



FICPI 22nd Open Forum

Madrid

25-28 September 2024



Bringing IP to life through IP Valuation

STRENGTHENING THE PRACTICE OF THE INDEPENDENT IP ATTORNEY

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Introduction

Andrew Hicks
Field Law, Canada



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Andrew Hicks

Canada



André Gorius

France



Éva Kovács

Hungary



Levente Pethő

Hungary

CALGARY / CANMORE / EDMONTON / YELLOWKNIFE

Bringing IP to Life Through IP Valuation

"Field Law" is a trademark and trade name of Field LLP.



Bringing IP to Life Through IP Valuation

▶ Speakers

- André Gorius
- Levente Pethő
- Éva Kovács

▶ Moderator

- Andrew Hicks

IP Valuation Questions

- What are the high-level approaches for valuing IP?
- What are the general purposes behind IP valuations?
- Is the result of an IP valuation objective or is it subjective to the IP owner or to other factors?
- What is the protocol/steps followed in starting a valuation analysis?
- What are the intangible/subjective factors that go into an analysis?
- What are the objective factors that go into an analysis?

IP Valuation Questions

- How does timing of an analysis affect value?
- How does the maturity of the business affect valuation?
- To what extent are values backed up/validated by the market after the valuation?
- What can we say about the credibility and reliability of IP valuations?
- From a valuator's perspective, are there particular things that a patent or trademark attorney could do to potentially make IP look/be more valuable?
- What are developments within the IP valuation industry?

André Gorius

- ▶ World Intangible Capital Initiative
 - President
- ▶ IFI - Institut Français de L'Immatériel (France Institute for Intangibles)
 - President and Founding Member
- ▶ AMAVI - Association for Management and Valuation of Intangibles
 - Founding and Board Member
- ▶ Solvay Group
- ▶ Winnotech
 - Partner (retired)
- ▶ Professor-Physics
- ▶ PhD-Chemical Engineering
- ▶ PhD-Physics

Levente Pethő

- ▶ Danubia Patent and Law Office
 - Partner
- ▶ Danubia IP Innovation Consulting
 - CEO
- ▶ LESI IP Valuation Committee
 - Vice-chair
- ▶ LES Hungary
 - board member
- ▶ MSc in Economics
- ▶ qualifications in industrial property rights protection and management by the Hungarian Intellectual Property Office.

Éva Kovács

- ▶ Serial Entrepreneur
- ▶ Continest Technologies – Global COO and Co-founder
 - commercializing patented technology foldable containers/temporary infrastructure solutions
 - currently listed 18th on the Financial Times TOP 1000 list of the most rapidly developing companies in Europe.
- ▶ IPGO Europe-Founder
- ▶ Fuszeresz-Founder
 - spice trading company



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IP Valuation

André Gorius
Winnotek, France



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IP Valuation - The Methods

Approximates the IP/Technology by the costs of replacement/creation of equivalent IP/Technology

- Generally R&D costs and patent filing related costs

Correlation between costs and value is generally highly questionable

- Wholly disregards the uniqueness of the IP/Technology
- Does not really reflect the evolution of the environment: time-lag effects
- Does not reflect earning power of IP/Technology and ultimate market share

Utilized whenever replacement is possible, and if not generally useful in case there is no other available data

- **More adapted to Early-stage development IP/Technologies**

Parallels the subject intangible asset with comparable or similar intangible assets that have been sold or listed for sale

- Difficulty lies in comparability
- **More adapted for mature and fully developed technologies**

Multiple Index approaches rationalize comparability

- Patent family size
- Citations analysis, technical coverage
- Geographical coverage, legal strength
- Market attractiveness

Comparisons are at best as good as the transactions database is....

Identifies the value of the assets with that of the **future potential** revenues derived from it

- Means a reasonable business plan exists
- **Adapted for technologies / products / services close to market launch or already in operation**

The most common approaches are based on Discounted Cash Flows

- Implies estimating the **probable** incremental cash provided by the asset
- Royalty, Incremental margins (Sales increase and/or cost savings)
- Implies to assess the part of revenues strictly linked to the

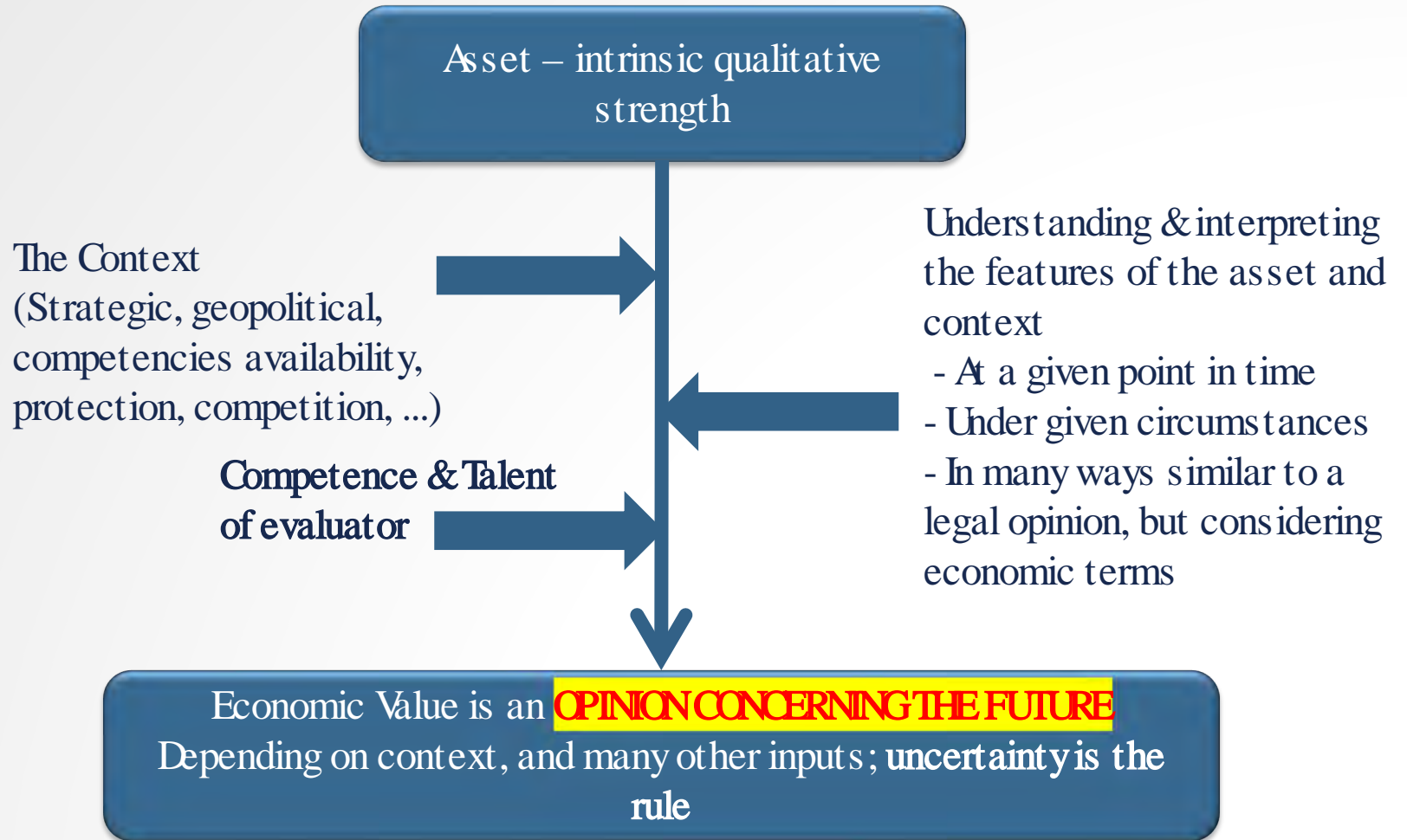
The most used category of IP Valuation approaches, with Relief of Royalty most used for Patents/Trademarks/Know-how/Software

	Costs Approach	Market Approach	Revenue Approaches	Revenue Approach
Principle	Costs of replacement	Comparison with real transactions	Discounted Cash Flows (Revenues, Profitability, ...)	Real Options
Key Issues	Cost is not value	Comparability Quality of transactions databases	Royalty rate Discount Rate	Go/No Go scenarios and Discounted Cash Flows
Application domains	If no other data available Useful for early-stage technologies	Patent Patent portfolios Trademarks	All types of intangibles	R&D projects Strategic projects
In Practice	Seldomly used as primary methods	Used for patent portfolios essentially	Very often used Discount rate is NEVER a detail	Sometimes used Very useful to foster project team discussions and analyses



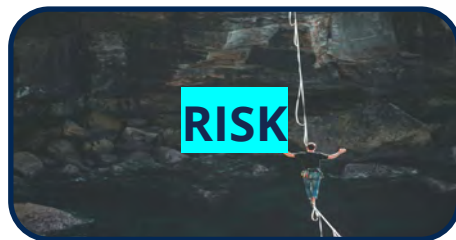
IP Valuation - The Determinants of IP Value

One has to recognize the strengths and weaknesses of Intangibles Valuation – Humility is the rule





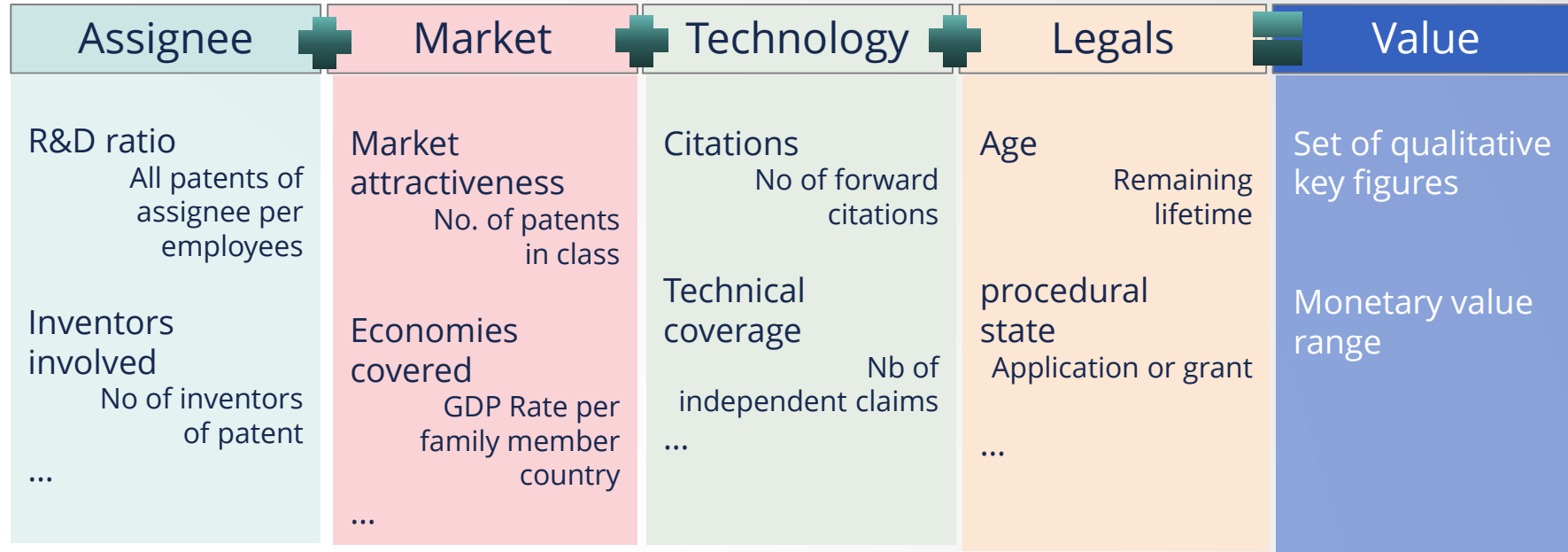
- Factors influencing value
- How to measure value?
- How to assess sustainability?



- Factors influencing risk?
- Strength of the IP?
- Is there a plan B?

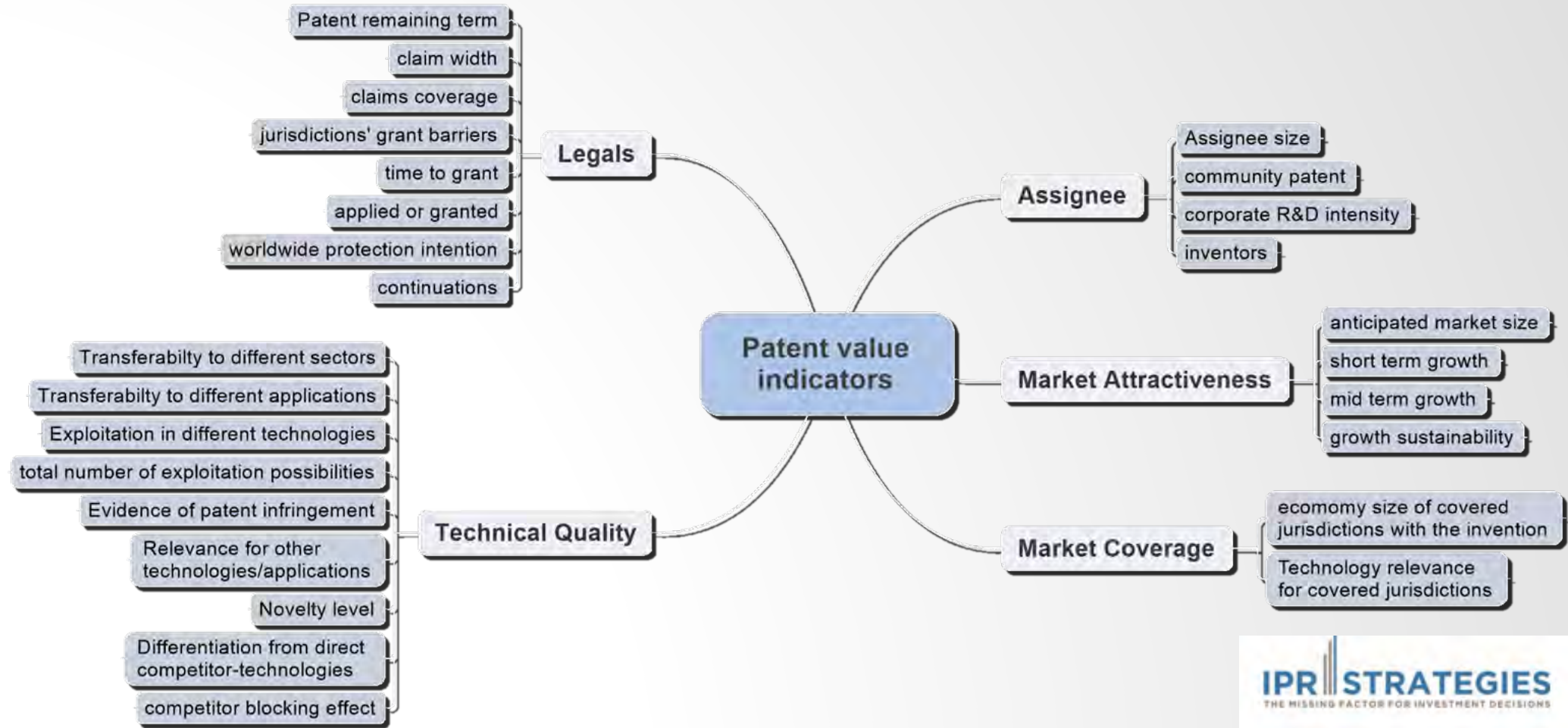


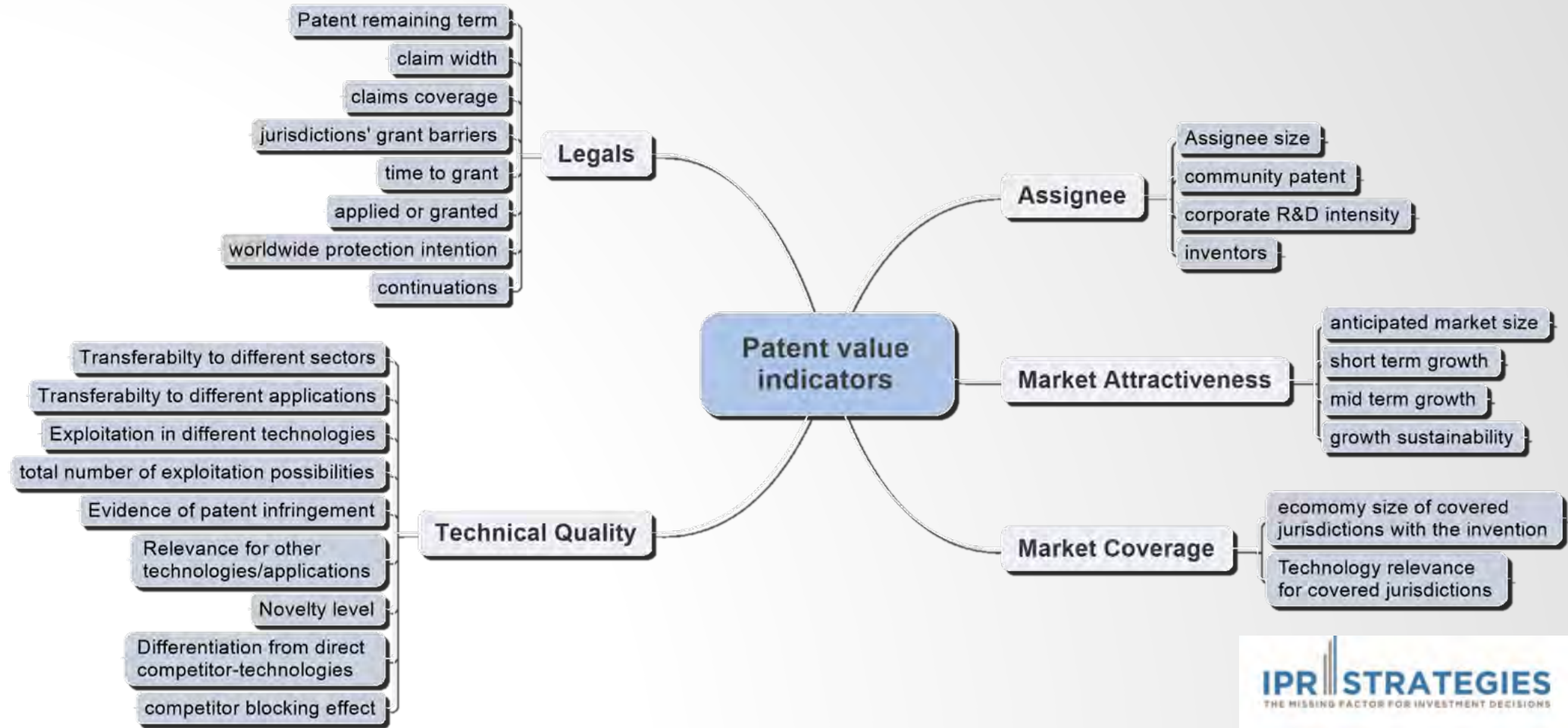
- What is a typical return?
- How does it compare to fixed assets?



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Indicators can be sourced automatically - as long as they are available - or manually. Investors should at least understand this macro-level – Long way to go!

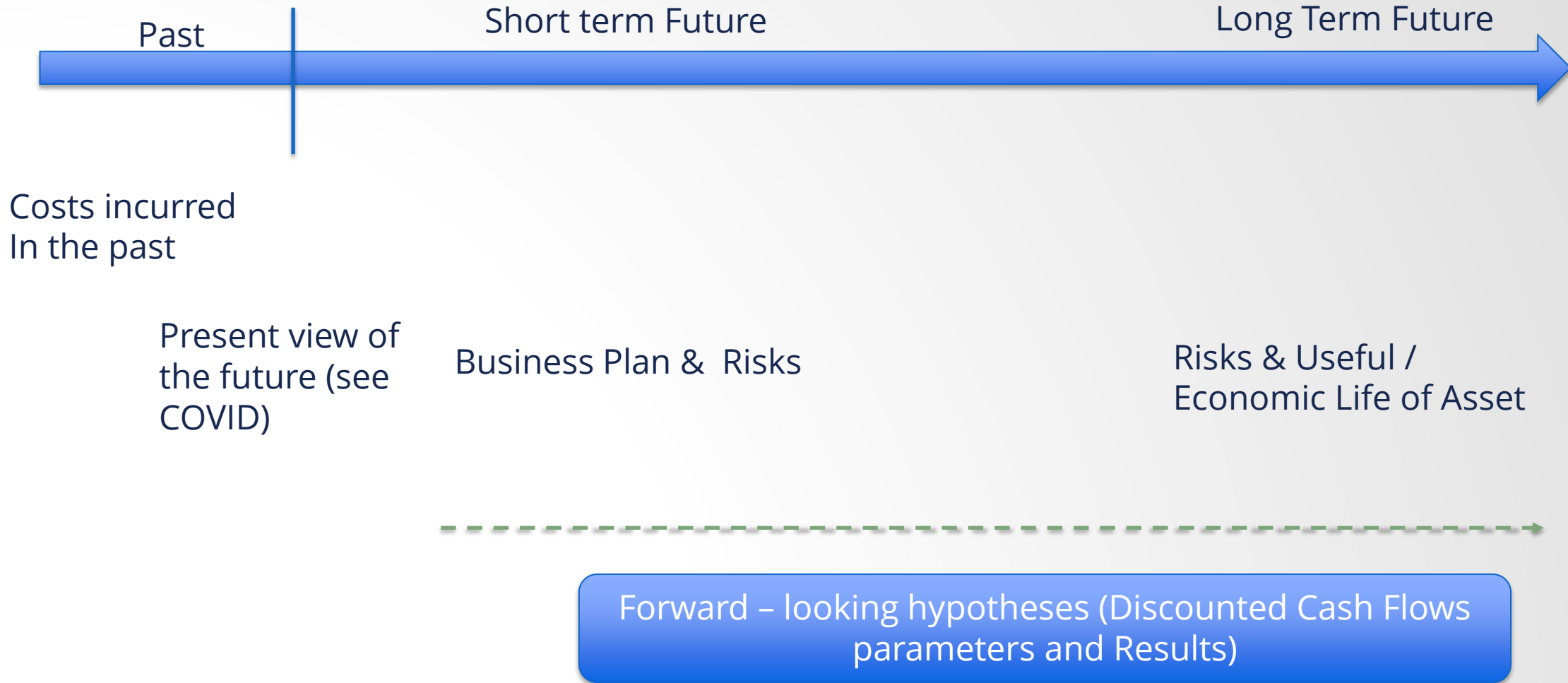






IP Valuation – Timing and Maturity Impacts

How does timing impact value?





IP Valuation – Testing The Market

The Share of Patent Value in Total Assets is Strongly Dependent on the Sector

Some Data

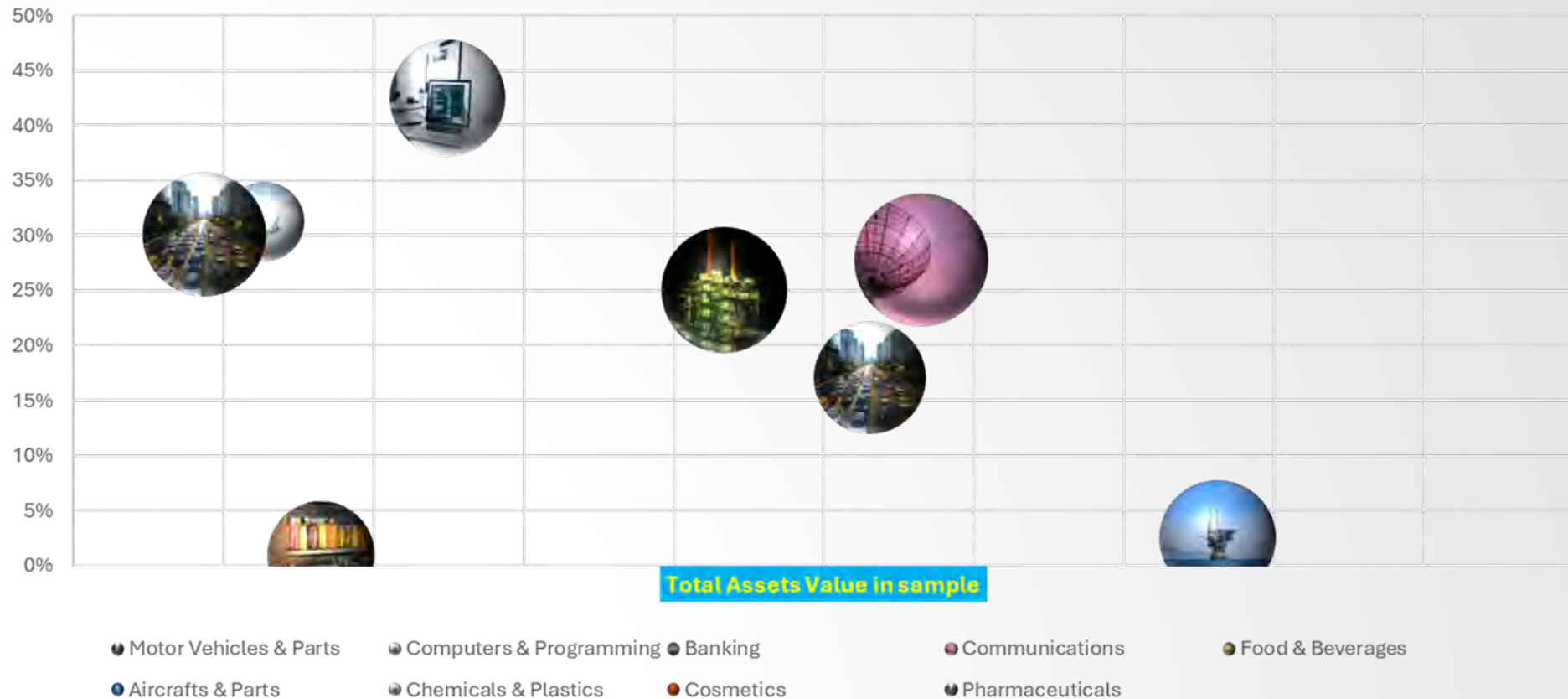
Patent Value / Total Assets

2022 Stoxx 600

> Computers & Programming	42,47%
> Aircrafts & Parts	31,26%
> Cosmetics	30,24%
> Pharmaceuticals	30,11%
> Communications	27,78%
> Chemicals & Plastics	25,03%
> Motor Vehicles & Parts	17,01%
> Oil& Gas	2,51%
> Food & Beverages	0,90%
> Banking	0,30%

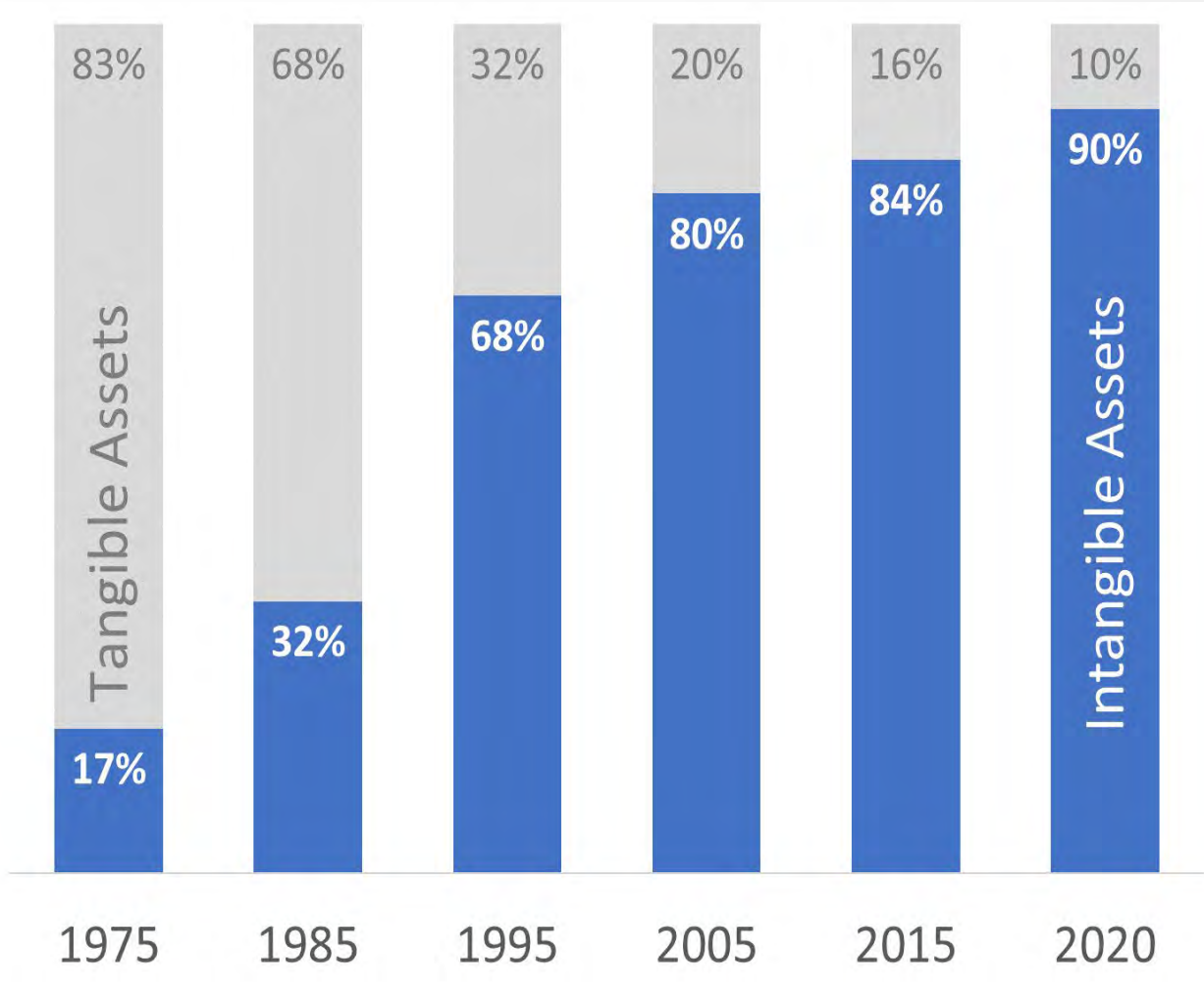
Bubble size proportional to number of companies in sample

Patent Value / Total Assets by Sector





IP Valuation – What is going on in the IP Valuation domain?



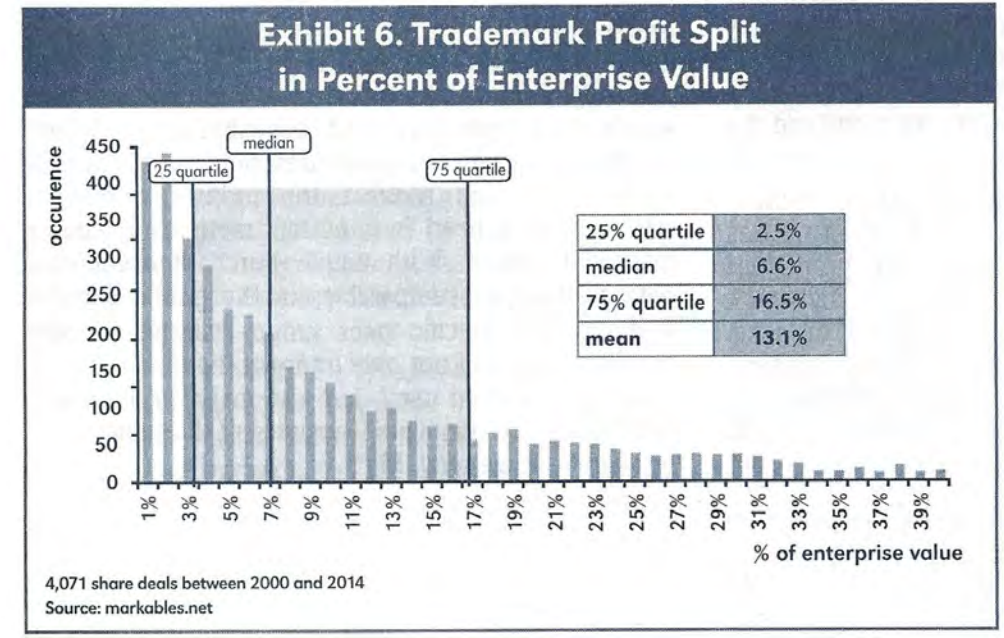
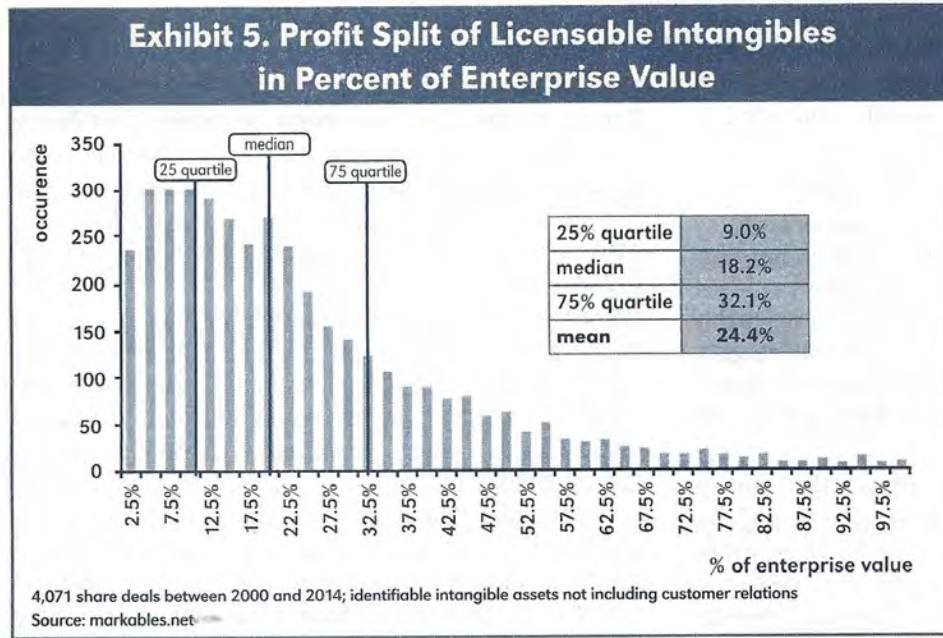
So, in a nutshell, more than 2/3 of Company Values are due to Intangibles

> **Nice statistics, what about real life?**

- Why do you choose one car instead of another?
- Why do you go to one concert instead of another?
- Why do you buy bread at one baker's than another?
- **How do you compare two companies?**
- Because of numbers, EBIT, EBITDA, Free Cash Flow, Structure of the Balance Sheet, ...)?
- Or because you trust the organization (management, commitments, ..)?
- And/or simply because you believe the (long term) payback of your investment in it is good?
- Trust is intangible

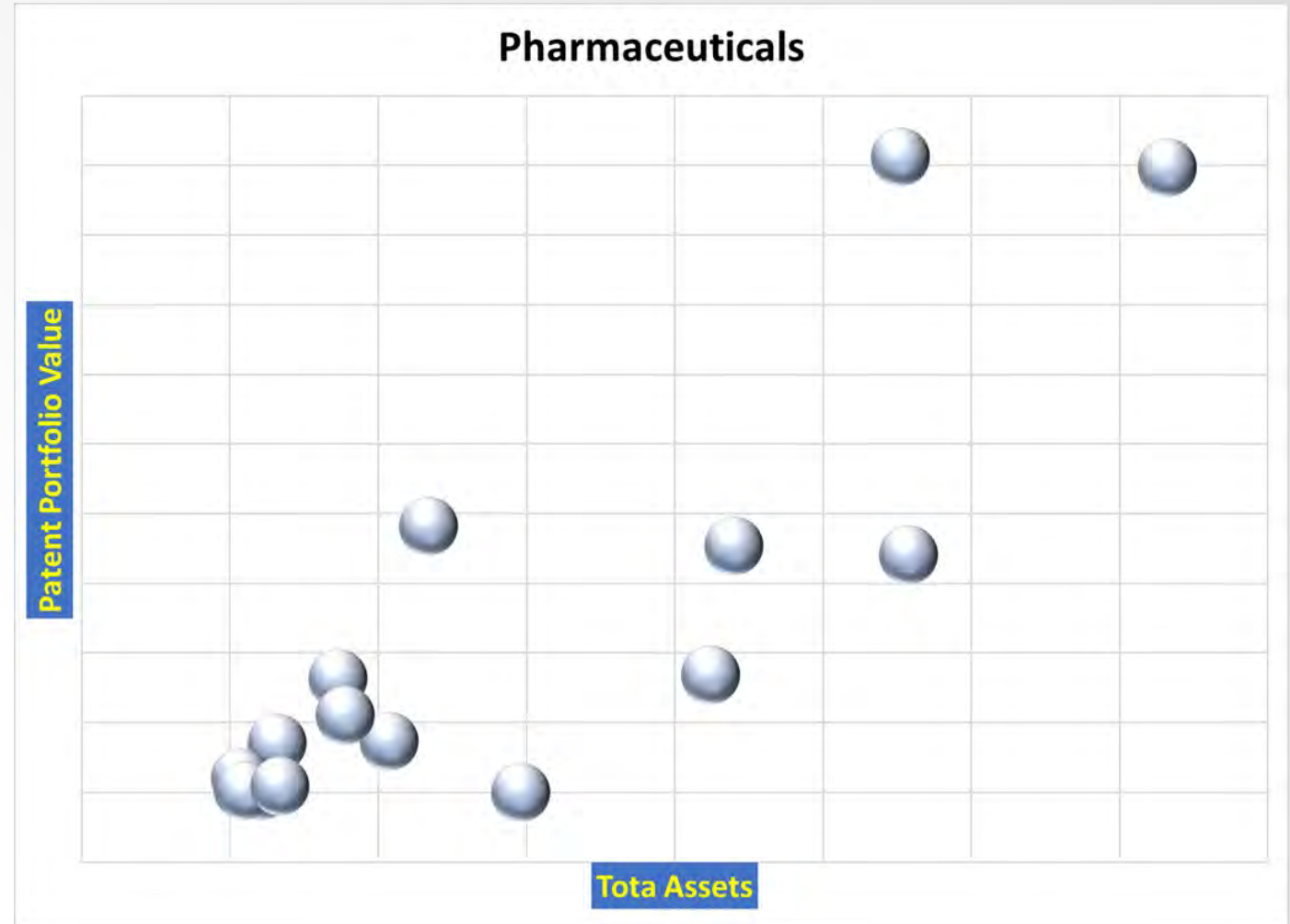
Sources: Ocean Tomo Intangible Asset Market Value Study, 2017; IP Closeup, 2021.
<https://www.oceantomo.com/intangible-asset-market-value-study/>
<https://ipcloseup.com/2021/01/19/latest-data-show-that-intangible-assets-comprise-90-of-the-value-of-the-sp-500-companies/>

Source : Les Nouvelles, December 2015, Vol L N°4, Binder et al., pp 203-212



The median share of IP assets is around 25% of company values, in a range 10% - 45%

- > IP is a key Asset for companies
- > Using IP as an Asset for financing can be done using two types of levers:
 - > “I have a 10M€ IP Asset, allow me to use it as a collateral for a 1M€ loan”
 - > “I have a strong IP Asset, which demonstrates the capability of my company to generate enough sustainable cash flows to allow guarantee your ROI”





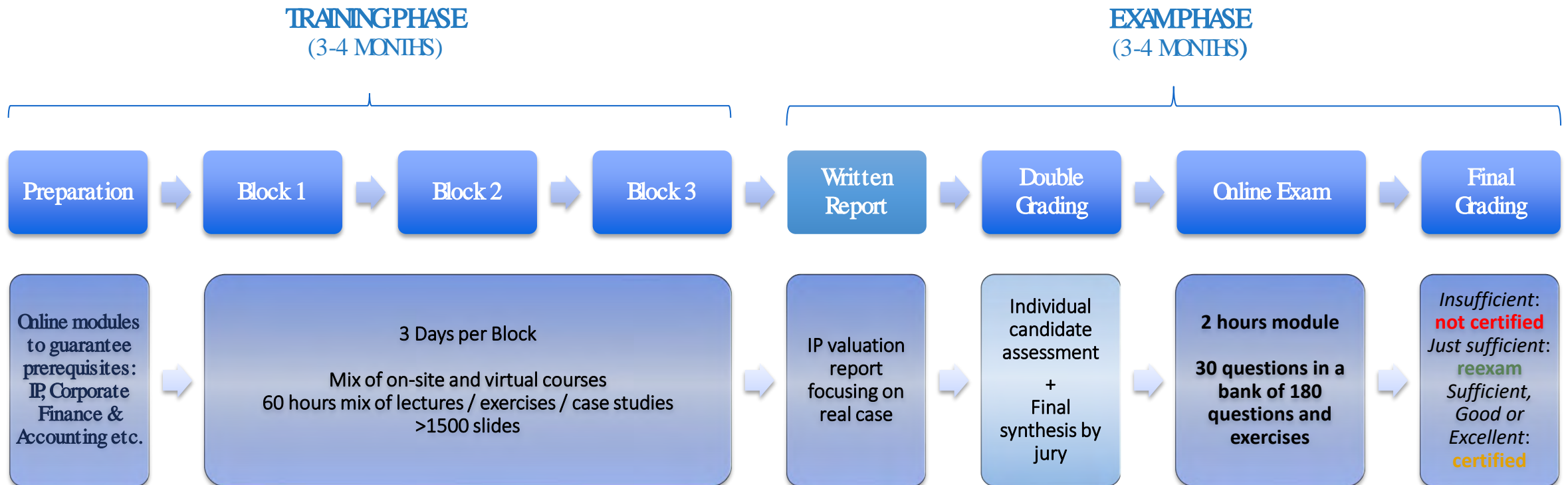
AMAVI

ASSOCIATION FOR MANAGEMENT
AND VALUATION OF INTANGIBLES

Building the Premier
Globally Recognized
Professional IP Valuation
Qualification



The Candidate Journey



Block 1

Fundamentals of IP Valuation

1. Why Value IP
2. Understanding the key features of different forms of IP
3. Financial concepts and theories required for IP Valuation

Block 2

Financial Valuation of IP

- 2.1 Deterministic valuation approaches
- 2.3 Probabilistic valuation approaches
- 2.4 Context and Purpose of Valuation

Block 3

Valuation Process and Report

- 3.1 Establish overall context and purpose of valuation
- 3.2 Collect information, do analysis and due diligence, make decisions
- 3.3 Perform valuation
- 3.4 Risk analysis, sensitivity analysis, further due diligence
- 3.6 Conclusion of value

Block 1

Chapter	Module
1.1 Why Value IP	1.1.1 Reasons for valuing IP
	1.1.2 Role & value of IP in innovation and business
1.2 Understanding the key features of different forms of Intellectual Property	1.2.1 General introduction
	1.2.2 Patent, Utility model
	1.2.3 Trademark, design
	1.2.4 Software and data
	1.2.5 Know-how and trade secret
	1.2.6 Other copyright works & Informational and Knowledge Assets
	<i>1.2.7 Individual / group exercise(s)</i>
1.3 Financial concepts and theories required for valuation	1.3.1 Finance Crash Course
	1.3.2 Value vs price
	1.3.3 Time value of money
	1.3.4 Discount rate
	1.3.5 NPV & IRR
	1.3.6 Tax (incl depreciation) & TAB
	1.3.7 Individual / group exercise(s)

A Gorius

Block 2

Chapter	Module
2.1 Deterministic valuation approaches	2.2.1 Cost
	2.2.2 Market
	2.2.3 Income
	<i>2.2.4 Individual / group exercise(s)</i>
2.3 Probabilistic valuation approaches	2.3.1 Introduction to uncertainty
	2.3.2 Heuristics criteria
	2.3.3 Risk-adjusted NPV - Adjusting discount rate
	2.3.4 Sensitivity analysis
	2.3.5 Scenario analysis
	2.3.6 Monte Carlo simulation
	2.3.7 Real Option approach
	<i>2.3.8 Individual / group exercise(s) - wrap-up of all 3 days</i>
2.4 Context and Purpose of Valuation	2.4. Overview of the valuation process & the content of the valuation report

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Block 3

Chapter	Module
3.1 Establish overall context and purpose of valuation	3.1.1 Defining the engagement
	3.1.2 Applications & purposes
	<i>3.1.3 Update Case Study</i>
3.2 Collect information, do analysis and due diligence, make decisions	3.2.1 Input data and assumptions for valuation
	3.2.2 Contribution of qualitative assessment to the valuation model
	<i>3.2.3 Update Case Study</i>
3.3 Perform valuation	3.3.1 Qualitative analysis of IP
	3.3.2 Industry analysis
	3.3.3 Market analysis
	3.3.4 Role of IP in the business model
	<i>3.3.5 Update Case Study</i>
3.4 Risk analysis, sensitivity analysis, further due diligence	3.4.1 Overview
	<i>3.4.2 Update Case Study</i>
3.6 Conclusion of value	3.5.1 Overview
	3.5.2 Conclusion of Case Study



Thank you!

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IP Practice Management

Levente Pethő
Danubia Patent & Law Office, Hungary



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IP PRACTICE MANAGEMENT

FICPI's 22nd Open Forum
Levente Pethő
26 September 2024, Madrid





IP valuation – A short user guide

Madrid, September 2024

Topics

General IP valuation purposes

Objectivity of IP valuation results

IP valuation processes

Credibility and reliability of IP valuations

How attorneys can enhance IP value

What are the general purposes behind IP valuations?

1

Accounting & Reporting

2

Business decision making

3

Licensing, sale & purchase

4

VC Investments

5

Joint Ventures, Mergers & Acquisitions

6

Intra-company transfers – Transfer Pricing

7

Litigation

Driver

Event

Type of (e)valuation

Accounting/Tax requirement
(Law/accounting policy)

Innovation and business processes

Invention disclosure

Recognition

Amortisation

Mandatory valuation events

Development & commercial milestones

Strategic business events

Qualitative evaluation **2**

Collecting and capitalizing direct costs + assessment of market potential
Self development **1**

Comparing acquisition value to fair value
Procurement **1**

Fair value measurement
Purchase Price Allocation (M&A) **5**

Review of useful life and impairment test **1**

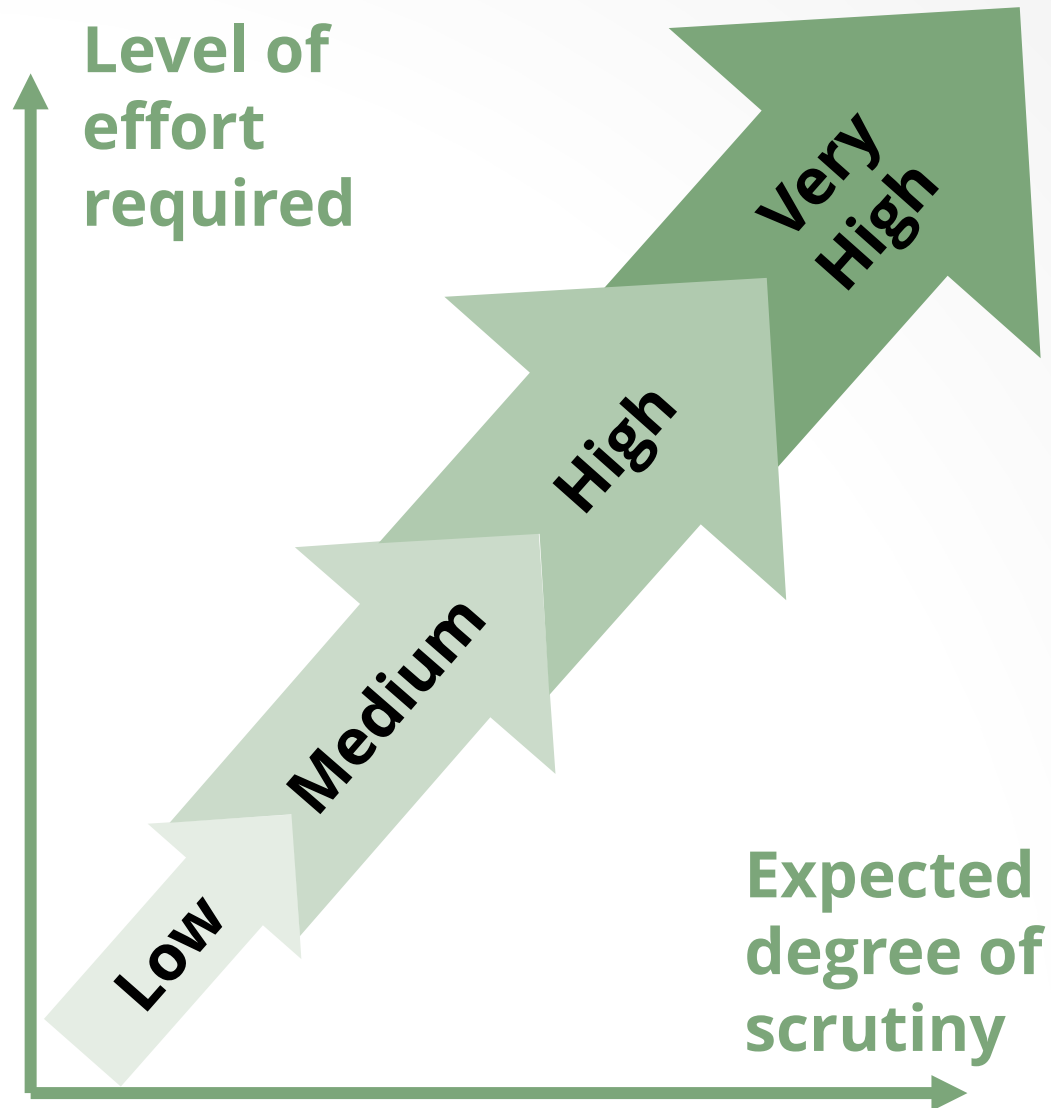
Fair value measurement
Contribution in kind, Transfer pricing, Value adjustment **1 4 5 6**

Qualitative evaluation / valuation
Stage-Gate decisions **2**

Strategic / Investment value estimation
IP transactions, negotiations **3 4**

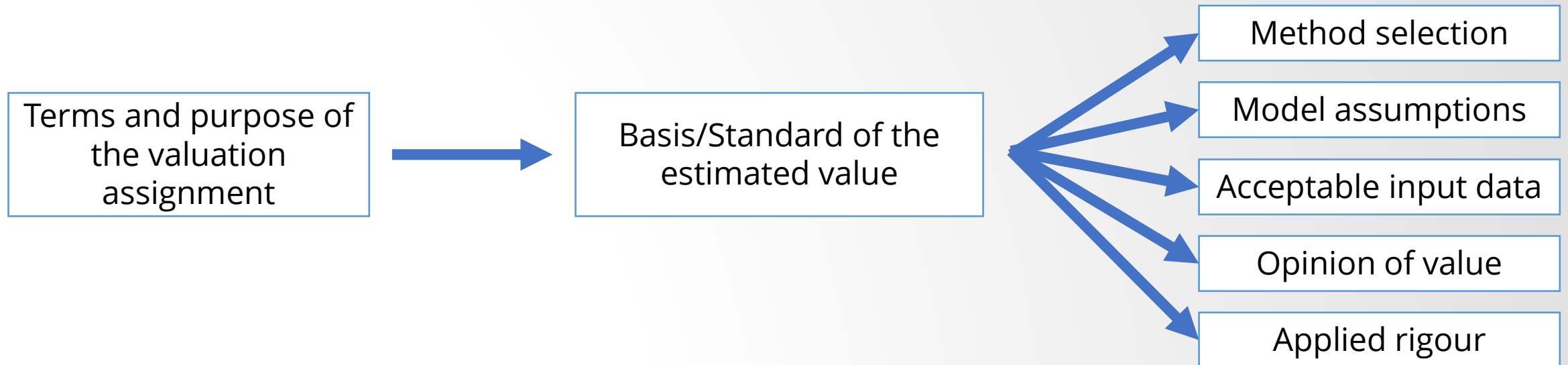
IP related damages / fair value calculation
Legal disputes **7**

When do you need a valuer?



- Litigation
- Taxation
- Collateralisation & Securitization
- Investments, M&A, JVs, Intra-Company Transfers, Bankruptcy & Reorganization
- Accounting & Reporting
- Licensing, Sale & Purchase
- Business Decision Making (incl. Portfolio Management & R&D Investment)
- Initial Estimate, Qualitative evaluation

Standards of value



Is IP valuation objective or subjective?



Prompt price: **€200k**
Auction starting price: **€140k**
Final price?

- > IP owner/user
- > Market conditions
- > Timing March 2020 vs. September 2024
- > Other factors...

Most prominent standards of value listed by the International Valuation Standard 104



IVS – Market Value

IVS – Synergistic Value

IVS – Equitable Value

IVS – Liquidation Value

IVS – Investment Value/Worth



IFRS - Fair Value



OECD / IRS - Fair Market Value



Local regulations (GAAPs)– country specific value definitions

„Fair value” is the **price** that would be **received** to sell an asset or paid to transfer a liability in an **orderly transaction** between **market participants** at the measurement date.

Price	Market	Market participants	Use of asset	Accounting
<ul style="list-style-type: none"> • It is a price! • An exit price, not an entry price • Prices don't contain transaction costs 	<ul style="list-style-type: none"> • Transactions take place on the principal market • If there is no principal market, then on the most advantageous market • If there is no market for the asset, there is no fair value 	<ul style="list-style-type: none"> • At arm's length • Well informed, understanding the asset and the transaction • Applying due care • Not forced or in need to transact • Able and willing to transact 	<ul style="list-style-type: none"> • Highest and best use (not the current use) • Use is practically possible, legally permitted and financially feasible 	<ul style="list-style-type: none"> • Fair value measurement is applied to recognizable and separable assets or a group of such assets • The measurement takes into account the state and position of the asset, if relevant

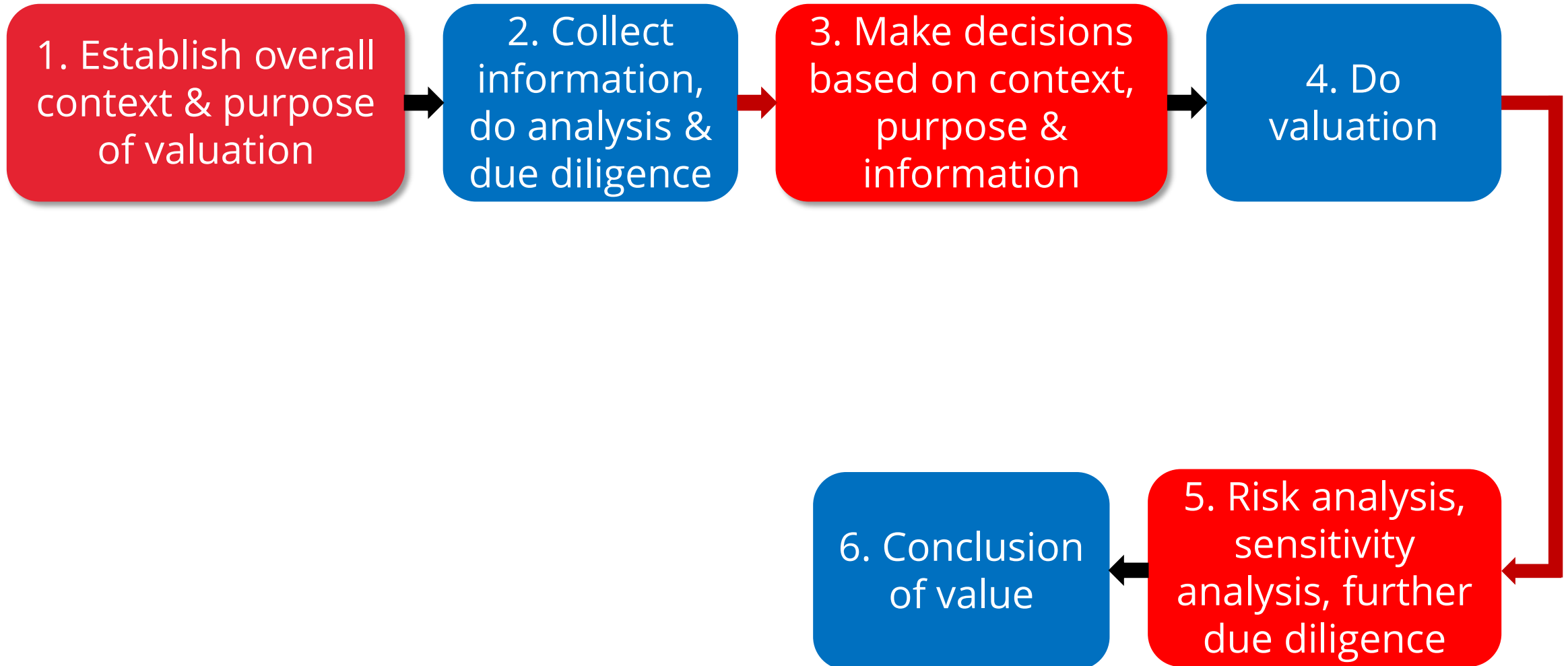
What is the typical process of a valuation engagement?



A consultant is the person who asks for your watch to tell you what time it is.

Acynical joke about the profession of consultancy

- > IP Valuation is a consultative process,
- > where client preferences (and satisfaction) cannot override professional requirements on conduct and judgement



1. Establish overall context & purpose of valuation

- Purpose and intended use of valuation
 - Drivers to do the valuation
- Economic/business context
- Stakeholders and recipients of the report



2. Collect information, do analysis & due diligence

- Management interviews
- Technical and business interviews
- Financial statements and records
- Client created PFI
- Market information
 - Business models
 - Value chain
 - Market participants
 - Potential market for the asset
- Asset information
- IP due diligence

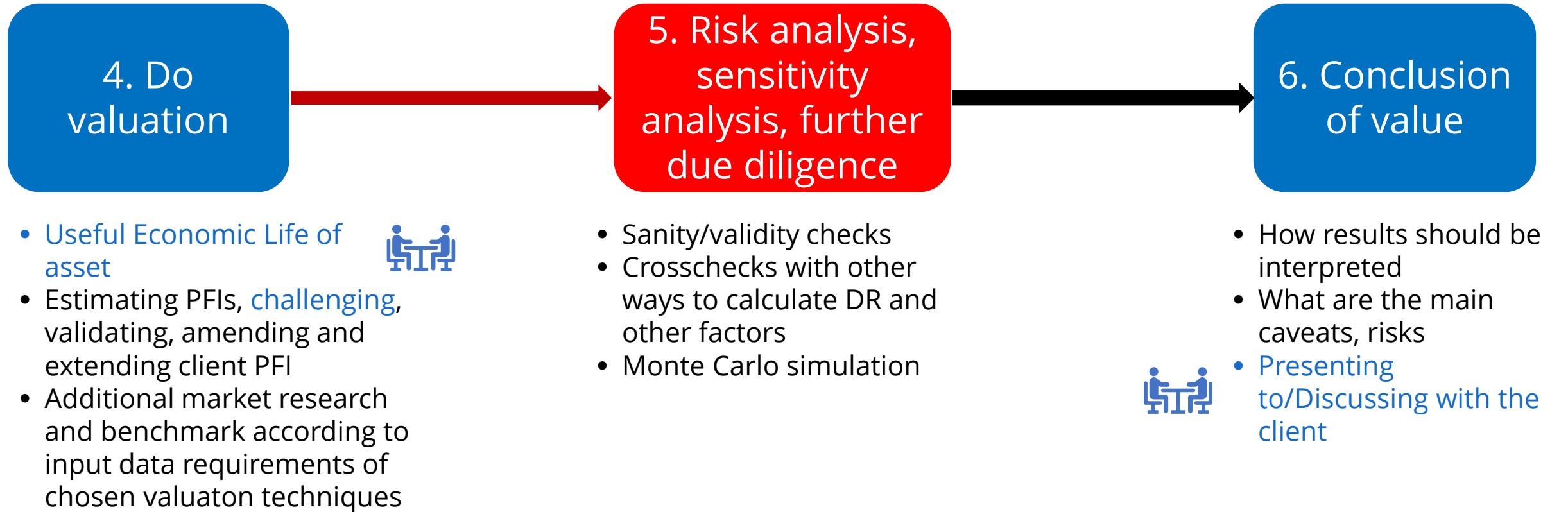


3. Make decisions based on context, purpose & information

- Standard of Value
- Premise of Value
- Applicable Standards & Regulations
- Valuation Date
- Valuation Methodologies
 - Applying multiple techniques



- Decide in consultation with client
- Client should not have an influence on decisions



- **Decide in consultation with client**
- Client should not have an influence on decisions

What can we say about the credibility and reliability of IP valuations?



Problems

1. Valuation (prediction) accuracy hard to measure, impossible to benchmark
2. Hard to assess product quality in advance and even in hindsight
3. Hard to assess provider quality
4. Provider quality is varying
 - There is a lack of a unified identity to IP Valuers
 - No comprehensive and common „body of knowledge“, as valuers possess very different educational backgrounds and experience
 - There is a demand from authorities ([SEC](#), [European Commission](#))
5. Limits in acceptance by industry and the financial sector

What can be done

1. -
2. Minimum content, standard conformity
3. Research on professional background (business valuation is not IP valuation), Certification program – AMAVI
4. Standards exist but more is needed in terms of harmonization, quality assurance, educations, etc.
5. More standardized methods, (Supra)governmental polycies, Initiatives on IP backed financing



International Valuation Standards - framework

IVS:
 IVS Framework
 General Standards
 IVS 101 to IVS 105
 IVS 200

RICS: Global Standards ('Red Book')

IP and intangible asset specific valuation standards

IVSC: IVS 210
 Intangible assets

ISO: 10668
 Brand Valuation

RICS: VPGA 6
 Intangible assets

AICPA: VS 100

Financial Reporting Standards (related to intangible assets)

International
IFRS: IAS 38, IFRS 13

Local
FRC (UK): FRS 102
 UK GAAP
FASB (USA): ASC 340, 350

Transfer Pricing Standards / guidelines

OECD:
 BEPS Action 8-10
 (TP Guidelines)

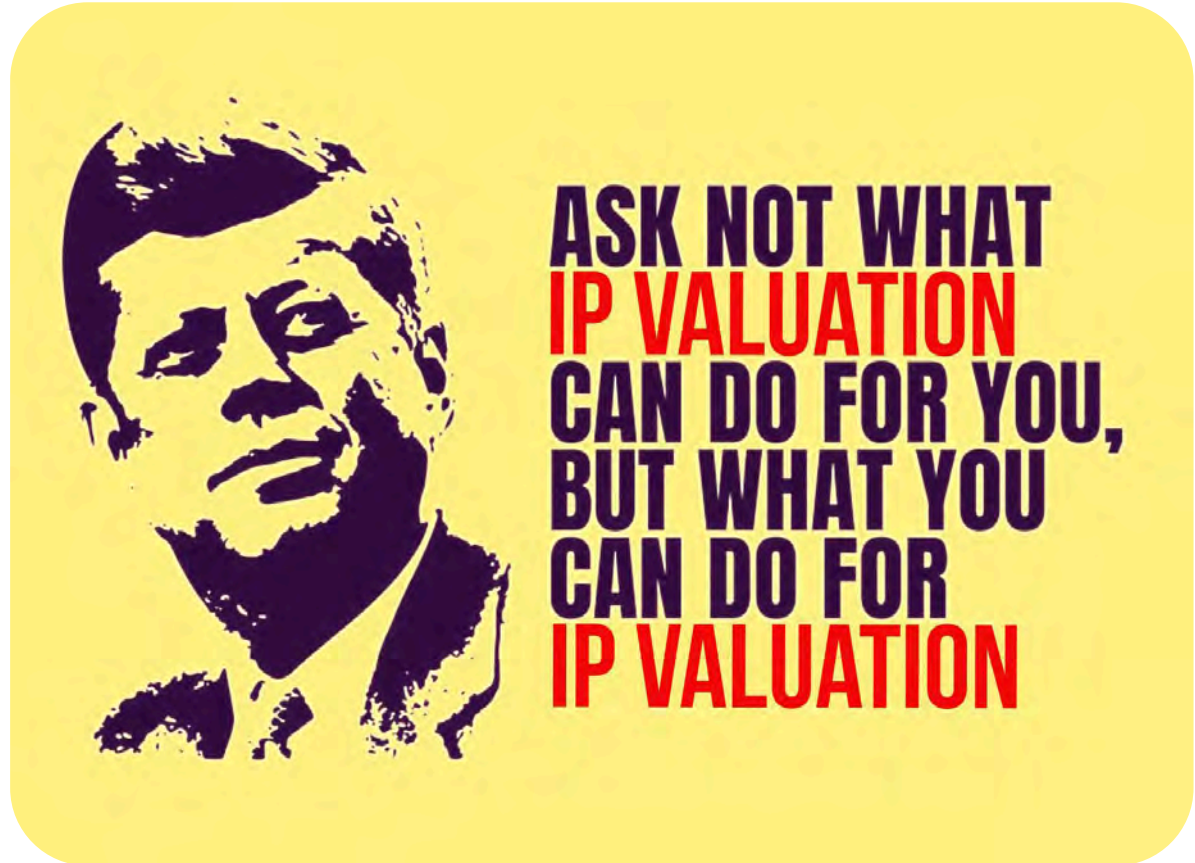
- 1 Introduction**
- 2 Information used**
- 3 A description of the fundamental analysis**
- 4 Identification of the assumptions and limiting conditions**
- 5 Representation of the valuer**
- 6 Relevant Qualifications/Certifications of valuer**
- 7 Appendices and exhibits**

- a) Client identification
- b) Identification of intended users of the report (potentially, limitations on use of report)
- c) Identification of the subject asset being valued
- d) Unit of valuation – stand-alone asset (bundle of assets / in combination with other assets)
- e) Purpose and intended use of the valuation
- f) Description of the asset being valued
- g) Description of any restrictive third-party rights, encumbrances or other restrictions on use of the asset
- h) Valuation date / measurement date
- i) Report date (date of report finalization)
- j) Disclosure of subsequent events considered (after Valuation date and before Report date)
- k) Standard of Value and its definition
- l) Identification of the premise of value
- m) Limitations on the scope of research and analysis
- n) Disclosure of changes in the scope of the engagement
- o) Material matters considered
- p) Hypothetical conditions/assumptions and the reason for their inclusion
- q) Reliance on conclusions of third-party specialist retained by client or valuer
- r) Denial of access to essential data
- s) List of valuation, accounting or other standards the valuation is conformed to
- t) Jurisdictional exceptions and requirements

ENGAGEMENT LETTER / VALUATION REPORT EXAMPLE

Client	XXXXXXXXXX as contracting party. Any and all members of XXXXXXXXXXXX Group, as well as the whole Group might be referred to as Client in the report.	Limitation on use of the report	The report can only be used in accordance with the herein defined intended use. It shall not be used for official proceedings or any other purpose where such provisions may apply - arising from local laws or applicable standards - that this report is not explicitly stated to be compliant with. This report shall not be used for, including but not limited to, tax purposes (e.g. transfer pricing), accounting purposes (e.g. contribution in kind, fair value adjustment), liquidation purposes or legal disputes.
Valuer	Danubia IP Innovation Consulting Ltd., as contracting party. Other members of Danubia Group were involved in the valuation to address specific expert fields.		
Intellectual Property (IP)	The intellectual property portfolio protecting the XXXXXXXXXXXX, the XXXXXXXXXXXX brand and other XXXXXXXXXXXX.	Standard of value (value base)	Investment value (Worth): The value of an asset to the owner or a prospective owner given individual investment or operational objectives (may also be known as worth). <i>International Valuation Standard 104</i>
Valuation date	1 July 2024	Premise of value	Current Use/Existing Use, which is assumed to qualify as the Highest and Best Use.
Time of engagement	1 March 2024 – 19 July 2024 No events subsequent to the valuation date were considered	Standard conformity	The valuation conforms with the international standards and best practices applicable, based on the purpose and intended use, including standards: IVS 101, IVS 102, IVS 103, IVS 104, IVS 105, IVS 210, Brand valuation - ISO 10668:2010, and the applicable provisions of IAS 38.
Purpose and Intended use of valuation	The purpose of the valuation was to determine the value of the Client's entire intellectual property portfolio that is connected to the business activities of commercializing the XXXXXXXXXXXX products, XXXXXXXXXXXX and related XXXXXXXXXXXX. Therefore, it was a goal of the engagement to identify all such IP elements that can bear significant value. The valuation is intended to be used by the management of the Client for decision making, and potentially to demonstrate the value of the IP portfolio to potential investors and partners.	Independency	Valuer received no contingency fee in relation to the valuation or the valuation results and had no financial or other interests connected to the valuation results. The valuation is an independent valuation.

What could
attorneys do
to make IP
look/be more
valuable?





*Of today's 2.1 million active patents, **95 percent** fail to be licensed or commercialized*

Forbes

***97%** of patents never make any money*

NBER

Of the 1,556 petitions for patent review proceedings at the PTAB that have reached final written decisions:

16 % - all claims upheld

15 % – at least some claims invalidated

***69 %** - all claims invalidated*

IPwatchdog

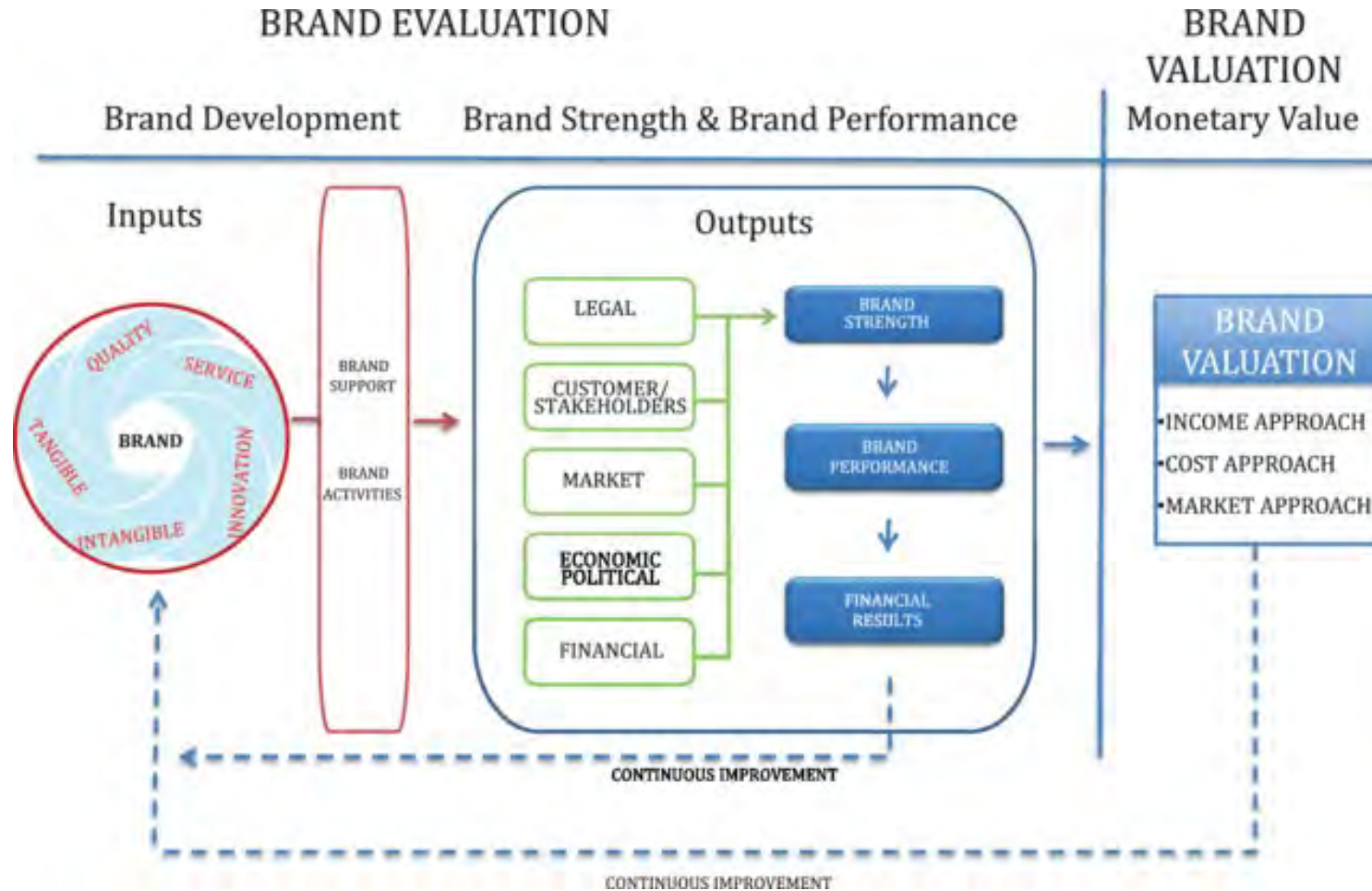
Within the traditional role

- Discourage clients from low cost patents
 - Preparation - Novelty search, mapping of competitor strategies, practice of patent offices
- Drafting
 - Getting the grant <-> Litigation and licensing
 - Scope of Protection
 - Circumvention
 - Completeness of disclosure
 - Defendable claims – dependent claims

A bit beyond...

- Alignment with
 - Business goals
 - Confirming underlying client needs – „We need a patent.“
 - Alternative IP measures
 - Company status
 - IP strategies by market position
 - Resources – worth as much as you can defend it
 - Product strategy
 - Value drivers for customers
 - Product development pathways
 - What are substitutes from a market need point of view
 - Monetization strategy
 - Defensive position / Enforcing/ Licensing
- Develop a full IP portfolio – transactions usually involve portfolios and not single IPs

ISO 20671:2019 brand evaluation framework

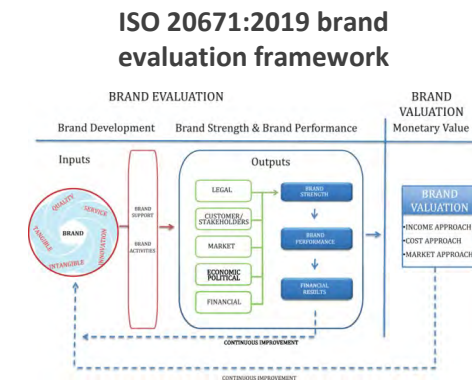


What trademark attorneys could do?

Brand Development
(Brand Resources)

$$\frac{\text{Brand Strength Score (0-100\%)}}{58,3\%} \times \frac{\text{Brand performance Score (0-100\%)}}{41,7\%} = \text{TOTAL SCORE (0-100\%) } 52\%$$

- Intellectual Property / Legal
 - Business model (current use / highest and best use)
 - Commercial performance
 - Environmental and market context
 - Comparison of subject asset and context to the benchmarked transactions
- **Importance of Brand in the purchase decision**
 - **Replaceability of brand without irreparable damage**
 - **EBIT Margin compared to Industry benchmark**





THANK YOU!

Levente Pethő
CEO, Partner

IP valuation and management expert

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DANUBIA
PATENT & LAW OFFICE



DANUBIA IP
INTELLECTUAL ASSET MANAGEMENT



DANUBIA LEGAL
ATTORNEYS & ADVISORS



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25-28 September 2024



The Real IP Deal

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Continest Technologies Plc, Hungary



revamp

STRENGTHENING THE PRACTICE OF THE INDEPENDENT IP ATTORNEY

www.ficpi.org



CN10 Standard

The Real IP Deal

A unique approach to IP valuation at
CONTINEST

■ www.continest.com

Continest solution

THE FOLDABLE CONTAINER



Folds down to just 20% of its original size, cutting logistics and transport costs by 80%



Integrated features – electricity and insulation



Fast deployment – complete installation within minutes



Mobile, scalable and modular to fit specific needs



Eco-friendly – reduces emissions by 80%



Certified solutions



Seeing is **believing**...



Our products



CN20 Standard



CN Retail Unit



Medical platforms



CN10 Standard

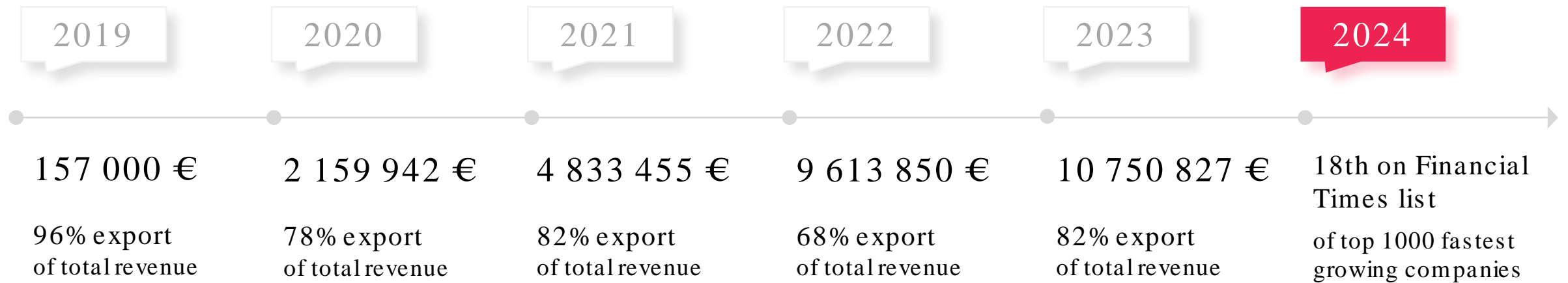


CN Retail Unit

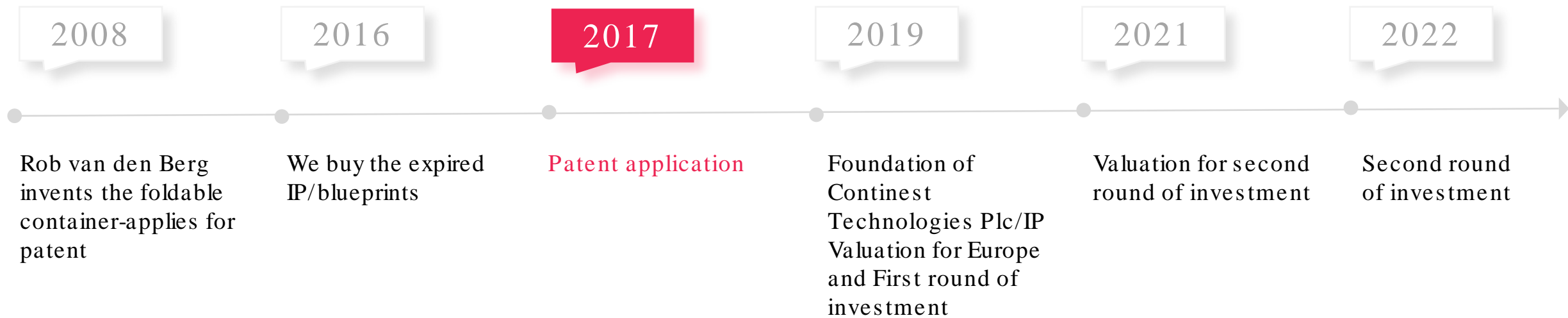


Medical platforms

Continest *in numbers*



Our patent history



Our primary concerns about VC investments



1st round

How to protect the IP from a Hungarian government-backed VC



2nd round

How to avoid dilution in a one product based IP heavy SPV



The answer is:

The territorial approach

Thanks to **this unique approach**,

we secured the investments we sought



1st round – Europe

Valuation by KPMG

Investment: ~3M €



2nd round – ”Rest of the world” with exceptions

Valuation by Danubia

Investment: ~3M+3M €



3rd round TBD

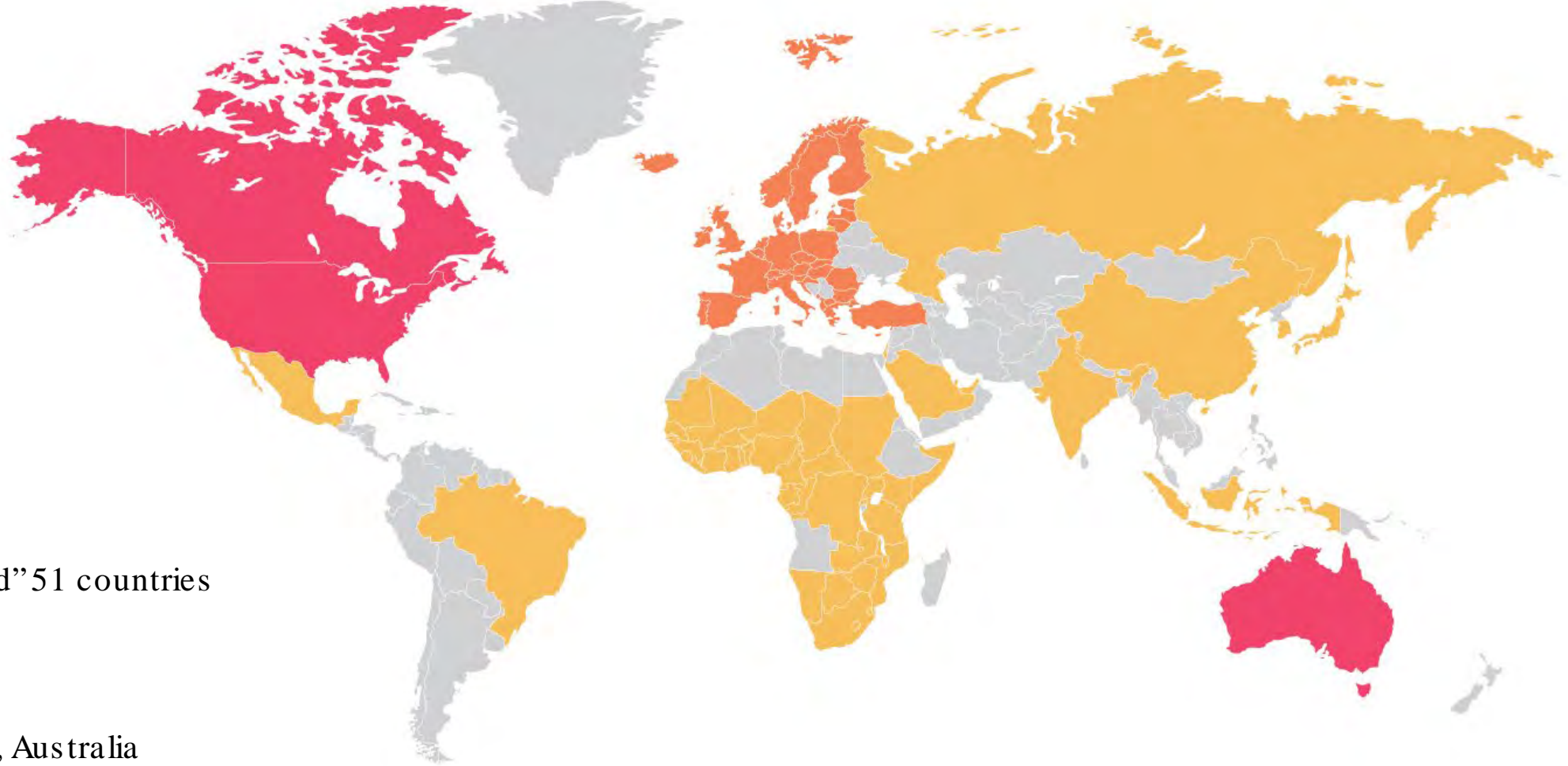
Options: USA, Canada, Australia



Exit Strategy?

IP map

-  1st phase
Europe
-  2nd phase
"Rest of the world" 51 countries
-  3rd phase
TBD-US, Canada, Australia



What we have learned throughout the years



Know what you want – Set visible goals



Dare to be different!



Straightforward communication with investors and advisors



Chemistry (build a trustworthy team who share your values)



The secret to **our success** is ...



There is no secret



Nobody is born to be an IP expert



You have to find a skilled IP advisor, harmonise your goals with legal realities and follow professional advice



And while it's easier said than done, we are continuously learning this ourselves



Let's connect!



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FICPI // Events 2025



FICPI Korean Symposium
2-5 April 2025
Jeju Island, Republic of Korea



FICPI World Congress & ExCo Meeting
12-18 October 2025
Naples, Italy

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**FICPI 22nd
Open Forum**
Madrid
25-28 September 2024



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