

## ASSET VALUATION

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# How Much Is That Patent Worth?

*Consider both the potential economic benefit and the risks.*

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AMERICA'S public companies are being subjected to greater scrutiny than ever before over their business decisions. For many of them, the scrutiny extends to decisions with respect to acquiring and enforcing their own intellectual property rights, as well as with respect to honoring the intellectual property rights of others. Although these rights may include all forms of intellectual property, e.g., trademarks, copyrights and trade secrets, for many companies, the biggest exposure lies in decisions made with respect to patents.

Patents provide inventors and their assignees with the right to exclude others from using, making, selling and offering for sale, products and services that embody a patented invention.<sup>1</sup> Accordingly, with patent rights in hand, a patent holder can create a niche in which to develop a market by preventing the entry of competitors and/or can generate income through the sale or licensing of rights to other parties. Increased market share and the receipt of royalties can lead to greater profits, which can raise the stock price of a public company, can turn an unknown start-up into a market leader, and can make the patent holder/licensor wealthy without ever creating or selling a product or service.

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The aforementioned economic benefits of patents are generally accepted as an accurate reflection of how a patent could provide value to a patent holder. But they do little to help to ascertain how much any one particular patent or any patent portfolio is worth, which is the critical inquiry for any client who is considering entering the patenting process, purchasing a patent or patent portfolio, investing in or acquiring a company that has patents, or entering into a license agreement for patent rights.

Assigning a value to a patent is a difficult problem. In order for the value to be meaningful, one must consider at least four issues:

- (1) the potential to increase revenue (IR);
- (2) the risk that a patent will be invalidated (RIV);
- (3) the risk that someone will design around

- (RDA) the technology; and
- (4) the risk that any commercial product or service will be covered by multiple patents (RMP).

### Potential to Increase Revenue

The first issue to consider when determining the value of a patent is the amount of IR that is being brought to a company that holds a patent or would be brought to a company if it were to acquire the patent right (or conversely, how much revenue would be lost were the company to lose the patent right or fail to acquire it). This IR may come in the form of license revenues or greater sales attributable to the exclusivity that is created by the ability to prevent others from entering a particular space within the market.

