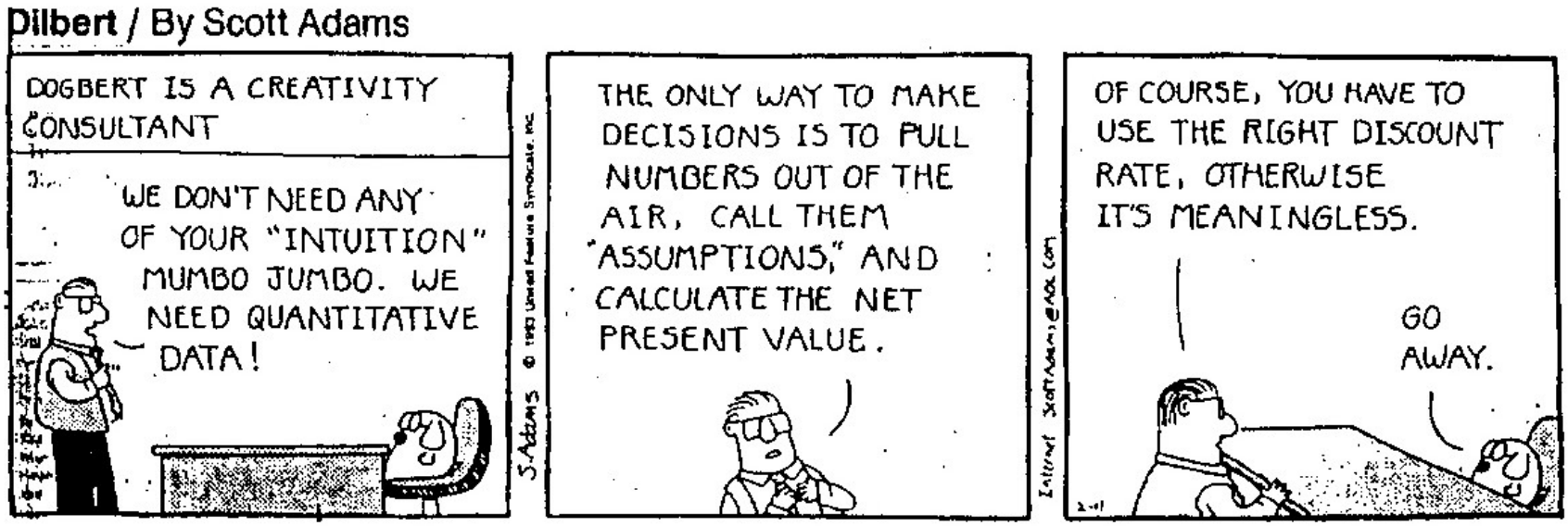
1. Introduction
2. IP valuation theory: cost, market, income, other
3. Price v. value
4. Pre-valuation due diligence
5. Deal structure discussion
6. Disclaimer
7. Contact information

Introduction: An IRS definition of Fair Market Value

- Fair Market Value is defined as the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts (Estate Tax Regs., Sec. 20.2031-1(b); Rev. Rul. 59-60, 1959-1 C.B. 237)



Introduction: Dilbert understands valuation



Introduction: The courts understand damages

	Parties	Award	Date	Source	Court
1	Polaroid v. Eastman Kodak	$873,158,971	Jan-91	17 USPQ2d 1771	D. Massachusetts
2	Michelson v. Medtronic Sofamor Danek	$529,000,000	Oct-04	National Law Journal	W.D. Tennessee
3	Eolas Technologies v. Microsoft	$521,000,000	Aug-03	Wall Street Journal	N.D. Illinois
4	City of Hope Medical v. Genentech	$500,100,000	Jun-02	New York Times	Sup. Ct. California
5	Johnson & Johnson v. Guidant	$425,000,000	Sep-03	National Law Journal	Arbitration Panel
6	Johnson & Johnson v. Medtronic	$270,000,000	Sep-03	National Law Journal	CAFC
7	Haworth v. Steelcase	$211,499,731	Dec-96	43 USPQ2d 1223	W.D. Michigan
8	Hughes Tool v. Smith International	$204,810,349	Mar-86	229 USPQ 81	C.D. California
9	Procter & Gamble v. Paragon Trade	$178,400,000	Jan-98	Press Release	D. Delaware
10	Exxon Chemical v. Mobil Oil	$171,000,000	Aug-98	Wall Street Journal	S.D. Texas
11	Guidant v. Medtronic AVE	$166,681,773	May-02	Judgement	Arbitration Panel
12	Viskase v. American National Can	$164,900,000	Jul-99	Press Release	N.D. Illinois
13	Masimo v. Nellcor	$164,000,000	Aug-04	CBS MarketWatch	C.D. California
14	Hughes Aircraft v. United States	$154,000,000	Jun-94	Wall Street Journal	Federal Claims
15	Intergraph v. Intel	$150,000,000	Oct-02	Wall Street Journal	E.D. Texas
16	3M v. Johnson & Johnson	$129,000,000	Dec-92	Dow Jones Newswire	CAFC
17	Fonar v. General Electric	$128,705,766	Feb-97	Final Judgement	CAFC
18	Mobil Oil v. Amoco Chemical	$120,000,000	Aug-98	Press Release	D. Delaware
19	Stac Electronics v. Microsoft	$120,000,000	Feb-94	National Law Journal	C.D. California
20	Internet Magic v. Netfax	$114,000,000	Feb-02	National Law Journal	Sup. Ct. California

Source: IP Litigation: Assessing and Managing The Risks, James R. Sobieraj - Brinks, Hofer Intellectual Property Seminar

Introduction: Some statistics and information

- Global licensing revenue is greater than $150 billion and is growing at 25% to 35% per year
- IBM collected more than $1.5 billion in royalties last year (and donated 500 patents for open source)
- Microsoft paid more than $1.4 billion in royalties last year (and is looking to cross license with the 30-40 top technology companies)
- Intellectual Ventures raised more than $350 million to execute its strategy of acquiring patents for license/assertion

Introduction: Commerce One auction

- Commerce One sells patent portfolio out of bankruptcy for $15.5 million in December 2004 to JGR Acquisition, Inc.
- Patent portfolio consisted of 39 patents/applications and was sold via an auction
- JGR Acquisition, Inc. is later identified as Novell, Inc.; purchase is made for defensive purposes
- The runner-up was Intellectual Ventures which bid $14.9 million

IP and RIM's Stock Price



	Date	Event
A	3/16/2005	RIM agrees to pay $450 million to settle the dispute, sending its stock soaring more than 17 percent.
B	6/9/2005	RIM and NTP fail to finalize a settlement, and RIM says it will ask for court action to enforce the terms of the March deal.
C	9/29/2005	U.S. patent office issues initial ruling rejecting all claims in the NTP patents it is re-examining.
D	10/7/2005	U.S. appeals court refuses to reconsider its ruling. RIM says will appeal to the U.S. Supreme Court.
E	1/23/2006	Supreme Court Refuses to hear RIM appeal
F	2/22/2006	U.S. Patent and Trademark Office issues final rejection of one of the five disputed patents owned by NTP Inc.
G	2/24/2006	Judge defers BlackBerry injunction ruling
H	3/3/2006	$612.5MM Settlement Ends BlackBerry Patent Suit

IP Creates Value Through a Variety of Mechanisms

Numerous Sources of Value

Exclusivity Value:
- Price premium
- Reduced manufacturing cost
- Increased market share
- Enhanced customer satisfaction
- Blocking value

Option Value:
- Current technology and protection may provide an avenue for future investments

Defensive Value/ Freedom to Operate:
- Creates an IP arsenal to discourage lawsuits
- Provides ability to compete, but little advantage

Trading Value:
- Value in trade for entering into cross-licenses, for licensing-out, or for sale

Cost Approach

- Value: Cost to replace or recreate the asset
- Theory: Licensee is willing to pay as much as it would cost to develop the asset on its own but no more
- What types of costs should be included in a cost approach calculation?
- What are the strengths of this approach?
- What are its weaknesses?

Market Approach

- Value: Arm's-length price paid in comparable transactions
- Theory: Licensee is willing to pay as much as others have paid for the asset but no more
- What constitutes a comparable transaction?
- What are the strengths of this approach?
- What are its weaknesses?

Example Market Approach

- Trademark valuation – start with comparable trademark transactions, and then perform adjustments for sales levels, trademark attributes, etc.

Brand IP	Owner / Seller / Licensor	New Owner / Licensee / Infringer	Trademark Value ($M)	Revenue ($M)	Date	Notes
Commodore	Tulip Co.	Yeahronimo Ventures	$33		2005	Transaction believed predominantly IP based. Commodore has not had traction since the 1970s/early 1980s
Levis	Levis Strauss & Co.	N/A	$500	$4,091	2003	Loan: "In 2003, Levis Strauss completed a $500 million trademark-backed term loan, $200 million of which was priced with a hefty 10% interest rate through lead arranger Bank of America"
Fieldcrest, Cannon, Royal Velvet	Pillowtex Co.	GGST LLC	$121	$935	2003	Bankruptcy: bidders at bankruptcy auction primarily interested in brand IP, although some hard assets also purchased
Rolls-Royce	Rolls-Royce, PLC (aircraft company)	BMW	$65	$5,645	2003	Purchase: "BMW, having done its homework, knew that the aircraft company owned the valuable Rolls-Royce trademark…BMW, already a partner with Rolls-Royce PLC in an aerospace venture, purchased the Rolls-Royce trademark from the aircraft company for a mere $65 million"
Nautica	Nautica Enterprises	VF Corporation	$217	$694	2003	Total purchase price of $589.6M
Hotel del Coronado	Lowe Enterprises	CNL Hospitality Properties	$49		2003	Total purchase price of $385M, representing a 60% majority stake
Calvin Klein	Calvin Klein	Phillips-Van Heusen	>$300	$172	2002	Calvin Klein is selling the company that bears his name. Klein will be paid $400 million in cash, plus $30 million in stock and up to $300 million in royalties
Prime	Prime Restaurants of Canada, Inc.	PRC Trademarks, Inc.	$130	$127	2002	Plus a 3.25% royalty rate of gross revenues
Schwinn	Schwinn/GT	Pacific Cycle	$86		2001	Bankruptcy: primary asset was brand IP, but some inventory may also have been purchased
Rocket	Gillette Co.	Rocket Electric Co., Ltd.	$44	$8,084	2001	"Rocket Electric Co., a battery maker in Korea, entered into a 7-year license contract with Gillette Co. involving the use of trademark ROCKET…Of the total amount, US$44 million was attributed to the value of the trademark as determined by Brand Value Co."
Dean Foods	Dean Foods Company	Suiza Foods Corporation	$207	$5,974	2001	Upon the acquisition Suiza Foods Corporation changed their name to Dean Foods Company. Total purchase price of $683.9M.
DHL	N/A	N/A	$50		1992	Tax: opinions by the various experts as to U.S. value of the mark were $350.9, $102.0, $122.2, $18.2 million – ultimately the Court allocated $50 million of value to the U.S. trademark rights
Speedo	Speedo	Pentland, UK	$37		1990	Worldwide license for Speedo swimwear

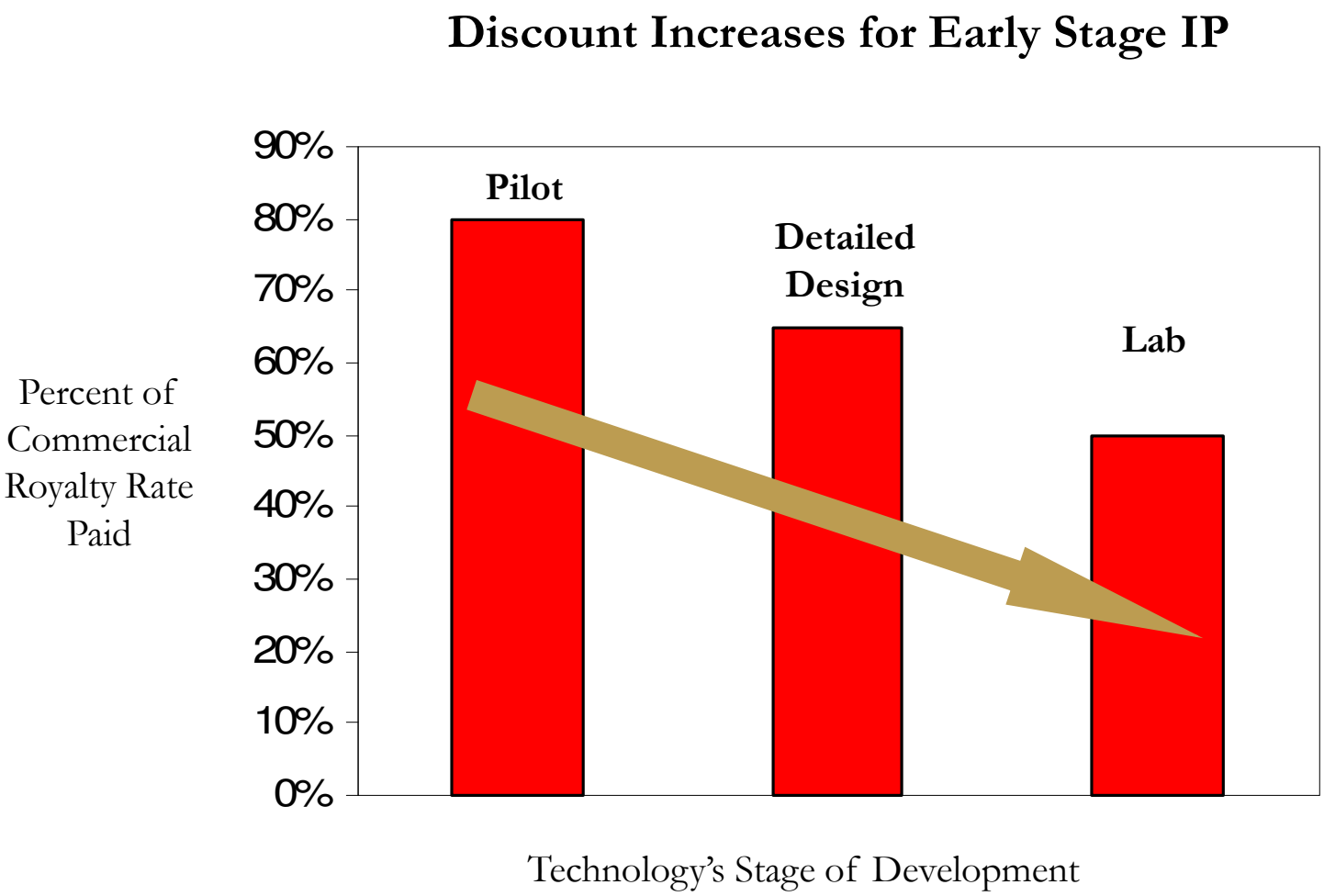
Market Approach: Analyzing comparables

- Specific rights conveyed in transaction
- Arm's-length transaction
- Special financing terms available
- Economic conditions at time of transaction
- Inclusion of non-IP assets in the transaction
- Functional characteristics of the guideline IP
- Technological characteristics of the guideline IP (stage of development)
- Economic characteristics of the guideline IP
- Legal characteristics of the guideline IP
- Other factors

Market Approach: Sources of comparable transactions

- SEC
- Recombinant Capital (Recap.com)
- Royaltysource.com
- Windhover Information (Windover.com)
- Court records
- Licensing Economics Review (LER)
- Licensing Executives Society publications (les Nouvelles)
- Industry presentations
- Licensing experts

Market Approach: Analyzing comparables



Source: A Survey of Licensed Royalty Rates, les Nouvelle, June 1997, Stephen A. Degnan and Corwin Horton

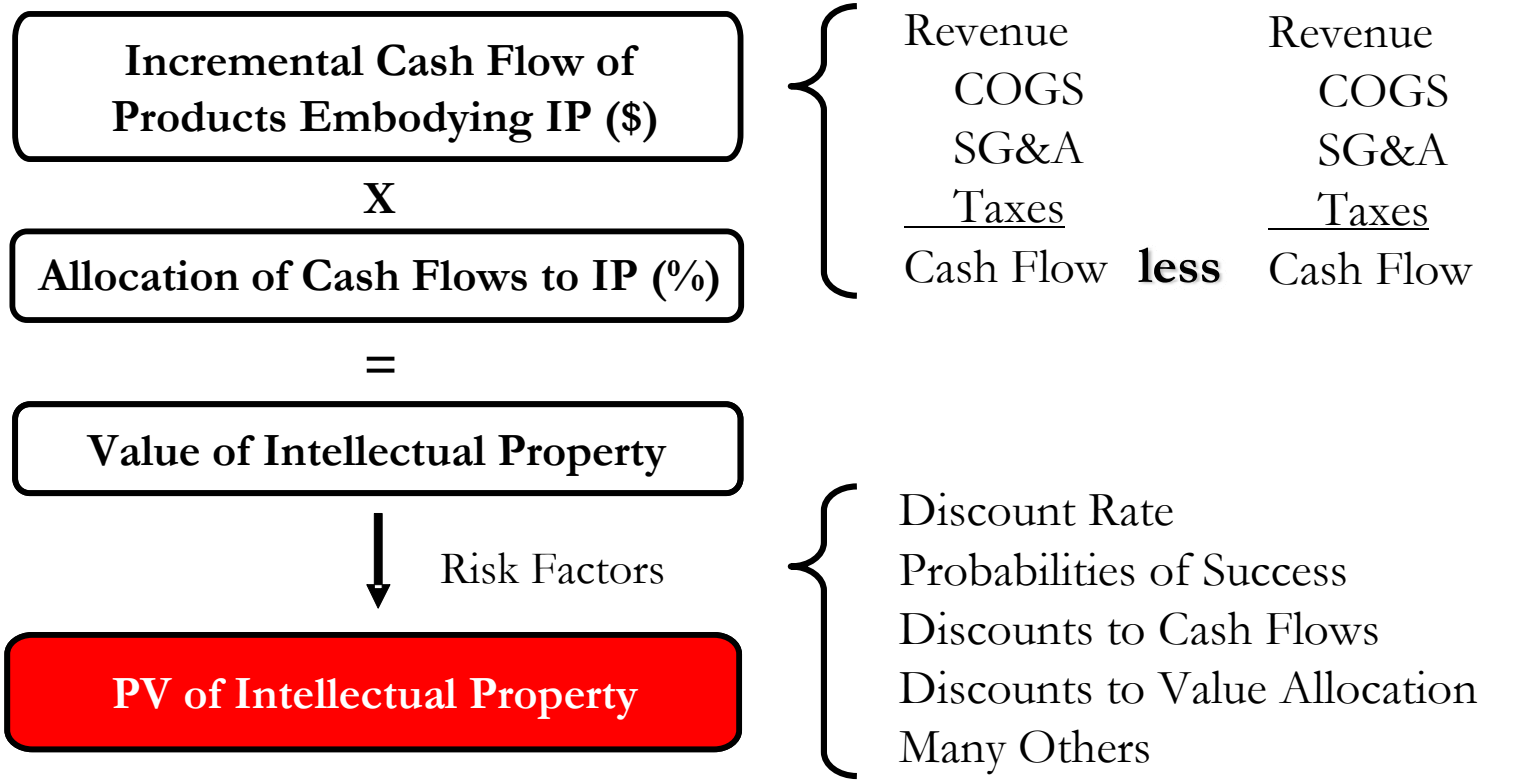
Income Approach

- Value: Present value of the expected cash flows from the subject intellectual property or expected increase in business value due to the intellectual property
- Theory: Licensee is willing to pay some portion of its economic gain from using the intellectual property
- What portion of the cash flows should shared with the licensee?
- What are the strengths of this approach?
- What are its weaknesses?

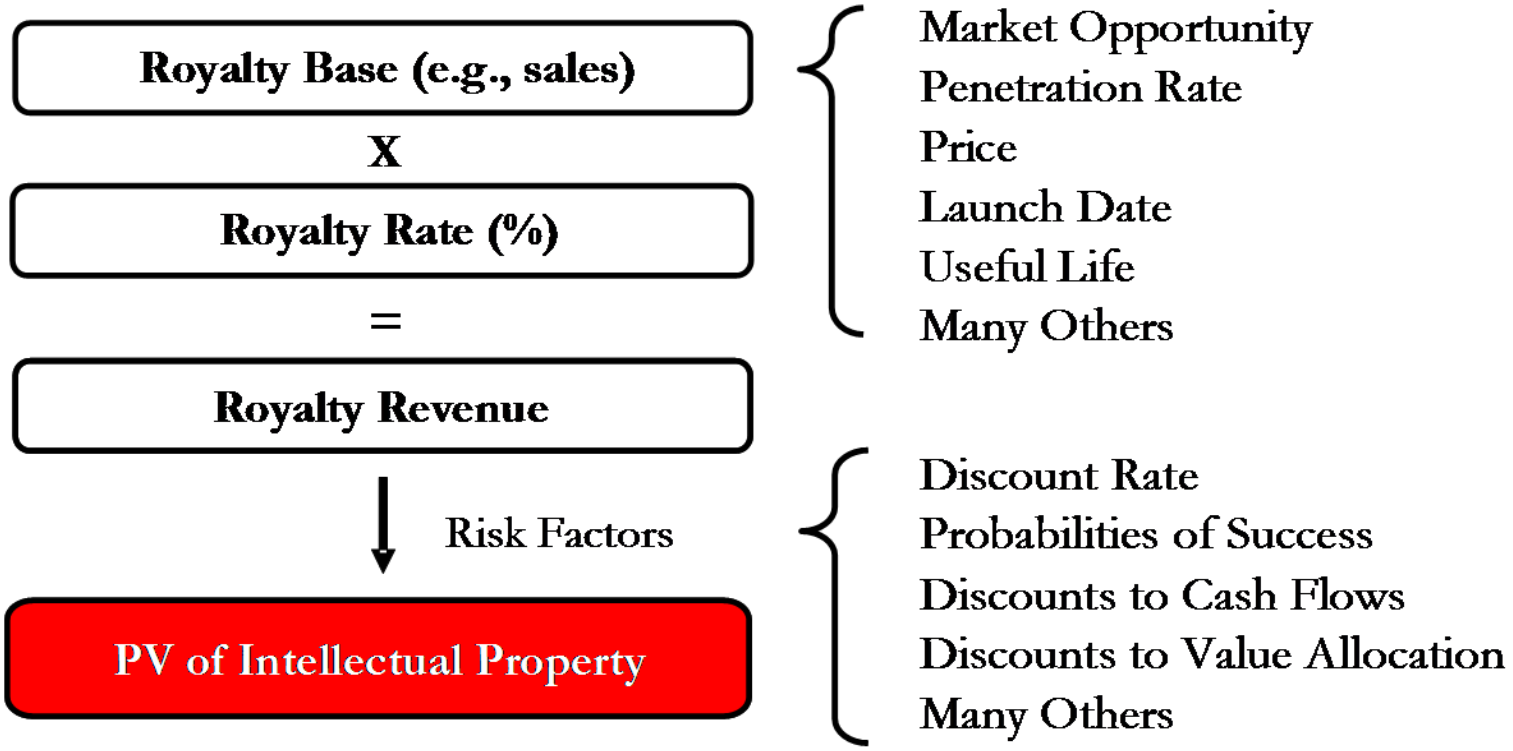
Income Approach: Key calculations

- Calculate incremental revenues (market share, premium prices) due to IP
- Calculate incremental cost savings due to IP
- Calculate relief from hypothetical royalty or lease payments
- Methods that calculate the overall business enterprise or similar economic unit as a result of owning the intellectual property versus one that does not own the intellectual property
- Appropriate discount rate calculation/estimation

Example Income Approach – Excess Earnings



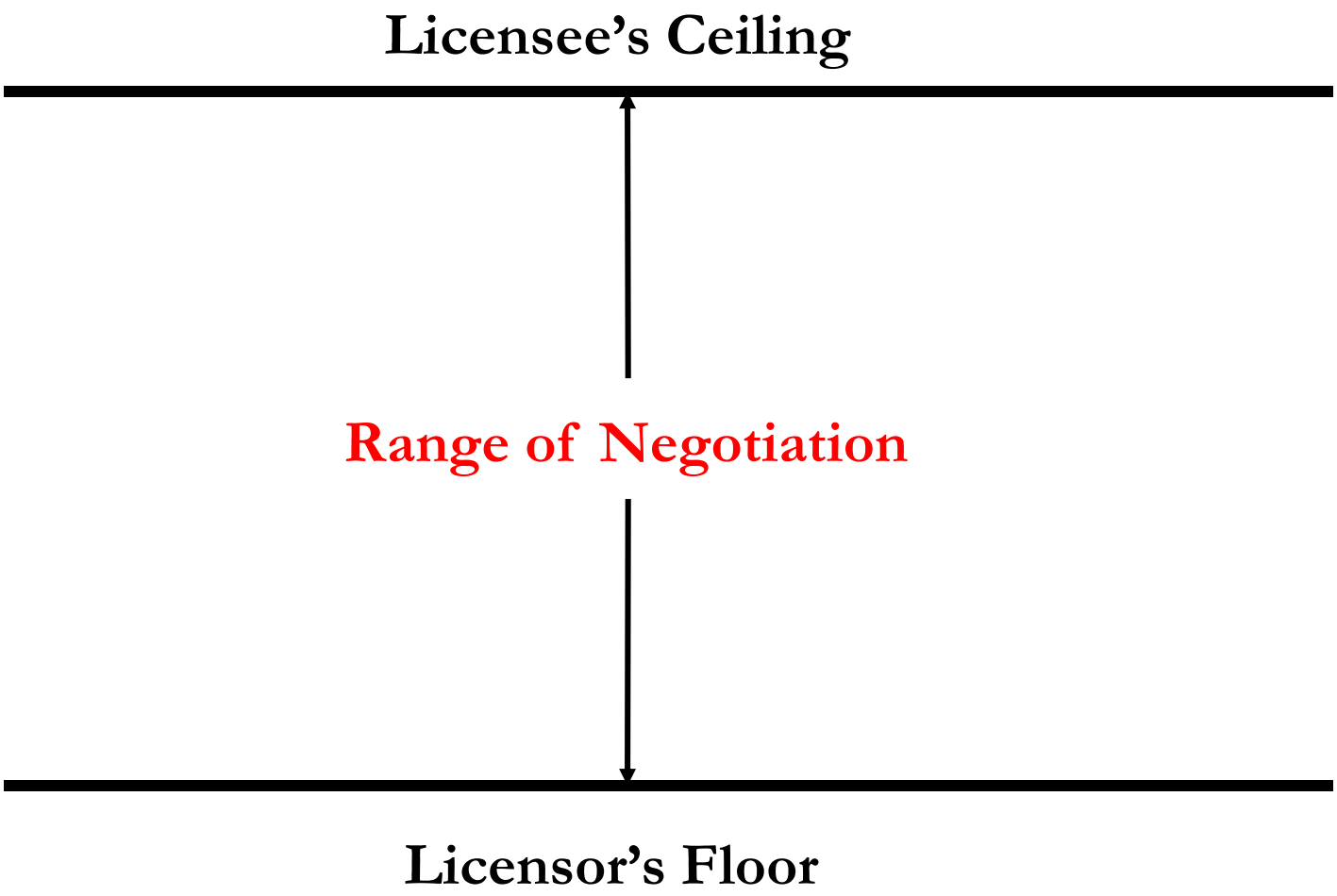
Example Income Approach – Relief-from-Royalty



Common methods for valuing frequently encountered IP

	Income Approaches				
Asset	Excess Profit	Cost Savings	Royalty Savings	Market Approach	Cost Approach
Brands	✓		✓	✓	
Customers Lists				✓	✓
Software	✓	✓		✓	✓
Patents	✓	✓	✓		✓
Know-how	✓	✓	✓	✓	✓
Franchises				✓	✓

Price v. value



Price v. value

"Price is what you pay. Value is what you get."

-- Warren Buffett



IP pre-valuation due diligence: Legal considerations

- Ownership analysis
- Maintenance records
- Completeness analysis
- Prior-art research
- Infringement/litigation analysis
- Encumbrance analysis (cross-licenses)
- Employee/consultant records
- Freedom-to-operate issues
- Other



Determine existence, ownership and control

IP pre-valuation due diligence: Business considerations

- Next best alternative
- Cost to design around
- Benefits of design around
- Comparable transactions
- Gross revenues
- Gross/incremental profit
- Pre-tax profit
- Cost savings
- Incremental revenues
- Complementary assets
- Accounting for risk
- Other



Determine economic, strategic and potential infringement value

Deal structure discussion

Form of Compensation	Licensor Considerations	Licensee Considerations
Lump Sum Payment *A single cash payment made simultaneously with executing the license and represents the only payment that the licensee will make.*	* Often reasonable for small licenses * Has a strong desire/need for near-term cash * Limited faith in licensee performance * Limited resources to account for or audit licensee's records	* Does not want to disclose sales-relat information to the licensor * Believes licensor underestimates opportunity * Less concerned w/ downside risk * Availability of cash / licensor need c
Up-Front Payment *Cash payment(s) made concurrently or within a specified number of days of executing the license agreement.* * *Non-creditable* * *Advance or creditable* * *Technical assistance fee*	* May (or may not) be creditable against future royalties * Has a strong desire/need for near-term cash * May account for past infringement	* Desires fixed cost versus per unit variable cost (lump sum) * Availability of cash * Less concerned w/ downside risk
Milestone Payments *Specified payments due upon the crossing of certain milestone events.* * *Re&D* * *Clinical testing* * *Regulatory approvals* * *Patent issuance / approvals*	* Desire to continue research * Comfortable w/ risk of achieving milestones	* Value hinges on achievement of milestone(s) * Desire to incentivize licensor to achieve milestone

Source: Technology Transfer Seminar, Intellectual Property Valuation - Michael Lasinski, InteCap, 2004

Deal structure discussion

Form of Compensation	Licensor Considerations	Licensee Considerations
Annual Fixed Payments *Annual cash payments due on each anniversary of the license for as long as the license is in effect.*	* When use of a process, method or machinery for which no definite use measurement is appropriate * Desire for consistent annual cash flow * Feels downside potential exists	* Desire for consistent (non-variable) payment * Feels upside potential exists * Does not want to provide licensor with relevant business information (i.e., per unit or percentage royalties)
Guaranteed Min./Max. Annual Payments *Annual cash payments due on each anniversary of the license for as long as the license is in effect. These payments have specified minimum and maximum amounts.*	* Need to incentivize licensee to implement technology * Upside potential due to forces beyond scope of license * Often critical in exclusive arrangements	* Long term sales forecast is relatively predictable and sufficient to cover minimums * Does not want licensor to benefit too much from upside * Less concerned w/ downside risk
Running Royalty *Payments which are due upon the use of the license. Typically, licensee pays on a periodic basis (e.g., monthly, quarterly).* * *Net sales* * *Per unit* * *Per use* * *Multi-tiered* * *Kicker / deflator* * *Cumulative maximum*	* Feels participating in commercial success of licensee is an appropriate way to maximize technology value * Reasonably confident in licensee's ability to perform * Sufficient resources to account for or audit licensee's records	* Desires licensor to be tied to commercial risks * Sales forecast is uncertain or limited upside exists * Limited ability to pay for license ahead of sales

Deal structure discussion

Form of Compensation	Licensor Considerations	Licensee Considerations
Equity Stake *Licensor agrees to take equity-based compensation (in the licensee's company) in exchange for the rights to the license. May also involve the licensee acquiring equity in the licensor (plus the technology license) in exchange for cash.* * *Common equity* * *Preferred equity* * *Options* * *Convertible debt*	* Very comfortable w/ risk * Limited need for cash from licensing * Faith in licensee's business / potential acquisition candidate * Believes value of license is directly related to the value of the licensee (e.g., start-up company)	* Considers licensor a potential acquisition candidate * Limited ability to pay cash * Availability of equity * Desire to own a portion of the licensee as well as have access to technology
Supply / Purchase Contracts *Licensee agrees to buy/sell goods at terms that are commercially favorable to licensor or licensee.* * *Product* * *R&D* * *Manufacturing rights*	* Desire to secure long-term source for products utilizing technology * Limited need for cash from licensing * Faith in licensee performance	* Requires secure purchase contract prior to commercializing technology * Potential exists to utilize technology for sale to other customers (besides licensor)
Patent Pick *Licensee agrees to allow the licensor to "pick" in the future a limited number of its patents or trademarks for use on a royalty-free basis or for preset royalty amounts.*	* Believes licensee may underestimate value of its portfolio * Believes licensee likely to develop technology in key areas	* Need to understand value of its patent portfolio * Licensee & licensor are not competitors (e.g., different geographies, markets, customers, etc.)

Deal structure discussion

Form of Compensation	Licensor Considerations	Licensee Considerations
Grant Backs / Grant Forwards *The licensee/licensor grants the licensor/ licensee rights to use improvements on a royalty-free basis or for preset royalty amounts.*	* Need future IP for licensing efforts * Feels that licensee likely to develop technology that will be useful / required	* Feels that licensor likely to develop technology that will be useful / required
Sublicensing (Revenue) Rights *A provision whereby the licensor shares any revenues that the licensee receives from sublicensing to third parties.*	* Feels licensee better able to license technology * Feels licensee better able to license technology	* Need for sublicensing rights for (second) source of supply * Desire to license partners of current licensees

(1) **Note:** The above list is not intended to be all encompassing, but is presented for illustrative purposes only. A significant number of other consideration are relevant in structuring benefit flows.

Disclaimer

The concepts and theories covered by this presentation are for discussion purposes only and are not intended to be all-inclusive on the topic of intellectual property or valuation. Many of the concepts are illustrative only and do not necessarily represent the approaches that the author would recommend in any particular case.

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