

The Evolving IP Marketplace

FTC Hearings on Developing Business Models and a National IP Economic Infrastructure

James E. Malackowski

April 17, 2009

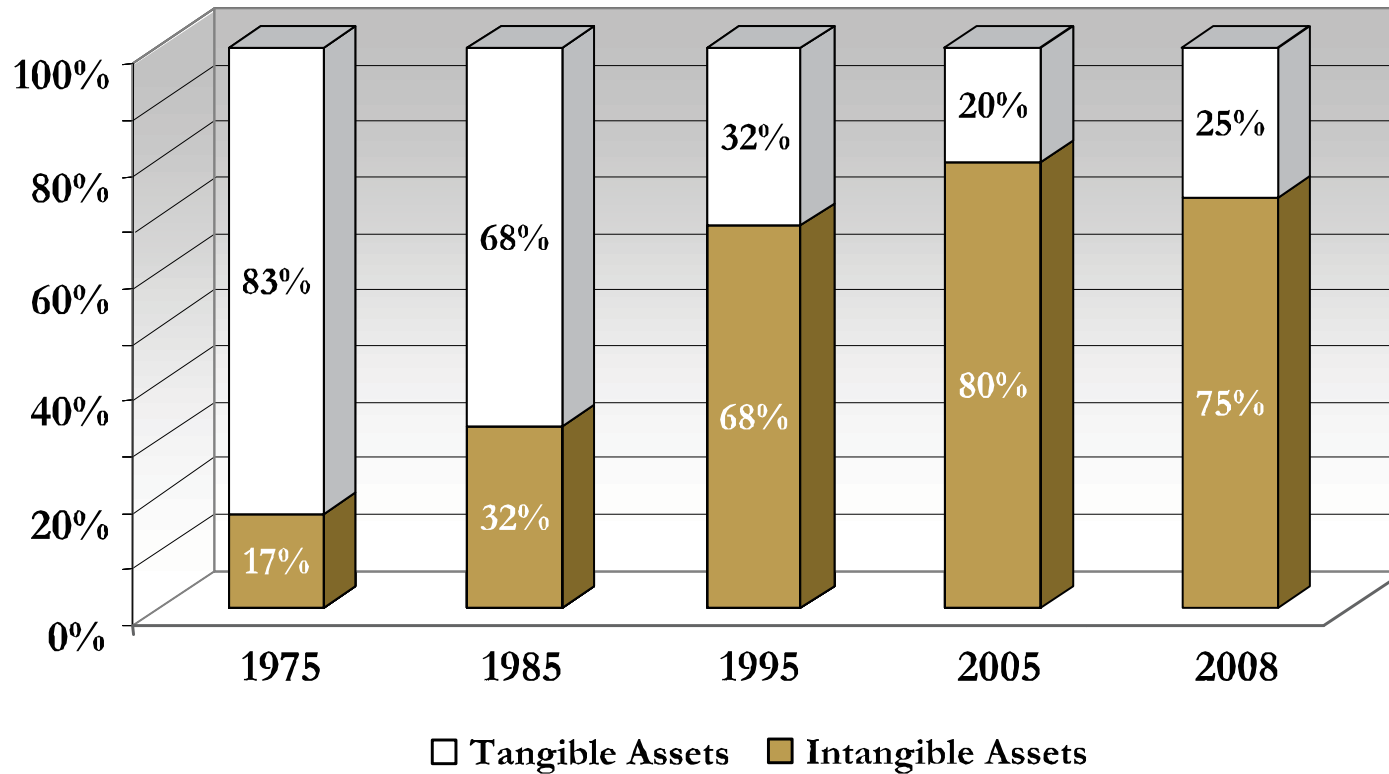
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OCEAN TOMO™
INTELLECTUAL CAPITAL EQUITY®

Economic Foundation

Components of S&P 500 Market Value



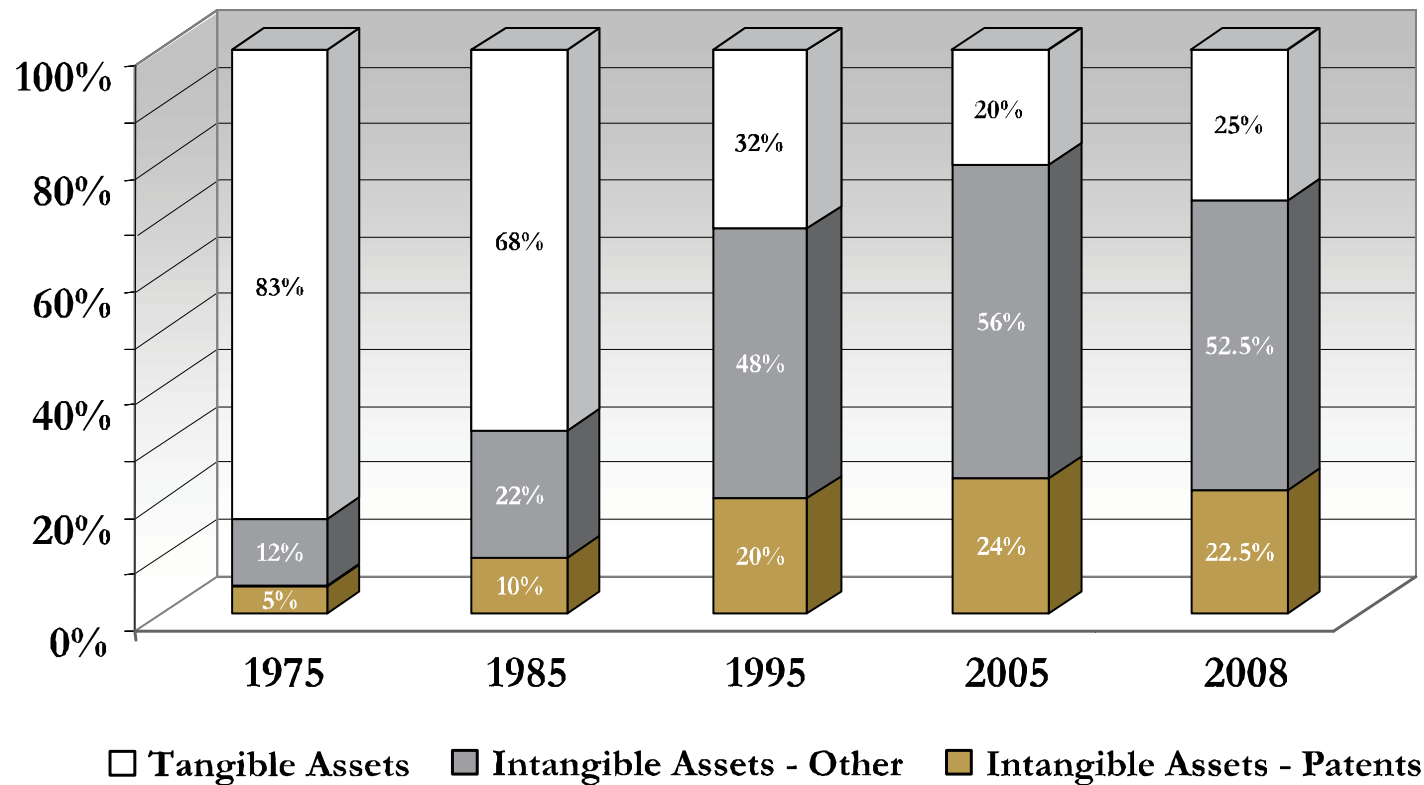
Source: Ocean Tomo

Economic Foundation

- Quantitative evidence of transition to “knowledge economy”
- Antiquates current accounting and SEC reporting requirements
- Greater asset volatility without traditional risk management and risk transfer
- Suggests need for greater intangible asset process and control requirements
- Likely permanent change to US economy
- Likely to be repeated internationally
- Further complications comparing and valuing intangible assets across national borders
- Intangible assets to deliver investor returns

Estimating Total Patent Value

Components of S&P 500 Market Value

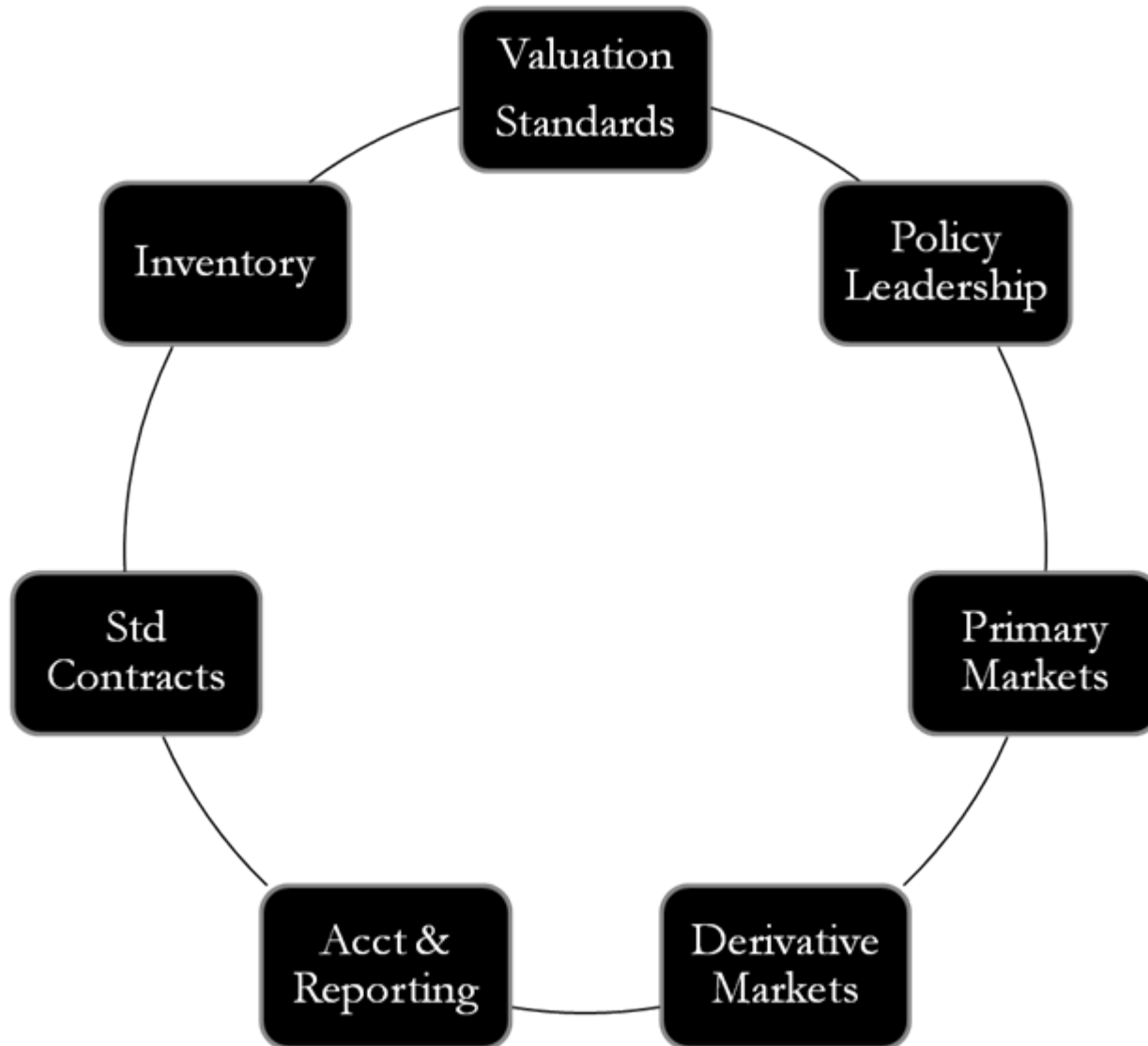


Source: Ocean Tomo

Estimating Total Patent Value

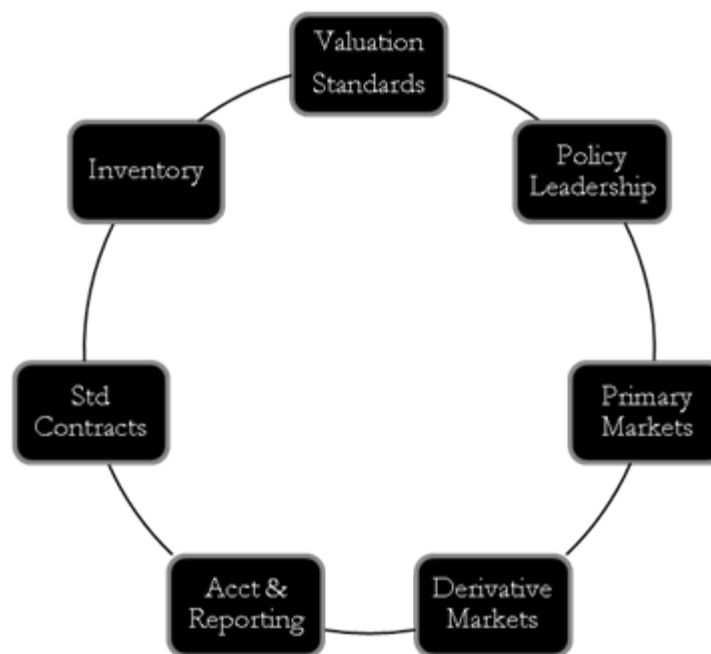
- Fifteen year testing of Ocean Tomo 300® Patent Index suggests a 10% increase in Innovation Ratio (patent value / tangible asset value) leads to a 7% increase in stock price
- From 1996 through 2008 firms in the top half of the S&P 500, as ranked by normalized patent signal, show 30% increase in reported earnings and therefore higher valuation multiple
- Thirty percent of current intangible asset value (75% of market capitalization) suggests 22.5% of total market capitalization fairly attributable to patent value, all other factors constant

IP Infrastructure



Valuation Standards

- Traditional appraisal standards
- Patent scoring reports



Traditional Valuation Standards

- The Uniform Standards of Professional Appraisal Practice (USPAP) effective July 1, 2006 provide minimum requirements for appraisers and is applicable to IP (Standards 9 and 10)
- American Institute of Certified Public Accountants (AICPA) Valuation of a Business, Business Ownership Interest, Security or Intangible Asset Statement of Standards for Valuation Services effective January 1, 2008.
- Section 482: Allocation of Income and Deductions Among Taxpayers “Transfer Pricing Regulations”
- American Society of Appraisers, Business Valuation Standards, BVS-IX Intangible Asset Valuation (DRAFT) and SBVS-3 Standards on IP Valuation (DRAFT)
- Statement of Financial Accounting Standards No. 141 (Business Combinations), 142 (Goodwill and Other Intangible Assets Impairment) and 157 (Fair Value Measurement).

Patent Scoring Reports



PATENT DUE DILIGENCE REPORT

REPORT DATE: January 11, 2006

US0543696

Patent: US5436960
 Filed: 5/20/1991
 Priority: 5/20/1991
 Issued: 7/25/1995
 Inventor: Campana; Thomas J., et al.

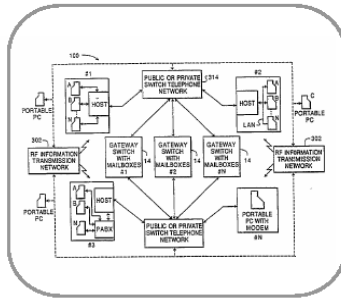
IPQ™ Score: **180.5**
 Overall Rating: **A+**

Assignee (orig): Campana, Thomas J., Jr.
 Assignee (cmt): NTP, Incorporated
 Recorded: 006986/0758; 5/20/1994
 Attorney: Antonelli, Terry, Stout & Kraus
 Current Status: IN FORCE

Electronic mail system with RF communications to mobile processors and method of operation thereof

Field: COMPU/SOFT
 U.S. Class/Subclass: 455/412
 Class Description: Telecommunications
 Int'l Class / SIC: H04M / 3661

Number of Claims (dep/ind): 89 (8 / 81)
 Number of Related U.S. Patents: 5; 1 pending
 Number of Related Int'l Patents: 1
 Number of Forward Citations Rec'd: 42



Summary of Scores/Ratings

Intellectual Property Quotient (IPQ™): 180.5¹
 Overall Percentile Rank: 99%²
 Overall Patent Rating: A+³
 Nominal Expiration Date: 7/25/2012⁴
 Remaining Life Expectancy: 6.1 yrs⁵

Scores & Percentile Rankings²

Factor ^a	Score/Rank	Raw Score ^b	Percentile Rank by Group ²			
			Overall	Field	Class	Subclass
TECHNOLOGY	1.55	96.1%	90%	--	--	--
DISCLOSURE	1.24	80.8%	63.6%	85%	80.7%	--
CLAIMS	1.97	99.6%	98.7%	99.6%	97.7%	--
PROSECUTION	1.74	98.7%	97.8%	99%	97.9%	--
OTHER	1.37	89.6%	90.2%	36.8%	95.3%	--
IPQ SCORE ¹	180.5	99%	98.9%	99.7%	99%	--
IPQ _s SCORE ⁴⁻⁶	162.5	97.3%	95.9%	98.5%	96.5%	--

Life Exp. & Survival Probabilities⁶

Life Exp. (Years)	Y0				M1				M2				M3	
	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	5
Exp. Survival	16.7	15.7	15.7	13.7	12.5	11.5	10.5	9.5	8.5	7.5	6.5	5.5	5	89%

IMPORTANT NOTICE

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⁶For application notes on this page please refer to Appendix 1 attached hereto.

PATENT DUE DILIGENCE REPORT

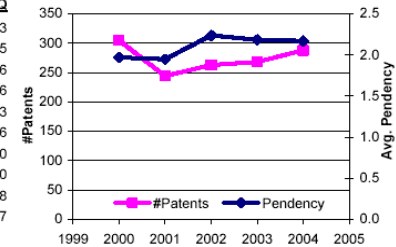
REPORT DATE: January 11, 2006

Related Technology Space

The '960 patent is currently classified by the USPTO in primary U.S. Class/Subclass 455/412 ("Telecommunications") and Int'l Class G06M 003/00. The closest corresponding SIC code is 3661 (Telephone And Telegraph Apparatus). Major patent holders in USPTO class 455 are listed below along with a patent-activity summary for the trailing 5-years.

Patent Assignee	#Pats	IPQ
Xerox Corporation	19	96.3
International Business Machines Corpor	18	83.5
Brother Kogyo Kabushiki Kaisha	18	128.6
Lexmark International, Inc.	17	91.6
Eastman Kodak Company	16	111.3
ZIH Corp.	16	100.6
Fargo Electronics, Inc.	12	117.0
Pitney Bowes Inc.	11	119.0
FrancoTyp-Postalia AG & Co.	11	81.8
Monarch Marking Systems, Inc.	10	130.7

Patent Activity - Class 455



Patenting activity in USPTO patent class 455 has been gradually increasing over the past 5 years, as shown in the above graph, with about 1897 new patents now issuing per year on average. Average pendency times (time from filing to issuance) have been increasing over the past 5 years to about 3.55 years currently, indicating a somewhat higher than normal backlog of pending cases awaiting examination.

Of course, it should be noted that patent technology classification is an inexact science and relies largely on subjective review and analysis by human decision-makers. Because of this, some patents and patented technologies may be "misclassified" and/or put into existing classifications that do not exactly fit or aptly describe a particular technology. Thus, it may be beneficial to consider other possible patent classifications. Other relevant USPTO patent classifications in this case are indicated below along with estimated relevancy scores and growth trends for each.

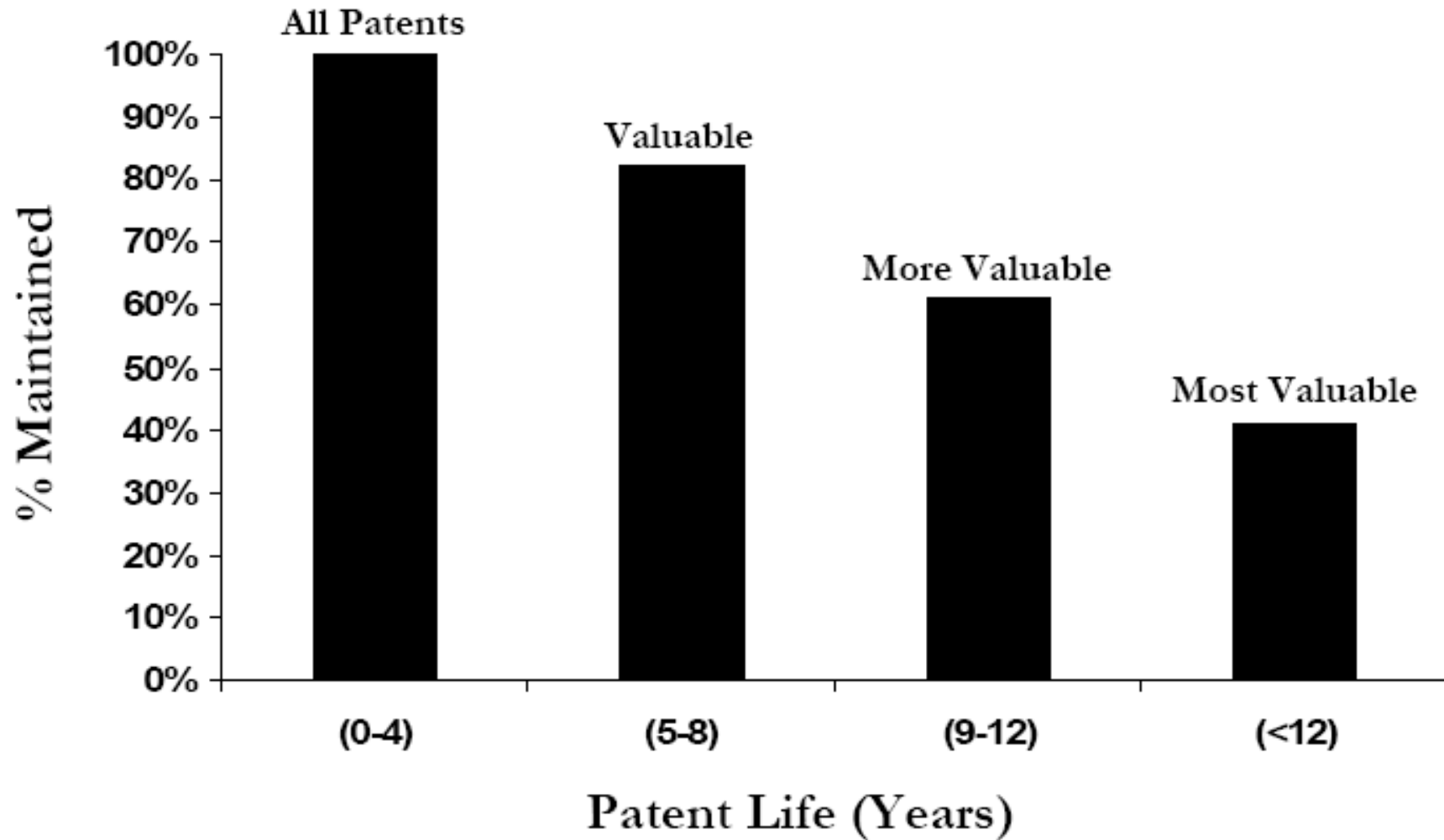
Relevant USPTO Classifications and Patenting Trends

Class#	Brief Description	Relevance	Trend	Relevance
200	Circuit breakers...	0.971	▲	~0.97
345	Computer graphics processing	0.837	▲	~0.84
128	Surgery	0.777	▲	~0.78
607	Surgery: light, thermal...	0.766	▲	~0.77
400	Typewriting machines	0.702	▲	~0.70
600	Surgery	0.688	▲	~0.69
341	Coded data generation...	0.627	▲	~0.63
273	Amusement devices: games	0.554	▲	~0.55
324	Electricity: measuring and testi	0.513	▲	~0.51
601	Surgery: kinesitherapy	0.303	▲	~0.30

* Trend data represents patent filing rates in a trailing 5-year period.

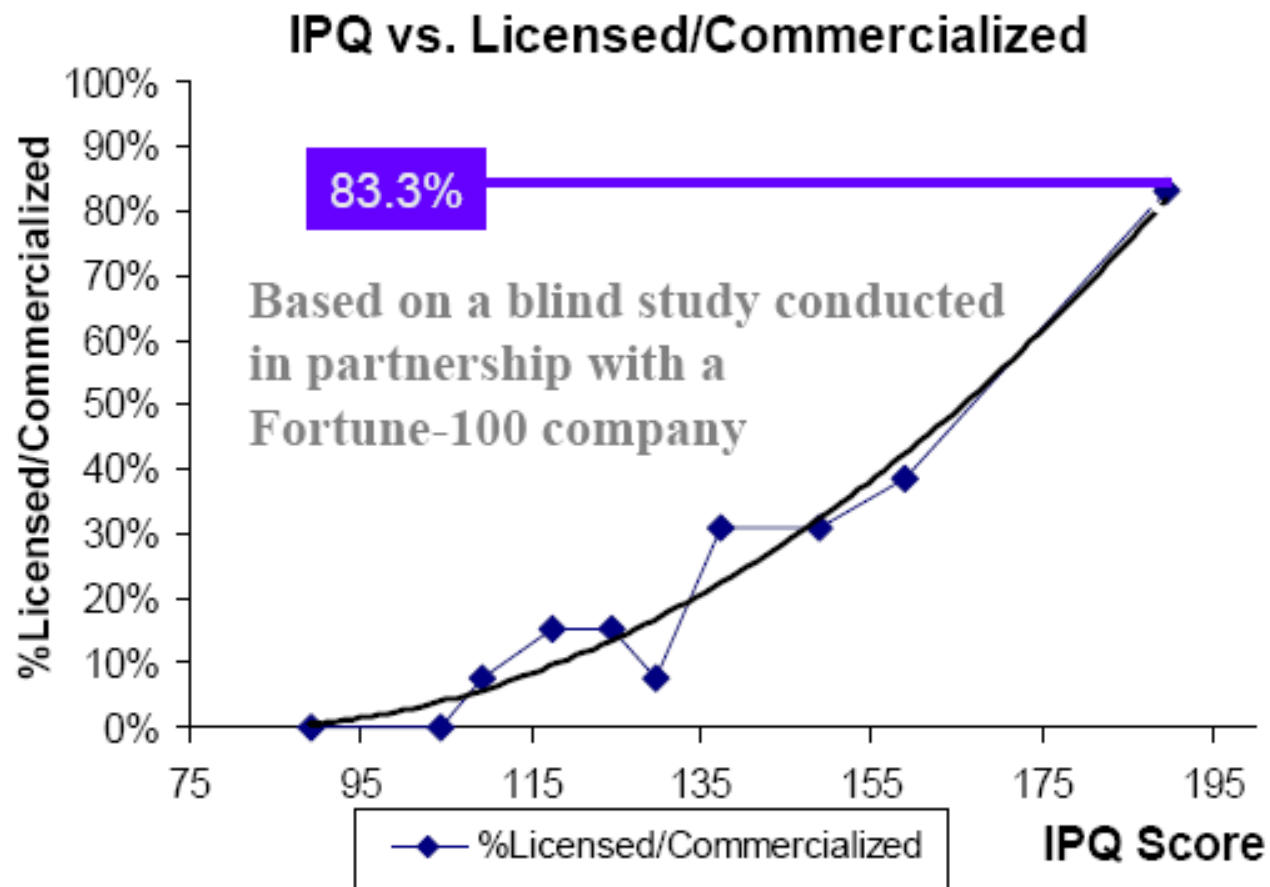
Patent Maintenance

Average Patent Life



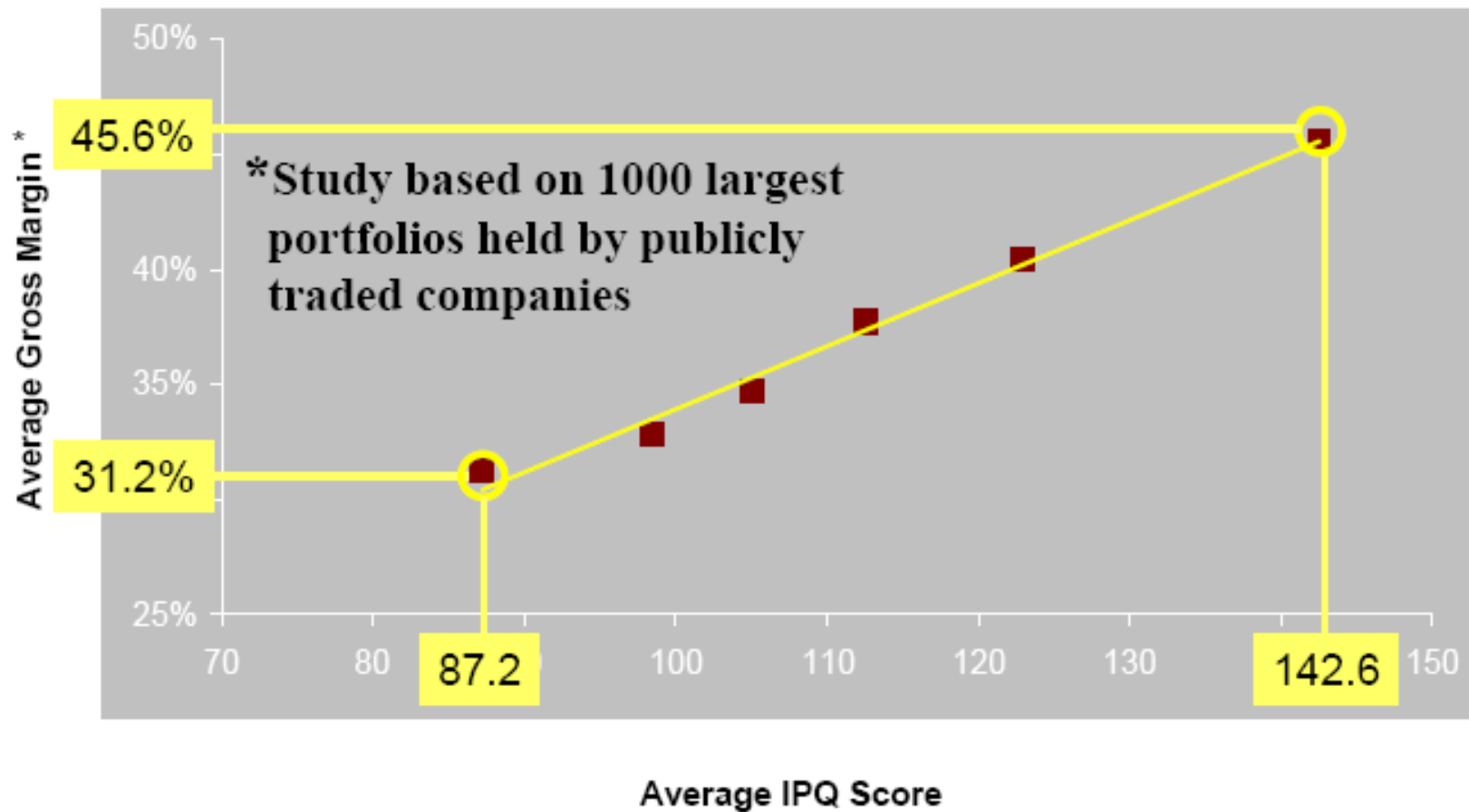
Empirical Proof – Case Studies

...higher patent quality correlates to a higher probability of being licensed / commercialized...

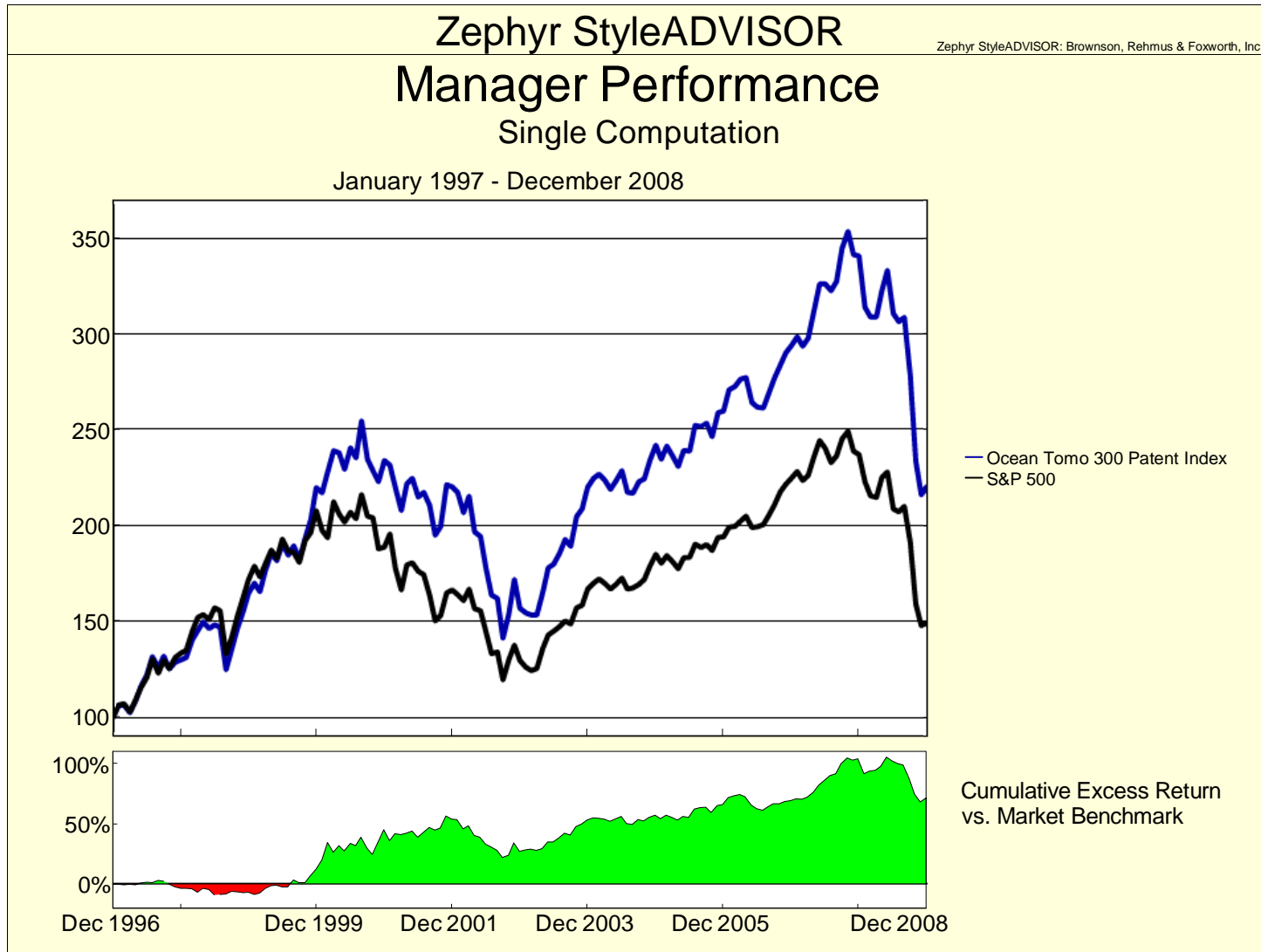


Empirical Proof – Margin Analysis

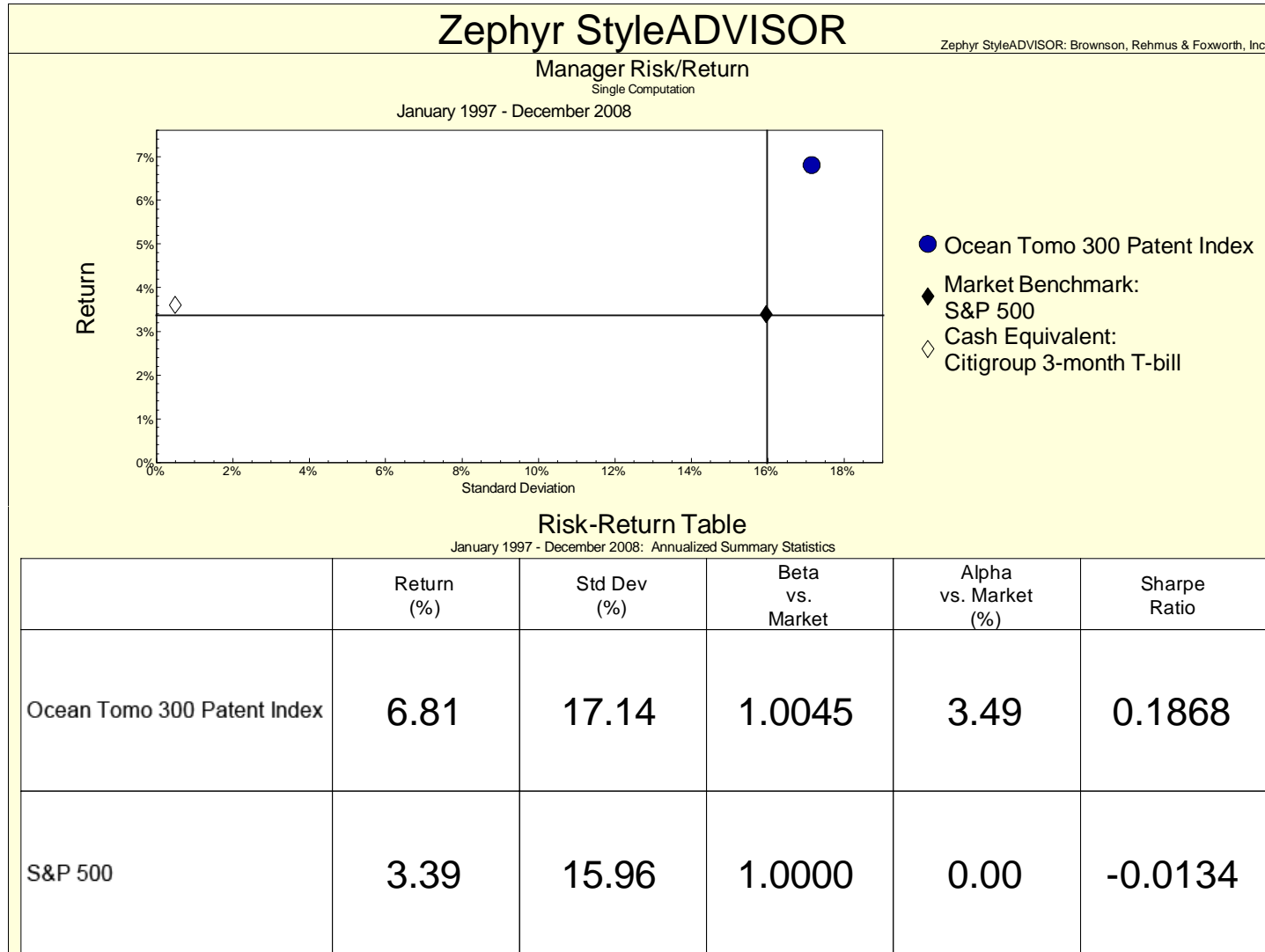
...higher patent quality correlates to higher gross profit margins...



Empirical Proof - Public Equity Markets



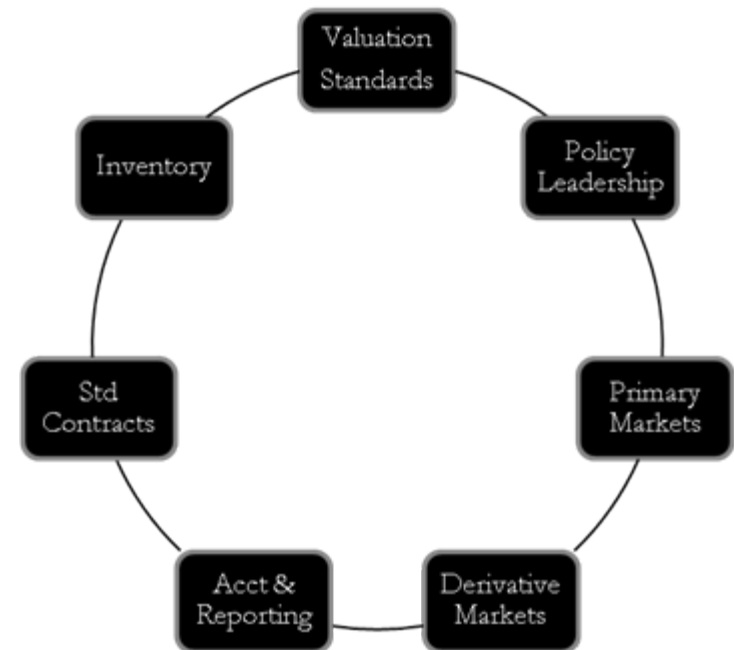
Empirical Proof - Public Equity Markets



Created with Zephyr StyleADVISOR.

Inventory

- Federal IP inventory and listing
- Private company inventory and marking



Federal Innovation Inventory

- Billions of dollars invested annually
- Current technology solutions exist but are not commercialized because they are not widely known or effectively presented
- Little current coordination
- Includes greater access to new medical technologies for patients not responding to approved treatment or with dire expected outcome
- Strong example of what's possible in NASA sale at auction
- Consistent with Obama policy of open government

Revised Patent Marking Standards

APRIL 2, 2009 PROPOSED AMENDMENT TO 35 U.S.C. § 287(a):

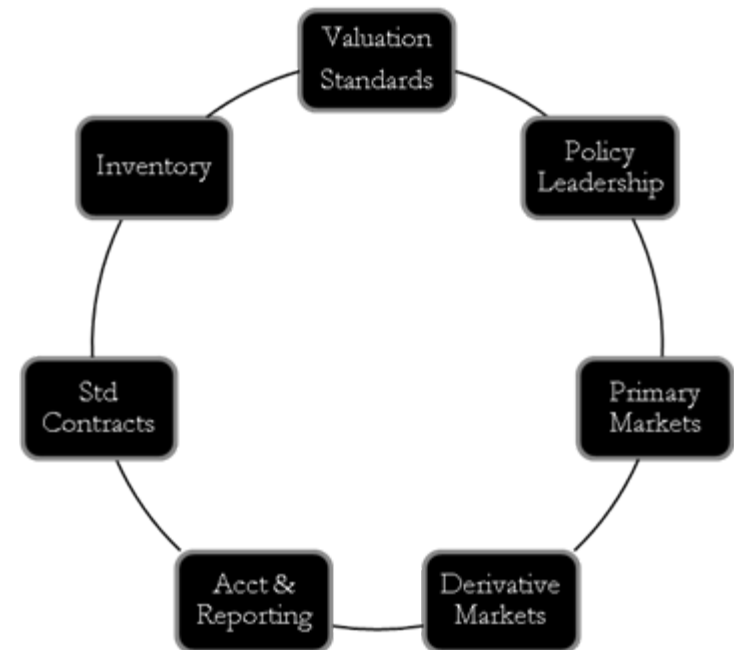
Patentees, and persons making, offering for sale, or selling within the United States any patented article for or under them or importing any patented article into the United States, may give notice to the public that the same is patented, either by fixing thereon the word “patent” or the abbreviation “pat.”, together with the number of the patent; or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is contained, a label containing a like notice **or by fixing thereon the word 'patent' or the abbreviation 'pat.' together with an address of a posting on the Internet, accessible to the public without charge for accessing the address, that associates the patented article with the number of the patent.**

Benefits of Revised Patent Marking

- Potential for near-universal patent marking
- Improved access to patented technology after a patent expires
- Substantial savings in patent marking costs to responsible manufacturers
- An ability to provide constructive notice for products that cannot otherwise be marked
- An increased likelihood of “substantially consistent and continuous” marking
- Enhanced oversight of marking by patent licensees
- Standardized and simplified evidentiary requirements for patent litigation

Policy Leadership

- US Patent & Trademark Office
- Whitehouse Office of Science & Technology Policy
- Infringement risk
- Labor policy
- Trade policy



Entrepreneurialize the PTO

- Significant modernization of customer interface for both processing and searching (web platform) in coordination with new National CTO
- Need leadership which can rebuild culture into one that recognizes and is inspired by the key role the office plays in the economy broadly
- Expand resources for training, tools and examiner salary competitiveness

Office of Science & Technology Policy

- Reverse the demotion of the head of the White House Office of Science and Technology Policy
- Structure such responsibility as a central role as an assistant to the President, a rank held in previous administrations, through creation of a new 'Innovation Secretary' position in the White House to oversee (not just coordinate) policies outlined here and key administrative positions affecting innovation including the PTO Undersecretary and current 'IP Czar':
- Allows building and harnessing an National innovation policy with a comprehensive view
- Effectively ties policy goals with execution
- Connects PTO more closely with White House
- Reconciliation of secrecy concerns and current process requirements

Holistic Approach to Infringement Risk

- Already provided for in commonly used *Georgia-Pacific* analysis
- Simple change to damages law (Section 284) could compel consideration of NPE compensation considering all potential third party patent use
- Arguably ‘form versus substance’ issue though key point of patent reform debate

Labor Policy

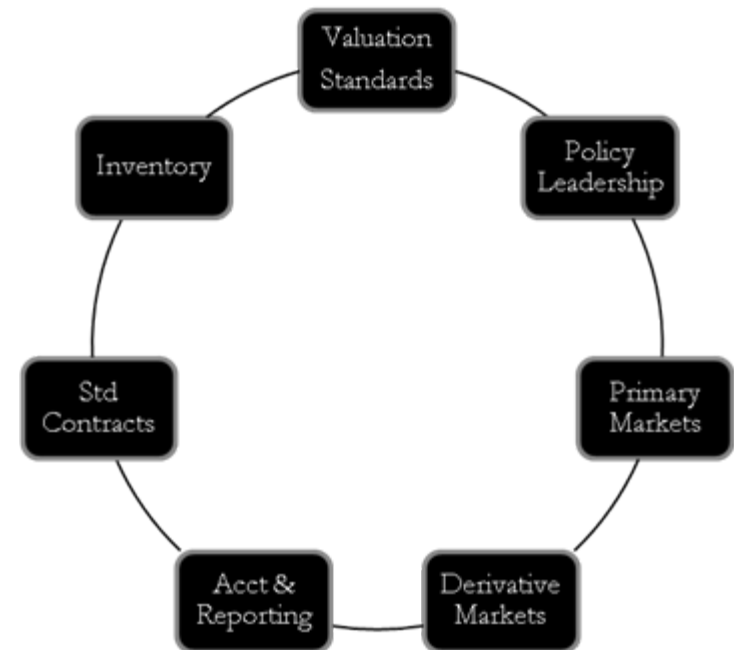
- Provide leadership vis-a-vis IP role in collective bargaining
- Addresses directly underfunded pensions and access to health care
- Promotes domestic job creation
- Empowers blue color workers
- Related labor issues include addressing immigration matters vis-a-vis their effect on innovation

Trade Policy

- More aggressively asserting US IP rights at the World Trade Organization including filing cases and collecting appropriate remedies
- Use Section 337 of the trade laws that allow US IP owners to exclude goods from the US market that infringe their IP using our market size/strength as a global tool also allowing the US Government to develop the capacity to self-initiate cases defending US IP

Standard Contracts

- Corporate patent license
- Federal patent licenses
- Patent sale



Standard Contract Benefits

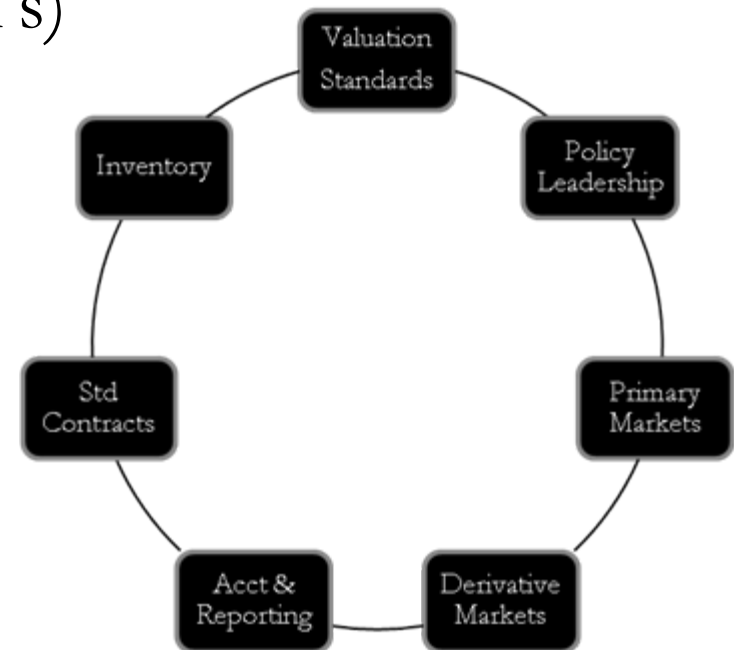
- Greater transaction speed and efficiency
- Facilitates secondary trading / sale
- Greater perception of fairness to small inventors
- Market moving to create (eg. Ocean Tomo Auctions and various on-line platforms)

Standard Contract Issues

- Disclosure of encumbrances due to confidentiality provisions
- Understanding full scope of existing licenses / cross-licenses
- Communication of believed use or infringement
- Developing standard of reasonable disclosure and diligence
- Protecting buyer identity
- Know-how transfer

Primary Markets

- Sale (eg. Ocean Tomo Auctions; www.PatentBidAsk.com)
- Licensing (eg. yet2.com, etc.)
- Traded exchange (eg. IPXI ULR's)



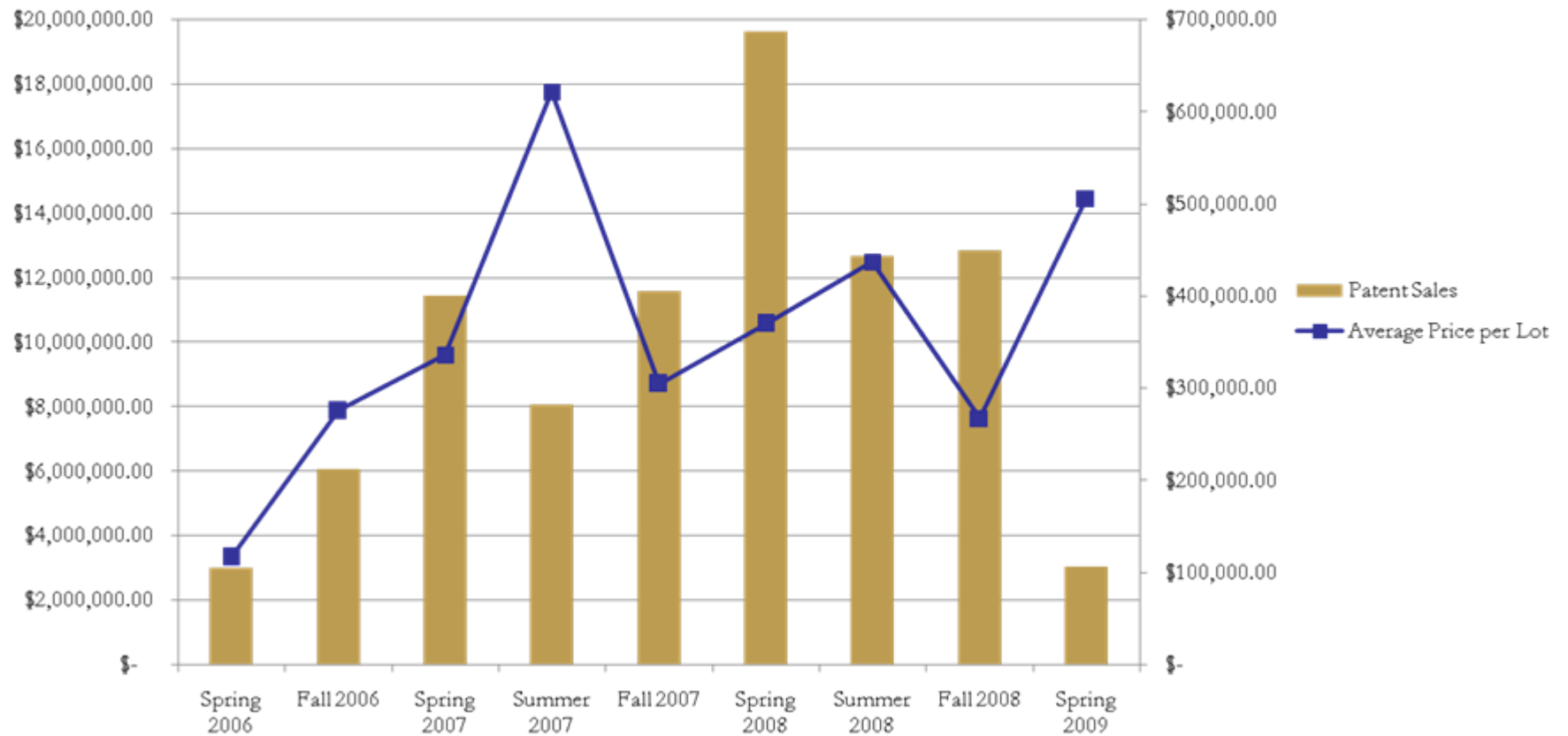
Ocean Tomo Auctions



\$100+ million in auction volume

Auction Results - Patents

Ocean Tomo Auction Results





March 12, 2008

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Logged in as: pba@oceantomo.com



Active Bid/Ask Patents

Patent #	Data Room	Assignment			Exclusive Lump Sum		
		Bid Exp Date	Bid (* +)	Ask	Bid Exp Date	Bid	Ask
EP1890523				<u>\$250,000</u>			
JP47013909		5/2/2008	<u>\$35,000</u>				
This patent is currently on consignment for the Spring 2008 Ocean Tomo Auction. Please visit www.oceantomoauctions.com for more information.							
US6588154		5/20/2008	<u>\$95,000*+</u>	<u>\$250,000</u>			
US6588160		5/3/2008	<u>\$25,000</u>				
US6588164				<u>\$55,000</u>			
US6588166		5/3/2008	<u>\$25,000</u>				
US6588168				<u>\$50,000</u>			
This patent is currently on consignment for the Spring 2008 Ocean Tomo Auction. Please visit www.oceantomoauctions.com for more information.							
US6588172							

Search Patent Number:

Place Bid on Patent Number:

+ denotes there are multiple assets in the portfolio being bid upon.
 * denotes there are multiple bids on portfolios containing this asset.

Unit License Rights™

CORE DESCRIPTION OF ILLUSTRATIVE ULR TRADE

ULR(s): U137A, B & C Valve Seat Insert

PATENT: X,XXX,137 and continuations, continuations-in-part and foreign counterparts.

LICENSED FIELD OF USE: All

RESTRICTIONS: All secondary sales through IPX

ISSUER RIGHT TO USE: Yes

UNIT BASIS: One ULR covers one automotive or light truck engine

TOTAL OFFERED QUANTITY: 5 million license units offered in 50 unit lots

OFFERING TERM: 3 years

TERM OF LICENSE: Until consumed

TRANCHES

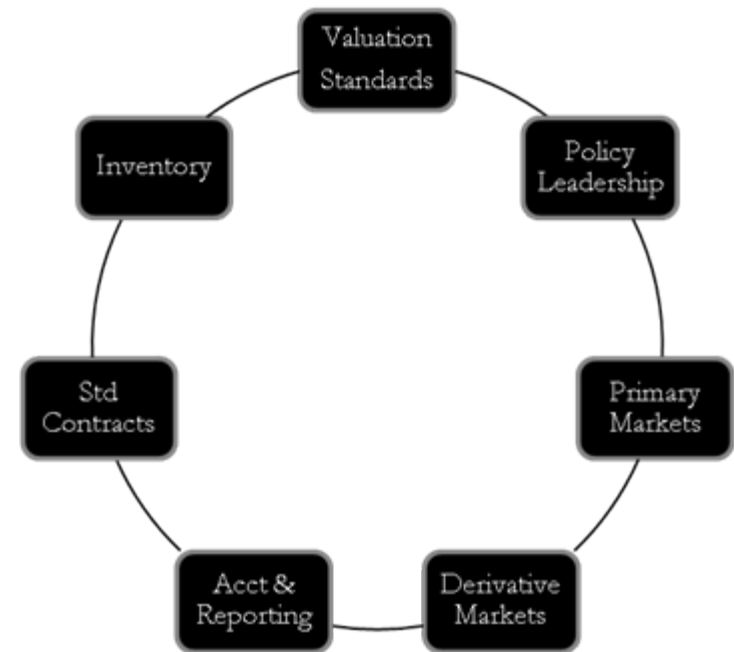
U137A: 1 million ULR's at an initial offering price of \$0.50 per unit (eg unit 1)

U137B: 1 million ULR's at an initial offering price of \$0.75 per unit (eg unit 1,000,001)

U137C: 3 million ULR's at an initial offering price of \$1 per unit (eg unit 2,000,001)

Derivative Markets

- Equity indexes
- Patent indexes



Equity Indexes

THE WALL STREET JOURNAL

PATENT SCORECARD

PatentRatings® System

Ocean Tomo's PatentRatings® system has identified 53 independent and object factors, which calculate the relative attractiveness of the more than 4 million patents issued by the U.S. Patent and Trademark Office since 1983. The PatentRatings® system is widely recognized by the intellectual property valuation industry.

Patent Based Indices

The transformation of the global economy to a knowledge economy has placed an unprecedented focus on the value of patents. Ocean Tomo has developed a suite of patent-based indexes which provide investors, asset managers and financial advisors with useful benchmarks.

Patent Index

The Ocean Tomo 300® Patent Index represents a diversified portfolio of 300 companies that own valuable patents.



Value Index

Includes the top value companies of the Ocean Tomo 300® Patent Index, as determined by the price-to-book ratio.



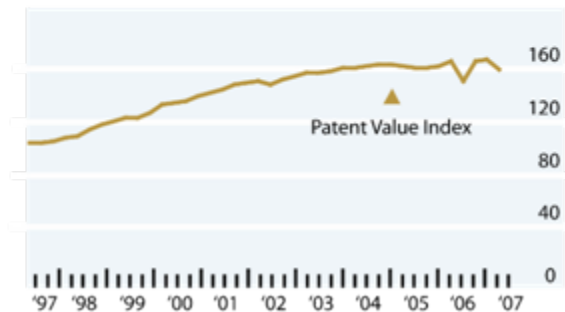
Growth Index

Includes the top growth companies of the Ocean Tomo 300® Patent Index, as determined by the price-to-book ratio.



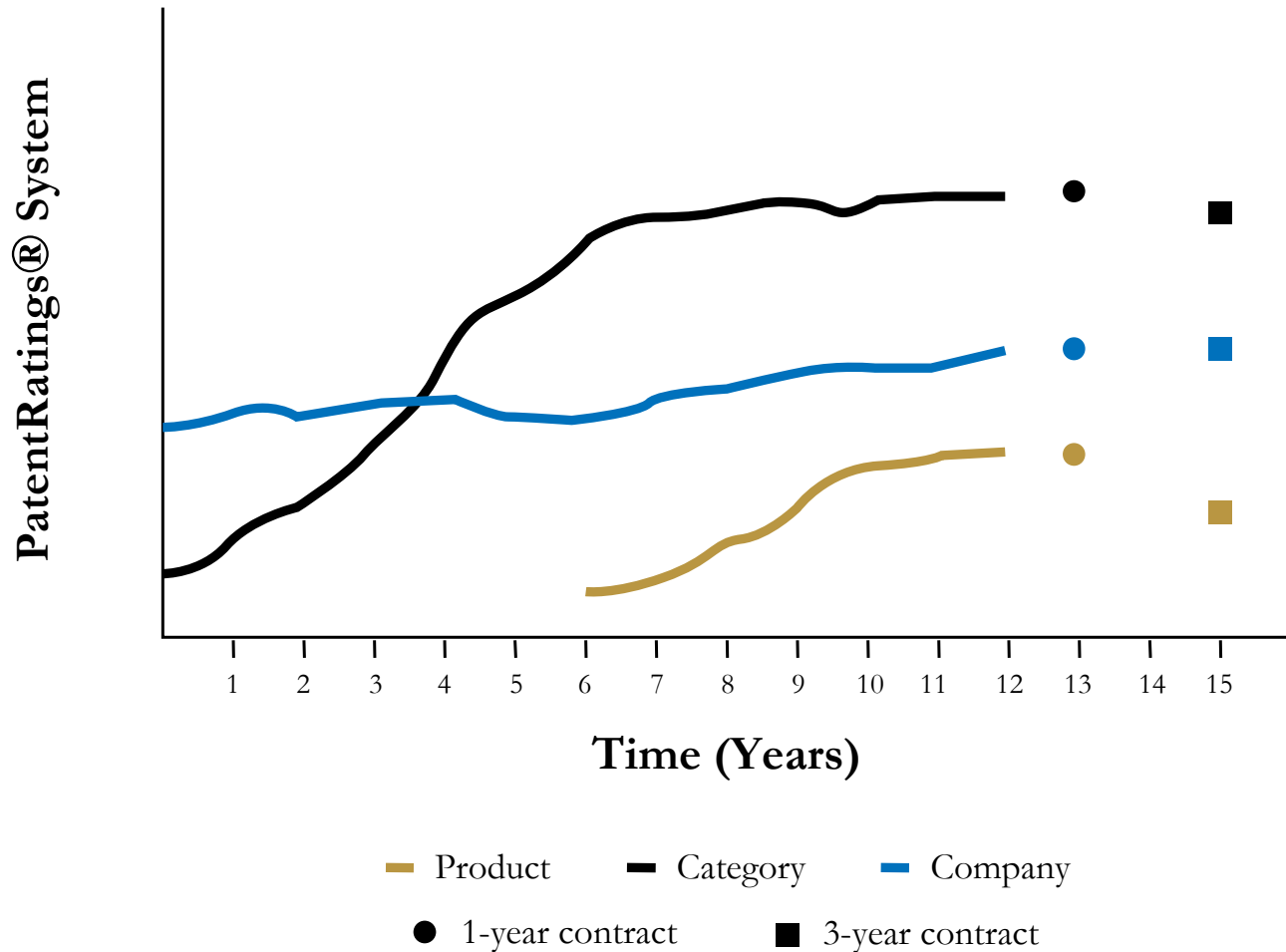
Patent Value Index

Measures cumulative maintenance value of all patents in force.



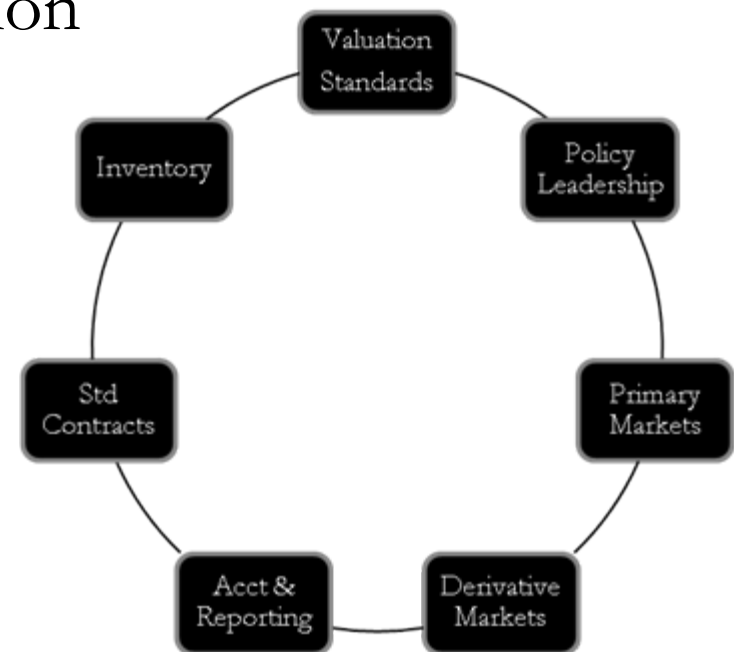
Patent Indexes

Tradable Technology Baskets™ Illustration



Accounting & Reporting

- Update current disclosures
- Evolving tax policy
- Potential public equity qualification
- Data transparency
- Need for global unification



Update Current Disclosures

- Reinstate joint FASB and IASB research on expanded disclosure guidelines for intangibles
- Revise SEC definitions of asset-backed securities to include intangible asset classes
- Create safe harbor reporting of intangible assets in financial statements
- Clarify Sarbanes-Oxley requirements vis-a-vis intangibles

Evolving Tax Policy

- Generally update the tax code to anticipate impact of innovation economy
- Examine valuation standards for off shore IP transfers
- R&D tax credit
- Consider lower tax rates for IP royalties
- Harness the tax revenue due from the sale of US technology to international buyers which is today hidden in royalty free licenses
- Recent State tax based initiatives (eg. Illinois)

Potential Equity Qualification

- Inclusion as a member within an IP-based index listed on IPXI (e.g. the Ocean Tomo 300® Patent Index or similar)
- Licensing revenue from intellectual property exceeds 15% of total revenues or 50% of reported earnings
- Innovation Ratio [intellectual property value / total book value], determined by an independent third-party appraiser, exceeds 25%
- Innovation Ratio, determined by an approved algorithm (e.g. Ocean Tomo PatentRatings®), exceeds that of the top quartile of a listed index based on such algorithm
- The value of intellectual property, determined by an independent third-party appraiser, exceeds \$1 billion.

Data Transparency - OTI.com

The screenshot displays the OTI.com website interface. At the top, there is a navigation bar with the OTI.COM logo and 'GLOBAL IP MARKET DATA'. Navigation links include 'ABOUT', 'ADD WIDGET', 'MY PROFILE', and 'LOGOUT'. Below the navigation bar, there is a search section with radio buttons for 'Company', 'Code', 'Patent', and 'Free Text'. The 'Free Text' option is selected, and the search term 'vacuum hose' is entered in the search box. There is also a checkbox for 'Show international results' and a 'Search' button. Below the search section, there are several category buttons: 'Patents (50,000)', 'Research & Ratings (10)', 'Patent-Bid/Ask (130)', 'Finance/IPXl (5)', 'RoyaltySource (25)', 'News (9)', and 'Blog (7)'. The 'Research & Ratings' section is expanded, showing a list of patent results. The first result is 'Process for coloring granite' with an IPQ@ score of 259.8. The second result is 'Aspirating/ventilating apparatus and method' with an IPQ@ score of 255.2. The third result is 'Vacuum finger harvester for strawberries or the like' with an IPQ@ score of 254.6. The fourth result is 'Method and device for impregnating especially natural stones' with an IPQ@ score of 253.1. The fifth result is 'Temperature and/or pressure resistant hose' with an IPQ@ score of 246.6. Each result includes a brief description and a link to 'Purchase a PatentRatings Report for this patent. (More information)'. The bottom of the page shows a pagination bar with '1 2 3 4 5 6 7 8 9 10'.

Data Transparency - IPXI Indexes



Finance data is provided by IPXI. To find out more information visit the IPXI website: <http://www.ipxi.com/>

The "Patent Value Index" (PVI) represents a normalization of patenting activity in a given sector. The relative level of the index gives a view into how valuable a technology or sector is believed to be by those practicing in that sector. One can use PVI to determine how interest in a sector has changed over time or relative to other sectors.

PVI relies on information from the US Patent and Trademark Office to determine patent issuance and maintenance events as well as classifications. This information is used to compile the indexes on a weekly basis.

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Global Unification

OTI.com

IPXI

Equity Qualification / IP Indexes / TTB's / ULR's

PatentRatings® Equivalency Engine

Portfolio Valuation / Patent Exchange Rates / Cross License Balancing Payments

United States

- Valuation expertise
- PatentRatings®
- Auction price discovery
- PBA US market
- OT 300® Indexes

Europe

- Valuation expertise
- PatentRatings®
- Auction price discovery
- PBA regional market
- Public equity indexes

Asia

- Valuation expertise
- PatentRatings®
- Auction price discovery
- PBA national markets
- Public equity indexes

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