

NAVIGATING INTELLECTUAL PROPERTY VALUATION IN SINGAPORE

Introduction

1. In brief, intangible assets are non-monetary assets that do not have physical substance. They include intellectual property (“IP”), such as patents, trademarks, and copyrights.
2. Intellectual Property Valuation (“IP Valuation”), which determines the monetary value of IP assets, is of growing importance to businesses. It facilitates various commercial activities, including the following:
 - (a) Licensing of intellectual property.
 - (b) Intellectual property litigation.
 - (c) Sale and purchase of businesses.
 - (d) Financing and securitisation.
 - (e) Measuring the performance and rates of return of investment.
3. This article provides an overview of the IP Valuation landscape in Singapore and introduces several approaches for IP Valuation.

Intellectual Property Valuation Landscape in Singapore

4. In April 2021, Singapore launched the Singapore Intellectual Property Strategy 2030 (“SIPS 2030”). SIPS 2030 aims to “*grow Singapore as a global hub for IA/IP activities and transactions*” and “*maintain Singapore’s top-ranked IA/IP regime*”. A key long-term goal of the SIPS 2030 is to “*develop a credible and trusted IA/IP valuation ecosystem*”. To this end, Singapore developed the Intangibles Disclosure Framework.

The Intangibles Disclosure Framework outlines key disclosure principles, laying the foundation for harmonisation of intangibles and IP disclosure. The authors of the framework envisage that intangible disclosure will facilitate the management and commercialisation of intangibles.¹

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¹ See Intangibles Disclosure Industry Working Group, *Intangibles Disclosure Framework 2023* (“Intangibles Disclosure Framework”) at page 8.

Intellectual Property Valuation Approaches

Prerequisites for valuation exercise

5. Before an IP asset can be valued, certain prerequisites must be satisfied²:
 - i. The IP asset must be separately identifiable with a recognisable description;
 - ii. There should be tangible evidence of the existence of the asset, such as a contract or a record;
 - iii. The IP asset should have been created at an identifiable point in time;
 - iv. The IP asset should be capable of being legally enforced and transferred;
 - v. The IP asset's income stream should be separately identifiable and isolated from those of other business assets;
 - vi. The IP asset should be able to be sold independently of other business assets; and
 - vii. The IP asset should be subject to destruction or termination at an identifiable point in time.
6. After the above matters are ascertained, the party dealing with the IP asset can adopt one or more of the following three principal approaches for valuing the IP asset.³
 - (a) *Market Approach*
7. The Market Approach is based on a comparison with the actual price paid for the transfer of rights to a similar IP asset under comparable circumstances. This approach is suitable if there is sufficient information on transactions involving comparable IP assets.
8. In principle, the Market Approach is simple. However, the Market Approach may encounter practical difficulties. It is difficult to find IP assets that are sufficiently similar to the IP asset being valued as IP assets, by nature, tend to be unique. For example, a requirement for the registration of patents is "novelty". This requires the invention to be new vis-à-vis the state of the art, which is assessed on a worldwide basis with no geographical or territorial limits. IP assets are also seldom traded separately from other assets, and the details of IP transactions are often kept confidential, making it difficult to find market evidence of transactions involving similar or identical IP assets.
 - (b) *Cost Approach*
9. The Cost Approach establishes the value of an IP asset by calculating the cost of a similar (or exact) IP asset. This approach is suitable when there is difficulty measuring the financial returns from the IP asset.

² See generally WIPO, "Valuing Intellectual Property Assets", <<https://www.wipo.int/sme/en/ip-valuation.html>>.

³ *Ibid.*

10. The Cost Approach is typically unsuitable as the primary method of IP Valuation as it does not capture factors which are typically associated with the “value” of an asset. For example, this approach does not incorporate the extent and duration of future cash flows that the IP asset may generate. On a related note, it also does not capture wasted expenses. For instance, research projects could involve large amounts spent but which may ultimately result in no viable product or patent.

(c) *Income Approach*

11. The Income Approach values an IP asset by reference to income that the IP asset is expected to generate over its economic life, adjusted to its present-day value. Unlike the Market and Cost Approaches, the Income Approach directly considers the economic potential and risks of the IP asset. This approach would be best suited for IP assets which generate predictable and positive revenue. The difficulty to any income method lies in the estimation of cash flows, and the calculation of the discount rate and economic life of the IP asset.

12. This approach is the most commonly applied approach for IP Valuation. Nonetheless, as alluded to above, there are various nuances involved under the Income Approach.

Commentary

13. IP Valuation is doubtless important for business strategy, as it helps companies decide whether to acquire or invest in another company and opens up a new range of commercialisation options for enterprises to enhance cash flow.⁴

14. Further, IP Valuation has a pivotal role in IP rights enforcement. IP rights owners with the benefit of IP Valuation would be in a far better position to decide whether to pursue litigation, explore alternative dispute resolution methods, or find other solutions to deal with the infringement, such as licensing the IP asset to the infringing party.

15. To elaborate, IP Valuation allows IP rights owners to undertake an informed cost-benefit analysis. Take, for example, a copyright infringement action – the court may grant, amongst others, the following remedies:

- i. Damages, which compensates the victim for his losses;
- ii. an account of profits, where the award takes into account the infringer’s profits; and/or
- iii. statutory damages, where the damages are stipulated by the Copyright Act 2021.

Assuming the IP rights owner wishes to maximise the amount it recovers, it must consider whether the cost required to do so will net a positive return. In this regard, IP Valuation will allow an enforcing party to understand what are the maximum amounts of account of profits and/or damages it can conceivably receive in the event of a successful suit. If, for example, the value of the IP asset has been determined to be on the lower side and the assessment of damages or account of profits is likely to be a complex and costly undertaking, the IP rights owner may well be financially better off if it settles the dispute for an agreed sum without incurring a multitude of Court-related fees (including expert witness fees).

⁴ *Intangibles Disclosure Framework* at page 7.



16. A multitude of factors, including legal requirements, must be considered before arriving at the valuation of an IP asset, and in turn, a viable commercial strategy. If you have any queries relating to this area of law, please do not hesitate to contact our partners Mr. Christopher De Souza (chrisdesouza@leenlee.com.sg) or Mr. Jasper Lim (jasperlim@leenlee.com.sg).

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