Gift and Estate Tax Valuation Insights

THE RELIEF FROM ROYALTY METHOD OF INTELLECTUAL PROPERTY VALUATION

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There are four (and only four) types of intellectual property: patents, trademarks, copyrights, and trade secrets. When they are the subject of an intergenerational gifting program or when they are included in a decedent’s estate, intellectual property assets may have to be valued for federal gift and estate tax purposes. There are also numerous instances when intellectual property assets have to be valued for federal income tax purposes. Whether related to gift tax, estate tax, or income tax, intellectual property assets may have to be valued as part of the individual or the corporate taxpayer compliance, audit, appeal, or litigation process. The relief from royalty method (the “RFR method”) is a market approach method that valuation analysts often use to value taxpayer intellectual property. This discussion summarizes (1) the conceptual foundation of the RFR method, (2) the procedural application of the RFR method, (3) the common sources of RFR method transactional data, and (4) the analytical strengths and weaknesses of the application of the RFR method.

INTRODUCTION

The relief from royalty method (the “RFR method”) is a market approach valuation method that is commonly used for the valuation of certain types of commercial intangible assets for various purposes. In particular, the RFR method is a common valuation method to estimate the value of taxpayer intellectual property for federal gift, estate, or income tax purposes.

This valuation method may also be used by the valuation analyst to value other types of commercial intangible assets, as long as there are sufficient transactional data from which to extract a market-derived license royalty rate. Often, the valuation analyst finds that there is a paucity of empirical data with regard to the arm’s-length license of most commercial intangible assets. Due to this data constraint, the RFR valuation method is primarily used to value the four types of intellectual property: patents, trademarks, copyrights, and trade secrets.

Of course, the RFR method may also be used to value taxpayer commercial intangible assets that are closely related to intellectual property. Examples of such intellectual property-related commercial intangible assets include:

1. unpatented but proprietary processes (related to patents),
2. trade dress (related to trademarks),
3. copyrighted computer software (related to copyrights), and
4. manuals and other documentation containing trade secrets (related to trade secrets).

Depending on the source of the intellectual property royalty rate used in the analysis, the RFR method may be considered either (1) a market approach valuation method or (2) an income approach valuation method. In fact, if the source of the intellectual property royalty rate is a fair return on an intellectual property asset value, then the RFR method may also be considered a cost approach valuation method. However, these categorizations are really a matter of semantics.

The experienced valuation analyst understands that whether the source of the selected intellectual property royalty rate is a “comparable uncontrolled transaction” license, a profit split, or a fair return on an intangible asset value:

1. the conceptual foundation of the RFR method remains the same,
2. the practical application of the RFR method remains the same, and
3. the value conclusion indicated by the RFR method remains the same.

First, this discussion summarizes: (1) the various types of taxpayer intellectual property and (2) the various types of taxpayer intellectual property analyses. And, this
discussion describes the use of the RFR method in the taxpayer intellectual property valuation process.

Second, this discussion explains the procedural application of the RFR method mechanics. In particular, this discussion considers:

1. the factors that the valuation analyst typically considers in the selection of the RFR method in the gift and estate tax intellectual property valuation analysis and
2. the factors that the valuation analyst typically considers in the selection of the taxpayer-specific intellectual property royalty rate.

Third, this discussion describes (1) the common intellectual property royalty rate online data sources, (2) the common intellectual property royalty rate print data sources, and (3) the common intellectual property royalty rate “other” data sources.

Fourth, this discussion presents a simplified illustrative example of the application of the RFR method to a hypothetical taxpayer intellectual property valuation. And finally, this discussion considers the analytical strengths and weaknesses of the RFR method to intellectual property valuation for federal gift and estate tax purposes.

FOUR TYPES OF TAXPAYER INTELLECTUAL PROPERTY

There are four (and only four) types of taxpayer intellectual property:

1. patents
2. trademarks
3. copyrights
4. trade secrets

In contrast, there are numerous types of taxpayer commercial intangible assets. Most general commercial intangible assets naturally come into existence in the normal course of ongoing business operations. Examples of such general commercial intangible assets include: customer relationships, supplier relationships, and employee relationships (in the form of an assembled workforce).

In contrast to general commercial intangible assets, intellectual property is created, protected, commercialized, financed, and exchanged under specific federal or state statutes.

A patent is a document that is issued by the United States Patent and Trademark Office (PTO). A patent grants a monopoly to the grantee (called the inventor) for a limited time on the use and development of an “invention.”

There are three types of patents that are granted by the PTO:
1. Utility patents – There are the following five categories of utility patents: (a) the process patent, (b) the machine patent, (c) the manufacture patent, (d) the composition of matter patent, and (e) the improvement of an existing idea patent.
2. Design patents – Design patents relate to a nonfunctional part of a functional manufactured product (e.g., a package design).
3. Plant patents – Plant patents relate to asexually or sexually reproducible plants.


A trademark is a distinctive word, phrase, logo, graphic symbol, or other device used to identify (and to distinguish) a taxpayer product or service. Unlike a patent, a trademark is not legally required to be registered. However, most taxpayer trademarks are registered with the PTO.

There are five types of trademark intellectual property-related intangible assets:

1. Trademarks – Trademarks are the taxpayer manufacturer’s unique logos or symbols.
2. Trade names – Trade names are the taxpayer manufacturer's name.
3. Service marks – Service marks are the taxpayer service provider’s unique logos or symbols.
4. Service names – Service names are the taxpayer service provider’s name.
5. Trade dress – Trade dress is a distinctive shape or packaging related to a particular taxpayer product or service.

Taxpayer trademarks are protected by the Lanham Act. The Lanham Act is included in Title 15 of the USC at Sections 1051 through 1127.

A copyright gives the owner of a creative work (called the “author”) the right to keep others from using that work without the owner’s permission. It is noteworthy that the copyright applies to the expression of an idea, and not to the idea itself. In other words, an idea (no matter how original) cannot be subject to copyright protection.

There are three criteria that a creative work (called a “work of authorship”) must meet in order for the work to qualify for a copyright:

1. It must be original.
2. It must be fixed in a tangible medium of expression.
3. It must be produced by an exercise of human intellect.

In order to create a copyright, the “author” of the work may either (1) place a copyright notice on a published work or (2) register the work with the U.S. Copyright Office. Copyrights are protected by the Copyright Act of 1976. The Copyright Act of 1976 is included in Title 35 of the USC at Sections 101 through 376.

The owner of the copyright may be a corporate taxpayer's employee. However, when the corporate taxpayer employee prepares a “work for hire,” then the owner of the copyright is the corporate taxpayer. The copyright may be on a literary work, musical composition, film, computer software, advertising copy, employee manual and training material, product or process drawing, product catalog, or other taxpayer corporation internally generated material.

A trade secret relates to the taxpayer owner of commercial information that provides a competitive edge. A trade secret provides the taxpayer with the legal right to keep others from using such information. A taxpayer trade secret can include any formula, pattern, physical device, idea, process, or compilation of information.

There are two requirements for such process or other commercial information to qualify as a trade secret:

1. It must provide the taxpayer owner with a competitive advantage in the relevant marketplace.
2. It must be treated by the taxpayer owner in a way so as to prevent the public or the competitors from learning about it.

There is no legal registration process with respect to trade secrets. Trade secrets are typically protected by state statutes. Most state trade secret statutes have generally adopted the provisions of (1) the Federal Uniform Trade Secret Protection Act and (2) the Economic Espionage Act of 1996.

## Various Types of Taxpayer Intellectual Property Analyses

For gift and estate tax purposes, the valuation analyst is typically interested in the valuation of the taxpayer intellectual property. However, there are three general types of intellectual property royalty rate analyses:

1. the valuation of the subject taxpayer intellectual property
2. the transfer price estimate for the subject taxpayer intellectual property
3. the measurement of economic damages to the subject taxpayer intellectual property

This discussion focuses on the gift and estate tax reasons to value taxpayer intellectual property (e.g., to identify intellectual property that is either subject to a gifting transfer or included in the decedent's estate). However, there are numerous other instances in which the valuation analyst may be called on to perform a valuation of the taxpayer intellectual property. Accordingly, the valuation analyst may begin the gift or estate tax valuation by asking the taxpayer if a valuation of the subject intellectual property (conducted for whatever purpose) already exists.

Some of the more common purposes for the taxpayer intellectual property valuation include the following:

1. financial (fair value) accounting (e.g., for purchase accounting)
2. federal income taxation (e.g., for a charitable contribution deduction)
3. ad valorem property taxation (e.g., identification of taxpayer corporation intangible assets that are exempt from ad valorem property taxation)
4. sale or license transactions (e.g., fairness opinions on intellectual property sales or licenses)
5. financing collateral (e.g., for intellectual property asset-based financing and sale/licenseback transactions)
6. bankruptcy (e.g., when the debtor's intellectual property is collateral on a secured debt)
7. equity allocation (e.g., in a joint venture, partnership, or other organization structure when one entity has contributed intellectual property to the organization)
8. asset distribution (e.g., when a business entity distributes its intellectual property to equity holders in exchange for their ownership interest)

There are also numerous instances when a valuation analyst may be asked to conclude a taxpayer intellectual property royalty rate or transfer price for intercompany or third-party transfer purposes. Therefore, the valuation analyst performing a gift and estate tax valuation may inquire of the taxpayer as to the existence of such intellectual property royalty rate analyses. Even if such a royalty rate analyses did not conclude a value indication, the royalty rate transfer price study may still be useful to the valuation analyst who is performing an gift and estate tax valuation.

Some of the common purposes for an intellectual property transfer price (i.e., license) study include the following:

1. Internal Revenue Code Section 482 planning and compliance related to the intercompany transfer of intangible property
2. formation of an intellectual property holding company in one state and the interstate license of the taxpayer corporation intellectual property to facilities in other states.
3. private inurement considerations (e.g., when a not-for-profit entity buys, sells, or licenses intellectual property to or from a for-profit taxpayer)

4. business unit cost accounting (e.g., when one corporate division or subsidiary uses an intellectual property owned by another corporate division or subsidiary and the corporate parent taxpayer prepares business unit financial statements)

5. unequal business ownership (e.g., when a wholly owned corporate taxpayer subsidiary licenses intellectual property to or from a non-wholly-owned subsidiary)

6. intergenerational transfers (e.g., when a privately owned corporate taxpayer owned by one generation of stockholders licenses intellectual property to or from an entity owned by the next generation of stockholders)

Lastly, there are numerous instances when a valuation analyst may be asked to estimate lost profits or some other measure of economic damages related to the taxpayer involved in litigation or a similar claim. Again, these lost profits or economic damages analyses will likely not conclude a value indication for the subject taxpayer intellectual property. However, such a lost profits or economic damages analyses may provide useful qualitative and quantitative intellectual property information to the valuation analyst who is performing the gift and estate tax valuation.

Some of the common litigation-related economic damages purposes for a taxpayer intellectual property royalty rate analysis include the following:

1. infringement of the taxpayer intellectual property
2. breach of contract related to the taxpayer intellectual property development or exploitation
3. breach of a noncompete agreement involving the taxpayer intellectual property
4. expropriation/condemnation of the taxpayer intellectual property by a governmental authority
5. tortious interference with the taxpayer business practices or business opportunity
6. defamation, slander, or libel regarding a name-related intellectual property

**Various Types of Intellectual Property Royalty Rate Analytical Methods**

Related to the three above-mentioned types of taxpayer intellectual property analyses, there are also numerous types of royalty rate analytical methods. These analytical methods are intended to either (1) estimate an arm’s-length (or otherwise fair) royalty rate for a license of the subject taxpayer intellectual property or (2) use a royalty rate estimate to estimate a value or economic damages amount for the subject taxpayer intellectual property.

The following discussion summarizes the most common intellectual property royalty rate methods, grouped within the three general categories of taxpayer intellectual property analyses.

With respect to valuation-related royalty rate analyses, the common types of intellectual property analysis methods are: (1) the direct capitalization of (hypothetical or actual) intellectual property royalty income/expense, and (2) the yield capitalization of (hypothetical or actual) intellectual property royalty income/expense.

The conclusion of a taxpayer intellectual property valuation is typically expressed as a dollar amount. And, that dollar amount is typically based on the capitalization of a royalty rate–based flow of income or expense.

With respect to transfer pricing–related royalty rate analyses, the common types of intellectual property royalty rate estimation methods are:

1. the comparable uncontrolled transactions (CUT) method royalty rate,
2. the profit split method royalty rate, and
3. the residual profit split method royalty rate.

The conclusion of a taxpayer intellectual property transfer pricing analysis is typically expressed as a royalty rate (i.e., as a percentage of taxpayer business enterprise revenue or of some other taxpayer business enterprise financial statement account).

With respect to economic damages–related royalty rate analyses, the common types of analysis methods are typically based on:

1. the CUT method royalty rate,
2. the profit split method royalty rate,
3. the residual profit method royalty rate, or
4. the incremental profit royalty rate.

In a taxpayer intellectual property economic damages analysis, the economic damages conclusion is usually expressed as either: (1) a royalty rate percentage (e.g., to be applied to the damaged party’s revenue or to the damaging party’s revenue), or (2) a dollar amount of economic damages that is based on a capitalized royalty rate–based flow amount.
GENERALLY ACCEPTED INTELLECTUAL PROPERTY VALUATION APPROACHES AND METHODS

As with all individual or corporate taxpayer commercial intangible assets, there are three generally accepted intellectual property valuation approaches: (1) the cost approach, (2) the market approach, and (3) the income approach. It is noteworthy that the market approach to intangible asset valuation is generally analogous to the sales comparison approach to real estate and tangible personal property valuation.

The following discussion summarizes the generally accepted valuation methods within these three valuation approaches.

The common cost approach intellectual property valuation methods include: (1) the replacement cost new less depreciation method, and (2) the reproduction cost new less depreciation method.

There are other cost approach valuation methods that are less commonly used. And, those other cost approach methods may be applicable in certain gift and estate tax valuation instances. These other cost approach valuation methods include: (1) the trended original cost less depreciation method and (2) the historical cost less depreciation method.

In any cost approach intellectual property valuation analysis, the valuation analyst should consider all four cost components. And, one of the cost components should also include any impact associated with the intellectual property development opportunity cost. The four cost components follow:

1. direct costs
2. indirect costs
3. developer profit
4. entrepreneurial incentive

In any cost approach intellectual property valuation analysis, the valuation analyst should also consider the three depreciation components:

1. physical depreciation
2. functional obsolescence
3. economic obsolescence

In the analysis of functional obsolescence, the valuation analyst will typically consider the intellectual property remaining useful life (RUL). This RUL consideration also applies to the valuation analyst’s assessment of the technological obsolescence component of functional obsolescence.

In the analysis of economic obsolescence (i.e., the economic obsolescence component of external obsolescence), the valuation analyst will typically consider the intellectual property return on investment (ROI).

The following simplified formula illustrates the basic relationship of (1) the intellectual property cost approach value indication and (2) the intellectual property royalty rate indication:

1. Intellectual property cost approach value indication \( \times \) A fair rate of return on investment = The intellectual property royalty income amount.
2. Intellectual property royalty income amount \( \div \) The taxpayer owner/operator revenue = The intellectual property royalty rate.

The common market approach intellectual property valuation methods include:

1. the analysis of the sales of guideline intellectual property,
2. the analysis of the licenses of guideline intellectual property, and
3. the analysis of any historical sales or licenses of the subject taxpayer intellectual property.

There are several valuation analyst considerations that are common to the application of all market approach intellectual property valuation methods. These common considerations are encompassed in the following valuation analyst procedures:

1. documentation of the selected guideline intellectual property sale or license selection criteria
2. confirmation of the selected guideline intellectual property transaction sale or license price
3. calculation of a cash equivalency amount for each selected guideline intellectual property sale or license transaction price
4. the conversion of the selected guideline intellectual property transaction price to a standardized unit of measure (or pricing multiple)
5. the selection of a taxpayer subject–specific pricing multiple from the range of guideline transactional pricing multiples
6. the application of the selected pricing multiple to a normalized financial fundamental metric for the subject taxpayer business enterprise (or for the subject taxpayer intellectual property)

The following simplified formula illustrates the basic relationship of (1) the intellectual property market approach value indication and (2) the intellectual property royalty rate indication:
1. Extract the empirical royalty rates from the selected guideline intellectual property license transactions.

2. Adjust the selected guideline intellectual property royalty rates to be more comparable to the subject taxpayer intellectual property. (valuation analyst note: don’t adjust the subject taxpayer intellectual property to be more comparable to the selected guideline intellectual property).

The common income approach intellectual property valuation methods include:

1. the incremental income method,
2. the differential income method,
3. the residual income method, or
4. the analysis of either hypothetical or actual royalty income to the subject individual or corporate taxpayer.

There are several valuation analyst considerations that are common to the application of all income approach intellectual property valuation methods. These common considerations are encompassed in the following valuation analyst procedures:

1. The valuation analyst should consider all intellectual property–related changes in the subject taxpayer revenue, expense, or investment fundamentals.
2. The valuation analyst should consider the cost of developing and/or maintaining the subject taxpayer intellectual property.
3. The valuation analyst should apply a capital charge (or economic rent) to all contributory assets related to the taxpayer intellectual property, when appropriate.
4. The valuation analyst should calculate a risk-adjusted discount rate or direct capitalization rate.
5. The valuation analyst should consider the RUL of the hypothetical or actual intellectual property–related income stream.

The following simplified formula illustrates the basic relationship of (1) the intellectual property income approach value indication and (2) the intellectual property royalty rate indication:

1. Estimate the subject taxpayer intellectual property economic income measure for a normalized (or stabilized) period.
2. Estimate the taxpayer intellectual property owner/operator revenue for a normalized (or stabilized) period.
3. Taxpayer intellectual property economic income ÷ Taxpayer intellectual property owner/operator revenue = Intellectual property royalty rate.

**THE CONCEPTUAL FRAMEWORK OF THE RFR METHOD**

The RFR method is based on both theoretical economic principles and on real world commercial relationships. The following discussion summarizes many of the principles and relationships that form the conceptual foundation for the valuation analyst's application of the RFR method.

First, taxpayer intellectual property total ownership rights are often disaggregated between licensors and licensees. In addition, taxpayer intellectual property ownership total rights are often disaggregated between owners (i.e., the intellectual property developer) and operators (i.e., the entities that use the subject intellectual property).

Second, the RFR method assumes that if the taxpayer is the intellectual property operator (but not the intellectual property developer), then the taxpayer should be willing to license the subject intellectual property from the intellectual property owner/licensor. In that license agreement, the taxpayer intellectual property operator is the licensee; and, the intellectual property owner is the licensor. In that license agreement, the taxpayer (as the party using the subject intellectual property) will have to pay a market-derived royalty for the use of the subject intellectual property.

Third, the license agreement intellectual property royalty is typically based on a royalty rate. And, that license agreement royalty rate is typically calculated such as:

1. X% of taxpayer revenue (or some other taxpayer income measure),
2. $Y per taxpayer unit produced (or sold), or
3. $Z per time period (e.g., per year).

Fourth, since the taxpayer in fact actually owns the subject intellectual property, the taxpayer does not have to pay a licensor to license the subject intellectual property to it. Therefore, as the intellectual property owner, the taxpayer is “relieved” from having to pay a royalty for the use of the subject intellectual property to an intellectual property licensor.

Fifth, it is noteworthy that the RFR method does not assume that the taxpayer outbound licenses the subject intellectual property. That is, the RFR method does not apply the selected royalty rate to the other party's (i.e., the hypothetical licensor) revenue. Rather, the RFR method assumes that the taxpayer inbound licenses the subject intellectual property. That is, the RFR method applies the selected royalty rate to the taxpayer revenue.

**ROYALTY RATE SOURCES**

The valuation analyst typically derives or extracts intellectual property royalty rates from difference sources, depending on the applicable valuation approach. The following
This discussion lists the common intellectual property royalty rate sources for each of the three generally accepted intangible asset valuation approaches.

For the market approach valuation methods, the following list presents the common sources for market-derived royalty rates from guideline intellectual property licenses:

1. Intellectual property online license data sources
2. Intellectual property license print medium data sources
3. Public SEC filings of selected guideline publicly traded companies
4. Taxpayer industry trade journal articles and taxpayer industry trade associations
5. Subject taxpayer actual inbound/outbound intellectual property licenses

For the cost approach valuation methods, the following formula is commonly used to extract a royalty rate from an intellectual property value indication:

\[
\text{Taxpayer Intellectual Property Cost Approach Value Indication} \times \frac{\text{A fair rate of return on the intellectual property investment}}{\text{Intellectual Property Royalty Payment}} = \text{Intellectual Property Royalty Rate.}
\]

For the income approach valuation methods, the following relationship is commonly used to estimate a royalty rate from an intellectual property income flow:

1. The subject taxpayer intellectual property economic income is calculated as either:
   a. Profit split of the total taxpayer owner/operator income,
   b. Residual income (after a fair return on all contributory assets),
   c. Incremental income (typically total taxpayer operating income measured with versus without the subject intellectual property), or
e. Differential income (from a taxpayer financial plan, projection, forecast, budget, or yardstick).
2. The intellectual property economic income ÷ The taxpayer owner/operator annual revenue = The intellectual property royalty rate.

Typically, an actual intellectual property licensee would calculate the amount of a royalty rate that it can afford to pay to the actual intellectual property licensor based on this type of profit split, residual income, incremental income, or differential income analysis.

**Basic Valuation Formula for the RFR Method**

The basic intellectual property valuation formula for the RFR method is presented as follows:

\[
\text{Taxpayer Intellectual Property Value Indication} \times \frac{\text{Taxpayer Revenue}}{\text{Royalty Rate}} = \text{Discount Rate} - \text{Growth Rate}
\]

When applying this simple-looking RFR method formula, the valuation analyst should contemplate the following not-so-simple considerations:

1. The valuation analyst should select a subject taxpayer intellectual property–specific royalty rate (i.e., the valuation analyst should not necessarily select the mean, median, mode, etc., royalty rate from the guideline intellectual property transactional data).
2. The valuation analyst should use a normalized revenue base for the taxpayer intellectual property owner/operator (and not necessarily use the actual last year or projected next year taxpayer revenue).
3. The valuation analyst should use a discount rate that is consistent with:
   a. The selected standard of value,
   b. The selected premise of value,
   c. The risk of the subject taxpayer intellectual property, and
   d. The income tax level of the projected taxpayer royalty income.
4. The valuation analyst should use an expected long-term growth rate that is consistent with:
   a. The age of the subject taxpayer intellectual property,
   b. The RUL of the subject taxpayer intellectual property, and
   c. The cost to maintain the subject taxpayer intellectual property.
5. The valuation analyst should adjust the royalty payment as needed:
   a. To account for the cost to develop (if it is still in development) or
   b. To maintain the subject taxpayer intellectual property.
6. The valuation analyst should use the yield capitalization model for an uneven long-term growth rate royalty payment projection.
7. The valuation analyst should use a limited life direct capitalization rate for a constant growth rate royalty payment projection, assuming that the subject taxpayer intellectual property has a limited expected RUL. That way, the valuation analyst can construct a hypothetical licensor/licensee transaction that will emulate the real world, arm’s-length conditions of commercial intellectual property license agreements.

**THE RESPECTIVE ROLES OF INTELLECTUAL PROPERTY LICENSORS AND LICENSEES**

In a real world, arm’s-length commercial intellectual property license transaction, the typical roles of the intellectual property licensor include the following:

1. Develop the subject intellectual property.
2. Maintain the subject intellectual property functionality.
3. Maintain the subject intellectual property legal status.
4. Legally protect the subject intellectual property.
5. Use the subject intellectual property in the defined products/territories.
6. Promote the subject intellectual property to the defined marketplace.
7. Maintain an unencumbered title to the subject intellectual property.
8. Update/replace the subject intellectual property.

In a real world, arm’s-length commercial intellectual property license transaction, the typical roles of the intellectual property licensee include:

1. Maintain a minimum use of the subject intellectual property.
2. Use the subject intellectual property in the defined products/services.
3. Use the subject intellectual property in the defined territories.
4. Promote the subject intellectual property to the defined marketplace.
5. Keep any confidentiality commitments to the intellectual property licensor.
6. Do not diminish the legal status of the subject intellectual property.
7. Do not diminish the economic status of the subject intellectual property.
8. Do not diminish the licensor's title to the subject intellectual property.

The valuation analyst should be aware of these typical licensor/licensee rights and responsibilities when the analyst is performing an RFR method valuation analysis.

**ALTERNATIVE STANDARDS OF VALUE**

Unlike some other common intellectual property valuation methods, the RFR method is analytically flexible enough to allow it to apply to alternative standards of value and to alternative premises of value. For federal gift and estate tax purposes (and income tax purposes), fair market value is the appropriate valuation standard of value.

However, the following list indicates the alternative standards of value that may be appropriate to some intellectual property valuations:

1. fair value
2. fair market value
3. investment value
4. use value
5. owner value
6. collateral value
7. strategic value
8. acquisition value

In order to adjust the RFR method to make it applicable to each of the above-mentioned standards of value, the valuation analyst would specifically consider the standard of value in the selection of the following valuation variables:

1. the subject intellectual property–specific royalty rate
2. the taxpayer owner/operator–specific base period revenue
3. the appropriate risk-adjusted discount rate
4. the taxpayer owner/operator–specific expected long-term growth rate

**SELECTION/ADJUSTMENT OF THE INTELLECTUAL PROPERTY ROYALTY RATE**

The valuation analyst is ultimately responsible for selecting the royalty rate that is most appropriate to the subject taxpayer intellectual property. To conclude this subject-specific royalty rate, first, the valuation analyst selects the best sample of guideline intellectual property license transactions. This sample of intellectual property license transactions is intended to provide the best pricing guidance.
Second, the valuation analyst adjusts the guideline intellectual property license royalty rates in order to make the guideline intellectual property licensees more comparable to the subject taxpayer intellectual property.

And, third, the valuation analyst selects the single royalty rate appropriate to the taxpayer intellectual property. This selected royalty rate is based on the range indicated by the market-derived intellectual property royalty rates. The selected royalty rate is, in the valuation analyst's opinion, the most applicable to the subject taxpayer intellectual property.

Exhibit 1 presents a list of some of the license rights and responsibilities that the valuation analyst may consider in the process of (1) adjusting the guideline intellectual property royalty rates and (2) selecting the taxpayer subject-specific royalty rate. (Note that all exhibits for this article are presented at the end of the article.) In particular, the valuation analyst will typically compare these factors in the guideline intellectual property licenses to the same factors in the hypothetical subject taxpayer intellectual property license.

To use the first factor as an example, let's assume that the guideline trademark licenses encompass one product or service (or a small group of products or services). In contrast, let's assume that the subject taxpayer trademark covers all of the subject taxpayer products or services. In that case, the valuation analyst may want to upwardly adjust the guideline trademark license royalty rates in order to make them more comparable to the subject taxpayer trademark.

It is noteworthy that Exhibit 1 is not intended to be a comprehensive list of all comparable intellectual property license rights and obligations. Of course, the valuation analyst should determine which factors are the most appropriate to the subject taxpayer intellectual property valuation.

Factors for the Valuation Analyst to Consider in the Application of the RFR Method

Even after considering the relative rights and responsibilities of the guideline intellectual property license agreement parties, the valuation analyst may still consider some noncontractual factors in the final selection of the taxpayer subject-specific royalty rate.

Exhibit 2 presents a list of some of these noncontractual factors. These noncontractual factors are primarily economic and/or functional (including technological) in nature.

The valuation analyst may assess each of these factors in (1) adjusting the guideline intellectual property license royalty rates and (2) selecting the ultimate taxpayer subject-specific intellectual property royalty rate. As with all comparative factors, the valuation analyst should compare (and adjust) the guideline intellectual property to the taxpayer subject intellectual property—and not the taxpayer subject intellectual property to the guideline intellectual property.

Again, Exhibit 2 is not intended to be a comprehensive list of all relevant economic and functional factors. And, the valuation analyst should use his or her professional judgment and expertise to determine the comparable economic/functional factors that are most relevant to the subject taxpayer intellectual property.

In addition to the above-mentioned factors, the valuation analyst should generally consider if the RFR method is, in fact, appropriate to the subject intellectual property valuation analysis. Some of the factors that the valuation analyst should consider with regard to the use of the RFR method include the following:

1. Is the subject taxpayer intellectual property the type of intellectual property that is regularly licensed in the commercial marketplace?
2. Are there sufficient guideline intellectual property license transactional data to provide meaningful pricing evidence?
3. Do the guideline intellectual property licenses adequately capture the subject taxpayer intellectual property--specific attributes?
4. Is the RFR method sufficiently appropriate to the engagement standard of value and engagement premise of value?

Typical Print Sources for Intellectual Property License Royalty Rate Data

The following publications are some of the print data sources for intellectual property license royalty rates that are commonly used by a valuation analyst:

2. Licensing Economics Review. This is a bi-monthly newsletter that publishes royalty rates on selected intellectual property license transactions and provides an annual survey (in December) of average royalty rates by industry. Licensing Economics Review is published by AUS Consultants.

Exhibit 3 presents a typical illustrative page from the Licensing Royalty Rates, 2008 edition. And, Exhibit 4 presents a typical illustrative page from a recent issue of Licensing Economics Review.
TYPICAL ONLINE SOURCES OF INTELLECTUAL PROPERTY LICENSE ROYALTY RATE DATA

There are four online data sources that a valuation analyst may use to search for guideline intellectual property license royalty rates. Summary descriptions of these four common online intellectual property license data sources are presented below.

Financial Valuation Group Intellectual Property Transaction Database, 8074 N. 56th Street, Tampa, FL 33617 (813/985-2232), www.fvgi.com

Description: This database includes many types of intellectual property license transactions, such as: product, patent, mineral rights, franchise/distribution rights, copyright, trademark, trade name, technology, software, and proprietary information. This database consists of approximately 40 fields of potential data for each reported intellectual property license transaction. Custom intellectual property royalty rate searches may be designed to find transactions based on: SIC code, NAICs code, keyword, industry, type of transaction, payment structure, or application.

Cost: A custom search costs $150. This price is applied toward the purchase of the intellectual property license transaction summaries. Each transaction summary costs $60. Each supporting document costs $30. There is a $25 shipping and handling fee for the overnight delivery of print copies of the intellectual property license transactional data.

RoyaltyStat, 5404 Blackstone Road, Bethesda, MD 20816-1821 (301/299-1018) www.royaltystat.com

Description: This database contains the name of the licensor, licensee, intellectual property description, license royalty rate, exclusivity, duration, and the territory covered by the selected intellectual property license agreements. The Royalty Stat database is useful for: finding royalty rates for licensing intangible property, finding industry or guideline royalty rates, determining buy-in payments, performing purchase price allocations, estimating litigation damages, and valuing intellectual property for mergers, acquisitions, divestitures, or bankruptcies. The user may search the database by SIC code or by full-text queries. Summary statistics, including quartiles of selected royalty rates, are available.

Cost: Annual subscription database costs $3,500 for a maximum of 150 license agreements. Searches in excess of 150 license agreements result in a charge of $25 per each additional license agreement.

RoyaltySource from AUS Corporation, PO Box 1050, Moorestown, NJ 08057-1050 (800/925-4287), www.royaltysource.com

Description: This database contains: licensee, licensor, industry description or code, description of the intellectual property licensed or sold, royalty rate details, other intellectual property compensation—such as upfront payments or equity positions, transactions terms—such as exclusivity or geographical restrictions, and source of information. AUS Consultants tracked intellectual property royalty rate information for over 16 years. This database searches patents, technology, and trademark sale and license transactions. Research begins after discussion of the technology, industry, and key words. Customer requests can be made by telephone or online.

Cost: Up to 10 transactions cost $250. The cost for 20 transactions is $300. The charge increases $50 for every additional 10 transactions. If no relevant intellectual property license/sale transactions are found, then the charge is only $100.

Recombinant Capital—rDNA's Biotech Alliance Database, 2033 N. Main St., Suite 1050, Walnut Creek, CA 94596-3722 (925/952-3870), www.rdna.com

Description: Recombinant Capital (Recap) specializes in biotechnical alliances, earned alliance revenue, product sales, employment agreements, and company information and capitalization. While this database contains license-related royalty rate data, it is not exclusive to intellectual property. This database tracks and analyzes almost 15,000 biotechnology company alliances entered into since 1971. The search results indicate whether (1) the subject alliance has filed SEC disclosures and (2) Recap has completed an analysis. The search results provide links to licensor/licensee press releases and valuation history graphs.
Cost: Access to the database is by subscription. The duration and type of subscription determine the cost. In addition to accessing this database via a subscription, deal-specific or consulting services are provided on either a project basis or a retainer basis.

Exhibit 8 presents a sample intellectual property license summary from the Recombinant Capital intellectual property license transaction database.

**OTHER SOURCES OF INTELLECTUAL PROPERTY LICENSE ROYALTY RATE DATA**

There are other sources of guideline intellectual property license royalty rate data. The most common other sources of such intellectual property license data include the following:

1. Valuation analyst research of selected guideline publicly traded company SEC document disclosures
2. Valuation analyst research of taxpayer industry trade publications/newsletters and taxpayer industry trade associations
3. Valuation analyst investigation of the subject taxpayer actual inbound/outbound intellectual property licenses
4. Valuation analyst independent confirmation of subject taxpayer anecdotes regarding taxpayer industry intellectual property license agreements

**SIMPLIFIED ILLUSTRATIVE VALUATION EXAMPLE**

Let’s consider a simplified illustrative example of the application of the RFR method to an intellectual property valuation. In this hypothetical federal income tax valuation, let’s assume that Charitable Taxpayer Corporation (CTC) is a pharmaceutical products company.

CTC management has developed a new pharmaceutical drug compound. CTC management expects that the new drug product will enjoy considerable commercial success. CTC management has decided to donate the patent rights for the new drug compound to the medical school alma mater of the CTC chief executive officer.

Of course, CTC will claim an income tax deduction related to the fair market value of this intellectual property charitable contribution. Therefore, CTC management needs to value the contributed intellectual property.

Let’s assume that CTC management retains the valuation analyst to perform a charitable contribution valuation of its donated intellectual property. Let’s assume that the valuation date for this charitable contribution valuation is January 1, 2009 (the date of the donation).

Let’s assume that the valuation analyst decides to use the RFR method to value the donated drug compound patent related to one specific CTC drug product—a product commonly called Vigor.

The CTC drug product Vigor treats a common valuation analyst condition—economic dysfunction (ED). Valuation analysts with ED can’t produce valuations that stand up to robust professional standards. These flaccid valuations often don’t satisfy the valuation analyst’s client.

However, when taken as directed, Vigor allows valuation analysts to achieve a firm conclusion whenever their client is ready. Nonetheless, CTC product label warns about a potential side effect of the Vigor drug compound: the valuation analyst who experiences rigid thinking for more than four hours should see a physician.

**ILLUSTRATIVE RFR METHOD EXAMPLE VALUATION VARIABLES**

Let’s assume that the Vigor drug compound was patented, passed its clinical trials, and received all FDA approvals. In fact, Vigor has just been introduced on the market. Let’s assume that CTC management expects that Vigor will generate about $400 million in first year (i.e., 2008) product revenue for CTC.

Let’s assume that the valuation analyst concludes a 9 year economic RUL for the Vigor patented drug product. This valuation analyst intellectual property RUL conclusion is based on the following:

1. The consensus of CTC management
2. The life cycle of the previous generations of ED drugs
3. The current research stage of potential replacement drugs
4. The expected impact of generic pharmaceutical products
5. Published product life estimates from taxpayer industry analysts
6. CTC management plans for developing its own replacement (i.e., more effective) pharmaceutical compound

Let’s assume that the valuation analyst concludes the following Vigor product expected revenue growth rates, based on the above RUL considerations:

1. 10 percent expected product revenue increase for the first 3 years
2. 0 percent expected product revenue increase for the next 3 years
3. 12 percent expected product revenue decrease for the last 3 years
And, let’s assume that there will be no residual revenue from the Vigor product after the 9 year RUL. That is, CTC management indicates to the valuation analyst that it will discontinue the manufacture of Vigor and, instead, manufacture a replacement drug product after year 9.

Based on discussions with CTC management, the valuation analyst learned that CTC is expected to incur an expense of approximately $10,000,000 a year related to the legal defense, marketing, and administration of the Vigor patented drug product. CTC management projects that this level of expense will increase at the rate of 3 percent per year, regardless of the level of the Vigor product sales revenue.

CTC management believes that any owner of the Vigor drug compound patent would incur such an annual expense. CTC management also informed the valuation analyst that CTC would continue to incur this type of expense if it was the licensee of the patent (and another corporate taxpayer was the licensor of the patent).

Let’s assume that the valuation analyst also concludes that a 20 percent pretax discount rate is appropriate for this patent valuation analysis, given the risk of the Vigor drug product and of the CTC taxpayer.

**Guideline Intellectual Property License Search Procedures**

Let’s assume that the valuation analyst researched all four of the following online intellectual property license royalty rate data sources:

1. Financial Valuation Group intellectual property transactions database
2. Recombinant Capital rDNA biotech intellectual property transactions database
3. AUS Consultants Royalty Source intellectual property transactions database
4. RoyaltyStat intellectual property transactions database

The valuation analyst searched each database (1) for the pharmaceutical industry SIC code and (2) for pharmaceutical compound or product patent license agreements. The valuation analyst searched for pharmaceutical compound patent licenses entered into within three years of the subject valuation date.

The valuation analyst searched for patent licenses where the royalty payment was expressed primarily as a percent of revenue. And, the valuation analyst scanned all of the identified patent license agreement descriptions for a similar disease (i.e., vascular) and a similar therapy (i.e., a pill type drug) to the subject Vigor drug product.

**Guideline Patent License Agreement Royalty Rates**

Based on the above-described search criteria, let’s assume that the valuation analyst selected as CUTs the hypothetical drug compound patent license agreements presented in Exhibit 9.

**Illustrative Example of a Royalty Rate Adjustment Grid**

Based on the comparability factors that the valuation analyst considered to be the most relevant to the subject analysis, the valuation analyst adjusted the hypothetical guideline intellectual property license transactional data as presented in Exhibit 10.

**Illustrative Example of the CTC Patent Valuation**

Based on the uneven expected revenue growth rate and the RUL analyses summarized above, the valuation analyst decided to use a yield capitalization method model (instead of the simple direct capitalization model illustrated above). The analyst used this yield capitalization model in the application of the RFR method to value the subject Vigor pharmaceutical compound patent for federal income tax purposes. This RFR method yield capitalization model is simply an expanded format of the RFR method simple direct capitalization formula presented above.

The Vigor drug patent yield capitalization analysis is presented in Exhibit 11.

In this simplified illustrative example, and based on the application of the RFR intellectual property valuation method, the valuation analyst concluded that the fair market value of the CTC Vigor pharmaceutical compound patent is $90 million, as of the January 1, 2009, valuation date.

Therefore, CTC management will claim this $90 million fair market value conclusion as the value of the CTC donation of the subject intellectual property to the CEO’s medical school alma mater.

**Analytical Strengths of the RFR Method**

Exhibit 12 summarizes many of the analytical strengths of the RFR method of taxpayer intellectual property valuation. Many of these analytical strengths are relevant to our illustrative valuation of the CTC drug patent for income tax charitable contribution purposes.
ANALYTICAL WEAKNESSES OF THE RFR METHOD

Exhibit 13 summarizes many of the analytical weaknesses of the RFR method of taxpayer intellectual property valuation. And, many of these analytical weaknesses are relevant to our illustrative valuation of the CTC drug patent for charitable contribution purposes.

SUMMARY AND CONCLUSION

This discussion considered (1) the various types of taxpayer intellectual property that the valuation analyst may encounter and (2) the various types of taxpayer intellectual property economic analyses that the valuation analyst may perform. This discussion also considered when and how to use the RFR method of intellectual property valuation.

The use of the RFR method is particularly appropriate in the valuation of the taxpayer intellectual property (or other commercial intangible assets) for federal gift and estate tax compliance, appeal, or litigation purposes. The RFR method is also appropriate in the valuation of taxpayer intellectual property for federal income tax purposes.

This discussion summarized the factors that may affect the valuation analyst's selection of the RFR method in a particular gift and estate tax valuation engagement. And, this discussion summarized the factors that may affect the valuation analyst's selection of guideline intellectual property license royalty rates.

In addition, this discussion described the common intellectual property license agreement royalty rate data sources. And, this discussion presented a simplified illustrative example of the application of the RFR method for a pharmaceutical compound patent valuation. This illustrative example related to the valuation of a taxpayer patent for income tax compliance, appeal, or litigation purposes. That is, the hypothetical taxpayer was claiming a charitable contribution related to the fair market value of a patent that was being donated to a university.

Finally, this discussion summarized the application strengths and weaknesses of the RFR method for valuing taxpayer intellectual property.

Robert Reilly is a managing director of the firm and is resident in our Chicago office. Robert can be reached at (773) 399-4318 or rfreilly@willamette.com.

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Exhibit 1
License Rights and Obligations that the Valuation Analyst May Consider in the Selection or Adjustment of Guideline Intellectual Property Transaction Royalty Rates

1. specific products or services
2. product or service line extensions
3. specified geographic territories
4. degree of exclusivity
5. competition from licensor or licensee
6. licensor/licensee required promotional expenditures
7. licensor/licensee required R&D expenditures
8. licensor/licensee required legal expenditures
9. ability to sublicense
10. ability to hypothecate
11. ability to disaggregate the use rights
12. term of the license
13. extensions of license terms
14. milestone payment commitments
15. new intellectual property rights of first refusal
16. intellectual property expansion rights of first refusal
17. intellectual property maintenance commitment
18. intellectual property development commitment
19. national/international registration requirements
20. termination rights and causes

Exhibit 2
Comparative Economic and Functional Factors that the Valuation Analyst May Consider in the Application of the RFR Method

1. comparative factors between the subject taxpayer intellectual property and the guideline intellectual property:
   a. seasoned intellectual property versus newly created intellectual property
   b. degree of competition and relative market share
   c. barriers to entry
   d. taxpayer industry/market growth rates
   e. taxpayer industry/market profit margins
   f. taxpayer industry/market ROIs
   g. expansion/commercialization opportunities
   h. promotional, R&D, other expenditures
   i. remaining useful life
   j. place in the intellectual property life cycle
2. absolute factors related to the subject taxpayer intellectual property:
   a. cost to maintain the taxpayer intellectual property
   b. consumer (customer) perceptions
   c. the licensee’s operating plans
   d. the licensor’s particular experience
**Exhibit 3**  
*Licensing Royalty Rates, 2008 Edition*  
Illustrative Typical Page

---

**SURVEY 2007: ALPHABETICAL LISTING BY LICENSED PRODUCT**

<table>
<thead>
<tr>
<th>Licensed Product</th>
<th>Class</th>
<th>Art</th>
<th>彻底</th>
<th>Character</th>
<th>Console</th>
<th>Corporate</th>
<th>Designer</th>
<th>Event</th>
<th>Spares</th>
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<td>Action Balls (Rubber)</td>
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<td>NA</td>
<td>NA</td>
<td>8-12%</td>
<td>6.5-10%</td>
<td>6.5-10%</td>
<td>NA</td>
<td>10-15%</td>
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<td>8-15%</td>
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<td>NA</td>
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<td>3-11%</td>
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<tr>
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<tr>
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<td>3-11%</td>
</tr>
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<td>4-8%</td>
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<td>5.8%</td>
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<td>Air Fresheners</td>
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<tr>
<td>Air Mattresses for Recreational Use</td>
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<td>6.5-10%</td>
<td>4-8%</td>
<td>8-15%</td>
<td>3-11%</td>
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<td>Airplanes (Paper)</td>
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<td>NA</td>
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</tr>
<tr>
<td>Airplanes (Scale Model)</td>
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<td>6.5-10%</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<tr>
<td>Airplanes (Toy)</td>
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<td>NA</td>
<td>8-12%</td>
<td>NA</td>
<td>4-7%</td>
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<td>NA</td>
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</tr>
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<td>3-11%</td>
</tr>
<tr>
<td>Albums (Photograph)</td>
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<td>8-14%</td>
<td>6.5-10%</td>
<td>5-11%</td>
<td>4-8%</td>
<td>10-15%</td>
<td>3-11%</td>
</tr>
<tr>
<td>Albums (Scrapbook)</td>
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<td>7-11%</td>
<td>8-14%</td>
<td>6.5-10%</td>
<td>6.5-10%</td>
<td>4-8%</td>
<td>10-15%</td>
<td>3-11%</td>
</tr>
<tr>
<td>All-Terrain Vehicles (Toy)</td>
<td>12</td>
<td>NA</td>
<td>7-11%</td>
<td>8-14%</td>
<td>NA</td>
<td>5-10%</td>
<td>4-8%</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

Exhibit 4

Licensing Economics Review

Illustrative Typical Page

Biocompatibles and Abbott. Biocompatibles’ and Abbott Laboratories’ license was recently in the news after the approval by the US Food and Drug Administration (FDA) of the Endeavor™ stent using licensed polymer coating technology from Biocompatibles. Sales of the product are forecast to be in the vicinity of $1 billion a year, of which Biocompatibles will receive royalties of 1.5 percent on worldwide sales, which translates into about $15 million a year.

The original license agreement between Biocompatibles and Abbott was executed when Abbott acquired Biocompatibles International’s cardiovascular stent business for $245 million in 2002. The polymer coating technology was to be used in Abbott’s ZoMaxx™ drug-eluting stent (DES), which released drugs into the body as well as holding arteries open.

ZoMaxx research was discontinued by Abbott in 2006 when they determined that ZoMaxx was not sufficiently superior to Boston Scientific’s market leading Taxus™. Abbott’s decision to drop ZoMaxx assured that Medtronic would be the only company to launch a DES system using the drug zotarolimus, which is a unique, patent-protected compound licensed to Medtronic by Abbott.

This year Biocompatibles supplemented its license agreements with Abbott to include supplying the polymer for the Endeavor™ Drug Eluting Stent, developed by Medtronic.

Biocompatibles will receive a milestone payment for initial sales. Both payments are receivable from Abbott Laboratories. Biocompatibles’ chief executive Crispin Simon says this is the first of a number of positive announcements the company has planned for this year. Other announcements will relate to its drug-eluting bead technology, which is being trialed in treatments for stroke and liver cancer.

The drug-eluting beads are for primary liver cancer and colorectal cancer with liver secondaries. So far, data from trials of the beads in primary liver cancer patients (using chemotherapy drug Doxorubicin) has been encouraging. The beauty of Biocompatibles’ products is that, because they are medical devices rather than drugs, they can be marketed before regulatory approval is received.

Anne of Green Gables. Written by Lucy Maud Montgomery, Anne of Green Gables, the popular children’s novel is set on Prince Edward Island (PEI) in a house where a fictional little girl lived. It was first printed for the North American market in April, 1908, by Lewis C. Page, a Boston publisher.

Montgomery’s novel entered the public domain in North America in 1992, 60 years after her death. Her heirs and the PEI government have been active in preserving,
### Exhibit 5
The Financial Valuation Group
Illustrative Sample Intellectual Property License Transaction

<table>
<thead>
<tr>
<th>Licensor:</th>
<th>Thomas J. Ulrich</th>
<th>Licensee:</th>
<th>FoneCash, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensee 1987 SIC:</td>
<td>6794</td>
<td>Licensee 1987 SIC:</td>
<td>7371</td>
</tr>
<tr>
<td>Licensee 1997 NAICS:</td>
<td>533110</td>
<td>Licensee 1997 NAICS:</td>
<td>541511</td>
</tr>
<tr>
<td>Type of Agreement:</td>
<td>Patent</td>
<td>Term of Agreement:</td>
<td>Patent Life</td>
</tr>
<tr>
<td>Secondary Type:</td>
<td>Product</td>
<td>Term Type:</td>
<td>Patent Life</td>
</tr>
<tr>
<td>Patent or Trademark Number:</td>
<td>4,803,719</td>
<td>Month of LA:</td>
<td>11</td>
</tr>
<tr>
<td>Geographic Region:</td>
<td>Worldwide</td>
<td>Day of LA:</td>
<td>1</td>
</tr>
<tr>
<td>Year of LA:</td>
<td>1997</td>
<td>Original or Amended:</td>
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<tr>
<td>Exclusive:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description of Product or Service:</td>
<td>License to patent method for powering telephone apparatus directly from the telephone line without external power.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remuneration Structure:</td>
<td>Flat Fee/Percent</td>
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<td>$30,000.00</td>
</tr>
<tr>
<td>Flat %:</td>
<td>3.00%</td>
<td>Range $ Low End:</td>
<td></td>
</tr>
<tr>
<td>Range % Low End:</td>
<td></td>
<td>Range $ High End:</td>
<td></td>
</tr>
<tr>
<td>Percent Based On:</td>
<td>Gross sales price of all licensed products sold or otherwise disposed of.</td>
<td>Dollar Royalty Based On:</td>
<td>Flat fee to be paid as such: $5,000 due in 30 days after signing, $25,000 upon first funding of the IPO any other</td>
</tr>
<tr>
<td>Base Definition:</td>
<td></td>
<td>Guaranteed Annual Royalty:</td>
<td>$10,000 for 1999, $20,000 for 2000</td>
</tr>
<tr>
<td>Additional Payment/Consideration:</td>
<td>In addition, Licensor shall be issued 50,000 shares of common stock in FoneCash, Inc.</td>
<td>Maximum Fee for Life of Agreement:</td>
<td></td>
</tr>
<tr>
<td>Comments:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Source Document:</td>
<td>105812G - Ex</td>
<td>Date of Source:</td>
<td>12/30/1999</td>
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</table>

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Exhibit 6
RoyaltyStat
Illustrative Sample Intellectual Property License Transaction

Reference: 6533
SEC Filer Name: SALTON MAXIM HOUSEWARES INC
Source: 10-Q/A EX-10.30 SEQ 2 07/30/97
Filed Date: 07/30/1997
Effective Date: 02/01/1998
Type of Agreement: Trademark
SIC Code: 3634
Licensor: WRAY Consolidated Industries, Inc.
Licensee: SaltonMaxim Housewares, Inc.
Royalty Rate (%): 4.000
Royalty Base: Net Sales
Duration (Year): 1.5
Territory: Canada, United States
Exclusive: Yes

Description of Licensed Intangible:
Exclusive trademark license to use the "White-Westinghouse" trademark to design, manufacture, advertise, sell and promote small kitchen appliances such as irons, can openers, mixers, food processors, electric knives, popcorn makers, toaster, toaster ovens, coffee makers, espresso/cappuccino makers, bread machines, pasta makers, doughnut makers, woks, pressure cookers, ice tea makers, sandwich makers, waffle irons/panini makers, panini grills, portable grilling machines, ice cream makers, yogurt makers, juice makers, and juice extractors.

Other Payments:
Initial license fee is $50,000, which is creditable against royalties. Minimum guaranteed royalty is: $146,300 during contract term, $156,500 during 1st extension term, $210,200 in 2nd extension term, $315,900 in 3rd term, $409,500 in 4th term, $494,400 in 5th term, $580,300 in 6th term, $707,500 in 7th term, $848,800 in 8th term, $1,015,200 in 9th term, $1,221,700 in 10th term, $1,467,400 in 11th term, $1,760,900 in 12th term, and $2,113,500 in 13th term. Minimum required net sales – see Article 6.

Comments:
Royalty for products selling for less than $10.00 per unit is: 2% of wholesale price during the contract term, and 3% of wholesale price during the extension terms. Royalty for products selling for more than $10.00 per unit is: 3% of wholesale price during the contract and 1st extension terms; 3.5% of wholesale price during the 2nd and 3rd extension terms; and 4% of wholesale price during the remaining terms.
### Exhibit 7

**RoyaltySource**

**Illustrative Sample Intellectual Property License Transaction**

---

**RoyaltySource Intellectual Property Database**

*A service provided by AUS Consultants*

<table>
<thead>
<tr>
<th>Consumer Product (household appliance related)</th>
<th>Oct 18 2007</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Licensee</th>
<th>Channel Freeze Technologies Inc</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensee Business</td>
<td>Refrigeration and heating equipment</td>
</tr>
<tr>
<td>Licensor</td>
<td>SIR Worldwide LLC</td>
</tr>
<tr>
<td>Licensor Business</td>
<td>Refrigeration and heating equipment</td>
</tr>
<tr>
<td>Royalty Rate, % (low range)</td>
<td>5.0</td>
</tr>
<tr>
<td>Royalty Rate, % (high range)</td>
<td>13.0</td>
</tr>
<tr>
<td>Upfront Fee</td>
<td></td>
</tr>
</tbody>
</table>

**Licensed Property:**

This Royalty Agreement was made effective September 14, 1998. Whereas, Assignor is engaged in the designing, engineering, performing research and development related to, manufacturing and selling of highly efficient automated machinery for freezing ice, food, food by-products, non-foods, freeze-thawed residual products, thermal energy storage, making recreational snow, and other applications not yet defined which incorporate the Intellectual Property and is commonly referred to as "Channel Ice" or "Channel Ice technologies", but excluding the Intellectual Property of PowerCold, "CIT Units" or "Channel Ice Technology Units", (hereinafter known as "CIT Units" or "Channel Ice Technology Units" U.S. Patent No. 5,029,453). A channel block ice making system includes a plurality of elongated channels and an associated refrigeration system for supplying coolant to the walls of the channels to form long, heavy channel blocks of ice. Water is recirculated from one end of said channels to the other end thereof, and after the channel blocks of ice are solidly frozen, the excess water including salts and the like is drained off, the outer surfaces of the channel blocks of ice are warmed, and they are advanced so that the ends of the blocks of ice protrude from the ends of the channels, where standard size blocks of ice are cut off. Fins on the sides of the channels score the blocks of ice so that the standard size blocks may be later automatically broken into smaller blocks and packaged. A door or gate is provided for retaining water within the channels during the freezing process, and for permitting subsequent easy removal of the ice.

**Compensation Detail:**

Royalty: The Company agrees that it will compensate Assignor as follows: Ten Percent Net Fee Payment. A fee payment of ten percent (10%) of the net gross invoice price on all Channel Ice Technology Units sold to distributors; or (ii) Thirteen Percent Net Sales Fee Payment. A fee payment of thirteen percent (13%) of the net gross invoice price on all Channel Ice Technology Units sold at the base price; and (iii) Five Percent Net Sales Royalty. A royalty agreement, to be attached as Exhibit G, which agreement shall provide SIR Worldwide a royalty payment of five percent (5%) of the net gross invoice price on all Channel Ice Technology Units and related materials for the life of SIR Worldwide patents.

Source: Form 8-K POWERCOLD CORP: Exhibit 10, 10/08/1998
Exhibit 8
Recombinant Capital
Illustrative Sample Intellectual Property License Transaction
Exhibit 8 (continued)
Recombinant Capital
Illustrative Sample Intellectual Property License Transaction

On rDNA.com, alliance Contracts are linked to the Alliance Summary documents. These contracts may be purchased by Recap.com subscribers for an additional fee. We are able to find contracts for approximately 40% of the alliances in the database. Many of these contracts predate the advent of electronic filing and are available in PDF format, created from the printed page.
Exhibit 8 (continued)
Recombinant Capital
Illustrative Sample Intellectual Property License Transaction
### Exhibit 9

**Charitable Taxpayer Corporation**  
**Vigor Pharmaceutical Compound Patent Valuation**  
**Selected Hypothetical Guideline Intellectual Property License Agreements**  
**As of January 1, 2009**

<table>
<thead>
<tr>
<th>Guideline Drug</th>
<th>Guideline Drug Patent</th>
<th>License</th>
<th>License Start</th>
<th>Term</th>
<th>Royalty</th>
<th>Paid to the Licensor</th>
<th>Type of Drug</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pfizer, Inc.</td>
<td>Columbia U.</td>
<td>2008</td>
<td>15</td>
<td>6</td>
<td>$4m [a]</td>
<td>ED</td>
<td></td>
</tr>
<tr>
<td>Glaxo Smith Kline</td>
<td>Autogen</td>
<td>2005</td>
<td>10</td>
<td>5</td>
<td>$10m [b]</td>
<td>cardiovascular</td>
<td></td>
</tr>
<tr>
<td>Johnson &amp; Johnson</td>
<td>Nobel N.V.</td>
<td>2006</td>
<td>12</td>
<td>10</td>
<td>[c]</td>
<td>anti-obesity</td>
<td></td>
</tr>
<tr>
<td>Merck &amp; Co.</td>
<td>All Saints Hospital</td>
<td>2006</td>
<td>10</td>
<td>4.5</td>
<td>[d]</td>
<td>vascular</td>
<td></td>
</tr>
<tr>
<td>Pharmacia &amp; Upjohn</td>
<td>MIT</td>
<td>2007</td>
<td>15</td>
<td>5.5</td>
<td>[e]</td>
<td>pulmonary hypertension</td>
<td></td>
</tr>
<tr>
<td>Wyeth-Ayerst MD, LP</td>
<td>2007</td>
<td>20</td>
<td>8-10 [f]</td>
<td>[f]</td>
<td></td>
<td>botanical ED</td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**

[a] represents an upfront (i.e., development financing) license payment  
[b] represents a milestone payment after the 5th year of the license  
[c] the license agreement also settles a pending $50 million litigation between the various license parties  
[d] the physician owners/employees also receive research grants from Merck  
[e] there are also numerous other relationships between the licensor/licensee parties  
[f] the royalty rate range is based on the level of the drug product annual sales volume

### Exhibit 10

**Charitable Taxpayer Corporation**  
**Vigor Pharmaceutical Compound Patent Valuation**  
**Guideline Royalty Rate Adjustment Grid and Selected Subject-Specific Royalty Rate**  
**As of January 1, 2009**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>--</td>
<td>+.5% [c]</td>
</tr>
<tr>
<td>2</td>
<td>5</td>
<td>2</td>
<td>++</td>
<td>++</td>
<td>0</td>
<td>+1% [c]</td>
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<tr>
<td>3</td>
<td>10</td>
<td>2</td>
<td>+</td>
<td>0</td>
<td>0</td>
<td>-2% [c]</td>
</tr>
<tr>
<td>4</td>
<td>4.5</td>
<td>3</td>
<td>+</td>
<td>0</td>
<td>-</td>
<td>[c]</td>
</tr>
<tr>
<td>5</td>
<td>5.5</td>
<td>2</td>
<td>+</td>
<td>+</td>
<td>0</td>
<td>[c]</td>
</tr>
<tr>
<td>6</td>
<td>8-10</td>
<td>3</td>
<td>++</td>
<td>-</td>
<td>-</td>
<td>-2% [d]</td>
</tr>
</tbody>
</table>

**Royalty Rate Mean** 6.3%  
**Royalty Rate Trimmed Mean** 6.5%  
**Royalty Rate Median** 6.5%  
**Royalty Rate Mode** 6.5%  
**Selected Subject Patent Royalty Rate Conclusion** 6.5%

**Notes:**

[a] based on a scale of 0 to 3; where 0 means that the guideline patent is less comparable to the subject patent; and 3 means that the guideline patent is more comparable to the subject patent  
[b] based on a scale of --, -, 0, +, ++; where -- is the smallest in size relative to the subject patented product; and ++ is the largest in size relative to the subject patented product  
[c] valuation analyst adjustment, based on an assessment of other factors (1) in the guideline intellectual property license agreement or (2) between the guideline intellectual property licensor and the licensee  
[d] valuation analyst adjustment, due to the different nature of a botanical drug product versus a pharmaceutical drug product
**Exhibit 11**

**Charitable Taxpayer Corporation**

**Vigor Pharmaceutical Compound Patent Valuation**

**Relief from Royalty Valuation Method**

**As of January 1, 2009**

**(in $ millions)**

<table>
<thead>
<tr>
<th>Patent Valuation Analysis:</th>
<th>Projection Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patented product revenue</td>
<td>Year 1 Year 2 Year 3 Year 4 Year 5 Year 6 Year 7 Year 8 Year 9</td>
</tr>
<tr>
<td>expected growth rate</td>
<td>10% 10% 10% 0% 0% 0% -12% -12% -12%</td>
</tr>
<tr>
<td>Patented product revenue amount (year 0 revenue = 400)</td>
<td>440 484 532 532 532 469 412 363</td>
</tr>
<tr>
<td>Selected patent license royalty rate</td>
<td>6.5% 6.5% 6.5% 6.5% 6.5% 6.5% 6.5% 6.5% 6.5%</td>
</tr>
<tr>
<td>Projected &quot;relief from royalty&quot; license expense (rounded)</td>
<td>29 31 35 35 35 30 27 24</td>
</tr>
<tr>
<td>Projected patent maintenance expense (year 0 expense = 10)</td>
<td>10 11 11 11 12 12 12 13 13</td>
</tr>
<tr>
<td>Projected net &quot;relief from royalty&quot; license expense (rounded)</td>
<td>19 20 24 24 23 23 18 14 11</td>
</tr>
<tr>
<td>Present value discount factor (at 20%, mid-year convention)</td>
<td>0.91 0.76 0.63 0.53 0.44 0.37 0.30 0.25 0.21</td>
</tr>
<tr>
<td>Present value of &quot;relief from royalty&quot; net license expense</td>
<td>17 15 15 13 10 9 5 4 2</td>
</tr>
<tr>
<td>Total present value of &quot;relief from royalty&quot; net license expense</td>
<td>90</td>
</tr>
<tr>
<td>Indicated fair market value of the Vigor pharmaceutical compound patent (rounded)</td>
<td>90</td>
</tr>
</tbody>
</table>

**Exhibit 12**

**Analytical Strengths of the RFR Method**

**In a Taxpayer Intellectual Property Valuation**

1. The royalty rate data are typically market-derived.
   a. The data come from actual arm's-length intellectual property license transactions.
   b. The data can be independently verified (or challenged) by the valuation analyst.
2. The RFR method valuation analysis is transparent.
   a. All of the valuation analysis components are fairly obvious.
   b. All of the valuation analyst judgments are fairly obvious.
3. The RFR method valuation analysis is mathematically straightforward.
   a. The valuation analysis is relatively easy to explain to other parties related to the taxpayer intellectual property valuation.
   b. The valuation analysis is relatively easy to replicate by other parties related to the taxpayer intellectual property valuation.
4. The RFR valuation methodology is consistent with actual commercial business practices.
   a. Business people frequently enter into inbound or outbound intellectual property license agreements.
   b. Business people frequently buy and sell intellectual property license agreements.
5. The RFR valuation methodology is consistent with the relevant judicial precedent.
   a. The courts are familiar with this intellectual property valuation methodology.
   b. The published judicial decisions indicate an acceptable range of intellectual property royalty rates.
6. The RFR valuation methodology has numerous analytical applications.
   a. The RFR method may be used for taxpayer intellectual property valuation, transfer pricing, and economic damages purposes.
   b. The RFR method may be used for taxpayer intellectual property license negotiation and financing structures.
1. There are rarely perfect “comparable uncontrolled transactions” intellectual property license agreements for the valuation analyst to rely on.
   a. The guideline intellectual property licenses may be in a different taxpayer industry.
   b. The guideline intellectual property licenses may be for a different intellectual property type.

2. It is often difficult for the valuation analyst to adjust and/or normalize the CUT intellectual property licenses.
   a. Often, milestone or other fixed license agreement payments are not publicly disclosed.
   b. Often, it is difficult to convert fixed license agreement payments to an intellectual property royalty rate.

3. The RFR method is not applicable in all instances.
   a. Some types of taxpayer intellectual property are not typically licensed or are not licensable.
   b. The cost approach or the income approach may be more appropriate in some intellectual property valuation instances.

4. The RFR method typically produces a downward-biased estimate of the taxpayer intellectual property value, transfer price, or economic damages, for the following reasons:
   a. Guideline license agreement royalty rates may reflect limited intellectual property use rights only.
   b. Guideline license agreement royalty rates may reflect value at the intellectual property license agreement inception date.
   c. Guideline license agreement royalty rates ignore other intellectual property licensee/licensor relationships.
   d. Guideline license agreement royalty rates ignore other payments between the intellectual property licensee and licensor.
   e. Guideline license agreement royalty rates may include distressed and/or dispute settlement transactions.
   f. Guideline license agreement royalty rates may reflect the intellectual property licensee value only (and not the subject taxpayer owner/operator value).