



WEBCAST #4

PATENT & IP VALUATION

Patents: a valuation approach

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MAY 29, 2025

WEBCAST 4

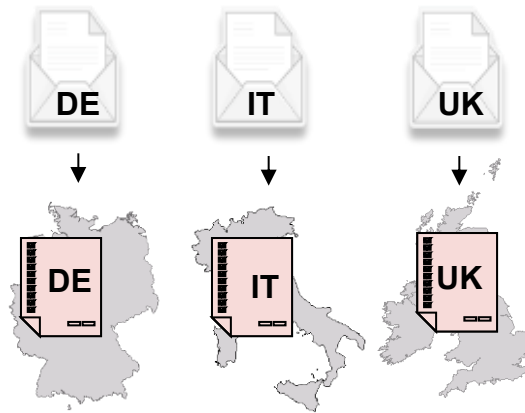
Valuation & Value

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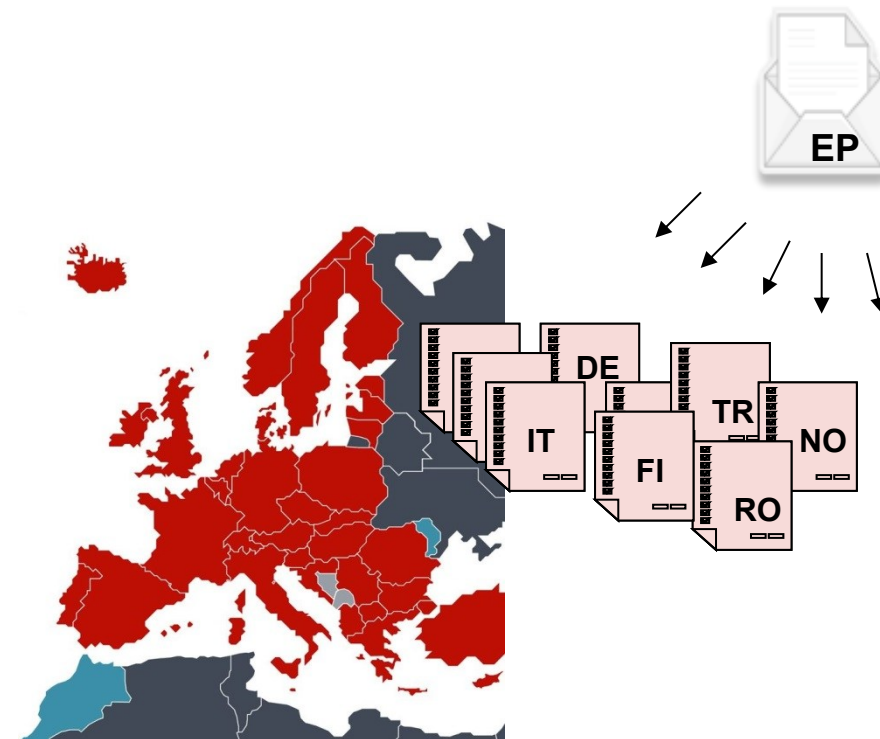
#ConnectingTheDots

How to obtain patent protection in Europe

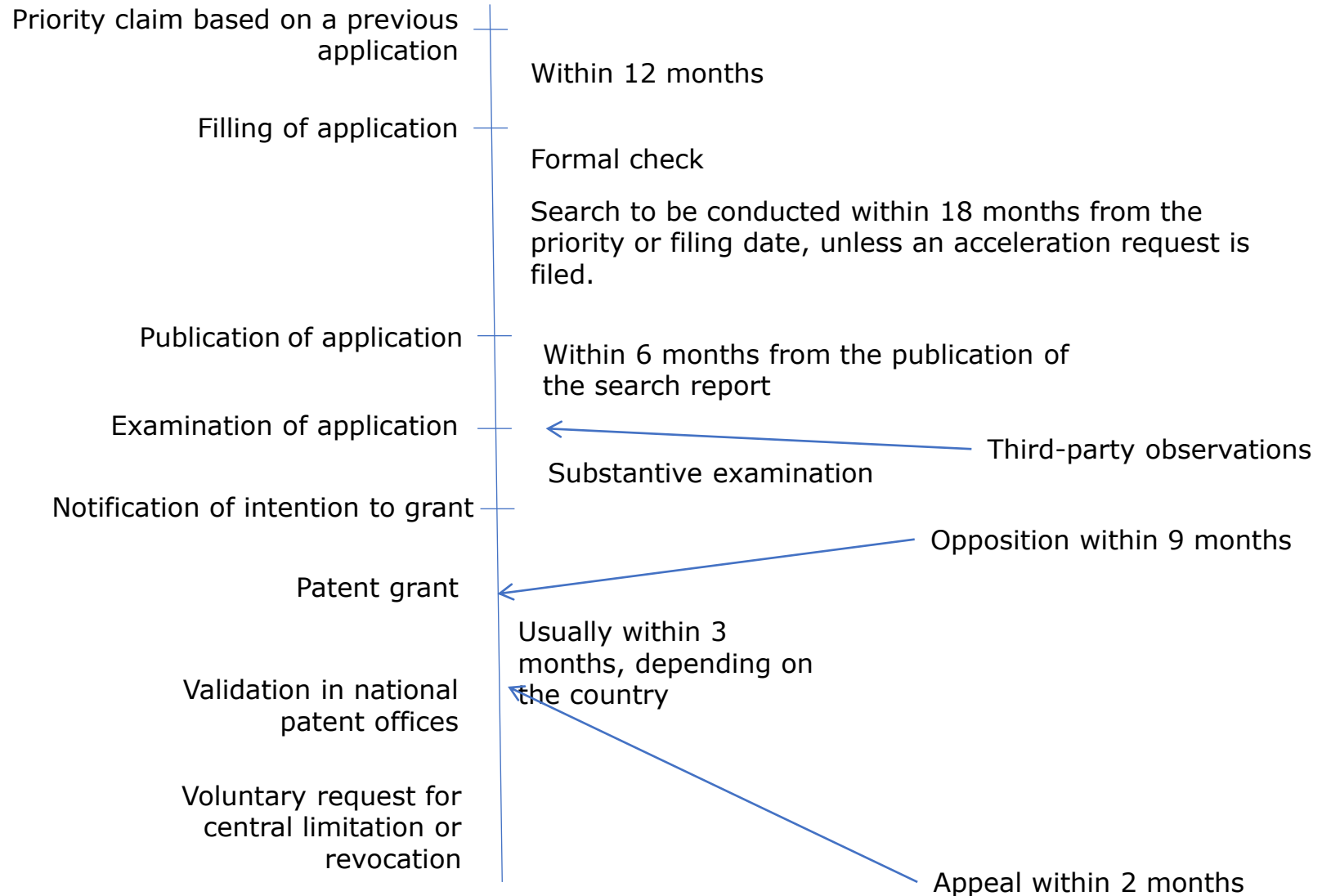
The national route



The regional route: European Patent Convention



European patent



How is value created by IP

- ☐ By exclusive
- ☐ By selling
- ☐ By providing for free
- ☐ By collaborative use
- ☐ As an insurance
- ☐ By the development of a standard (patent pool)

How to value a patent

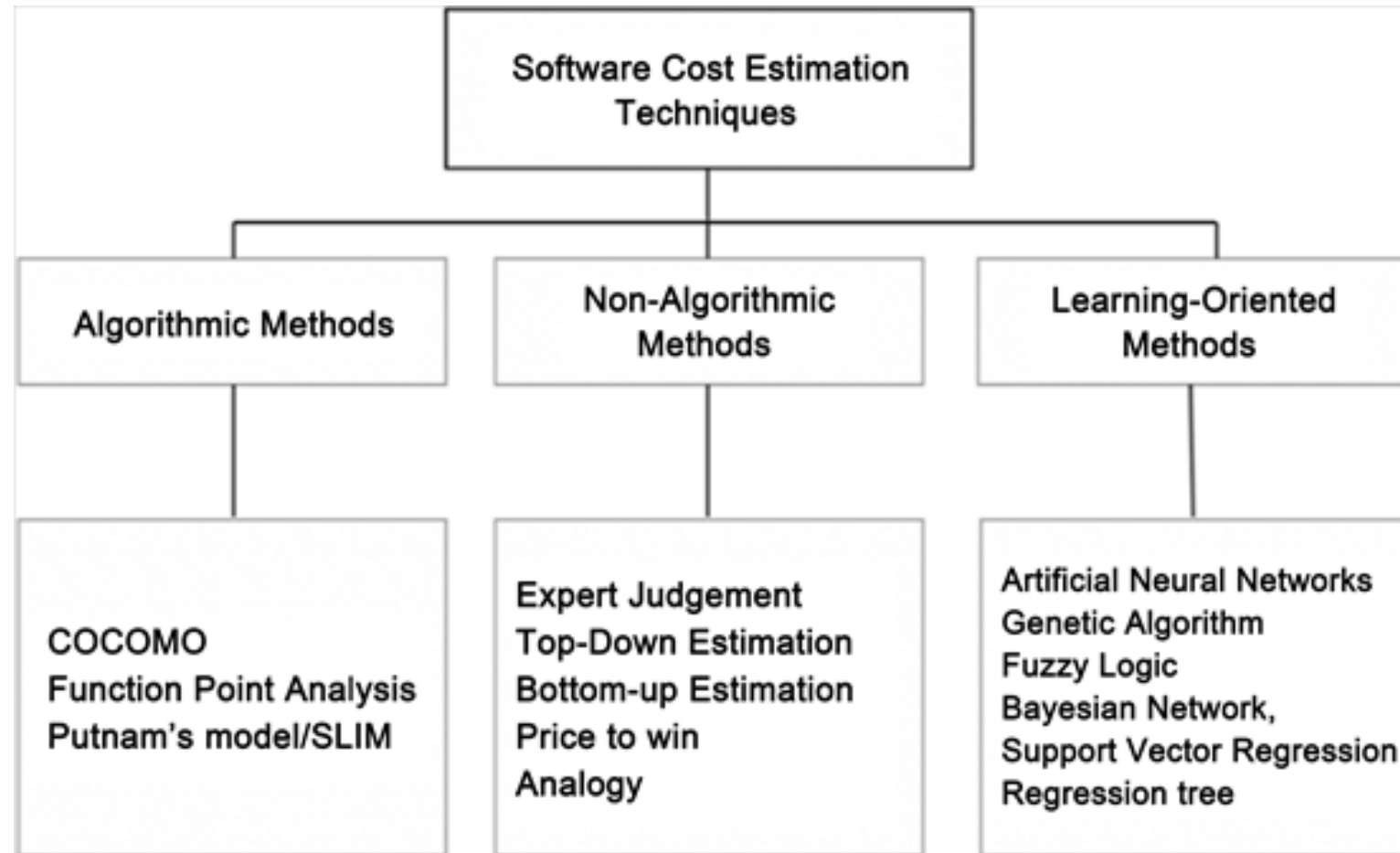
- Why? Market exclusivity
- How? Enforceable rights
- What? How broad is the scope
- Where? Prospective markets, competitors
- When? Before product development

Value of a patent: How much succeeds on the above

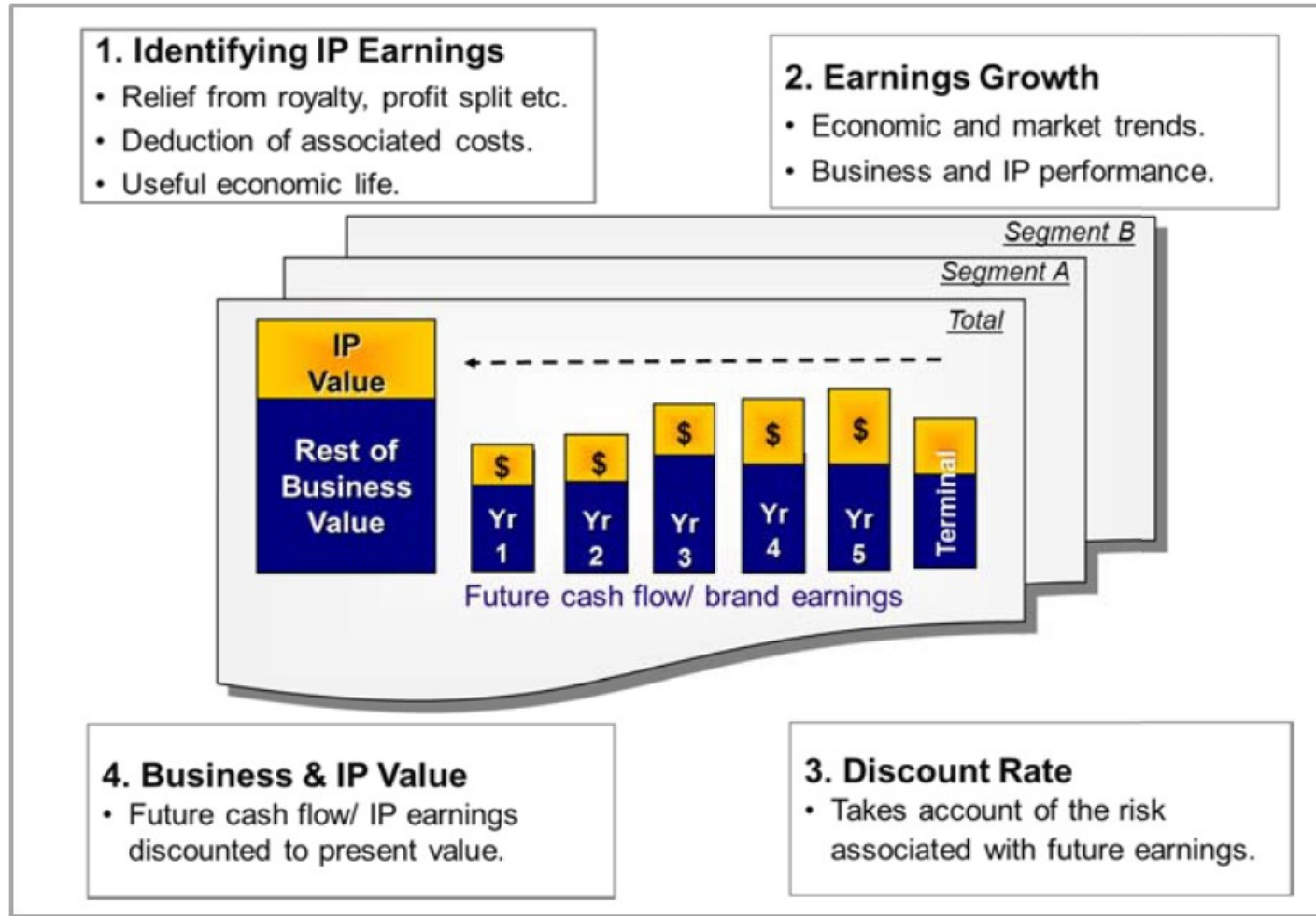
Quantitative Valuation

- ❑ Cost based Methods (Historical cost, Cost of reproduction, Replacement cost)
- ❑ Market based Methods (Market transactions, comparison with similar transactions)
- ❑ Income based, i.e. Time, Discounted Cashflow (DCF)
 - ❖ Uncertainty, DCF taking cashflow risks into account
 - ❖ Flexibility, DCF with Decision Tree Analysis (DTA)
 - ❖ Changing Risk methods based on Option Pricing Theory
- ❑ Other methods: Relief from royalty
- ❑ Damages

Cost based for IT/IS



Income based



Source: Brand Finance plc

Rule of thumb: a licensee should pay a royalty rate equivalent to about 25 per cent of the expected profits for the product that incorporates the subject IP.

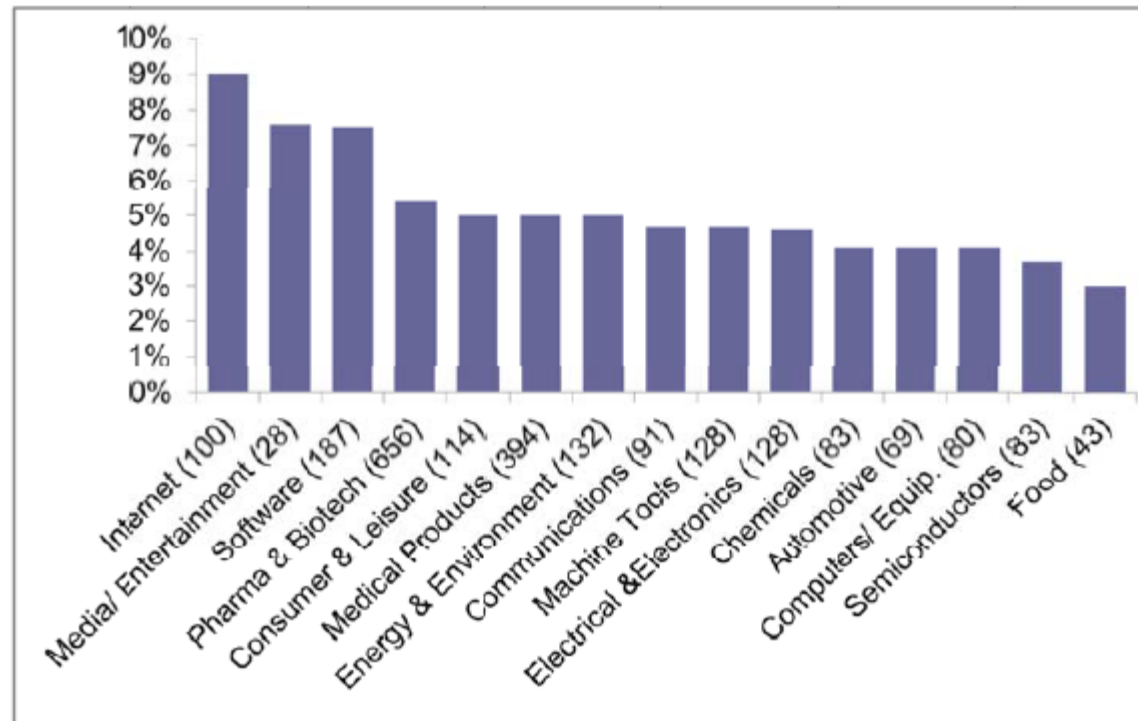
Compare with a similar invention / patent sold in the market

- even if sales prices for comparable IP are available, adjustments are required for differences in the utility of the asset and for factors such as the relative market conditions at the time of the sale and the remaining economic life.

Relief from royalty rate

Relief from royalty rate

Royalty rates are an earnings splitting approach



Source: Analysis Group, as quoted by Parr, R. in 'Royalty Rates for Licensing IP'

Relief from royalty rate

The idea is what the owner would save if he should license the patent

Methodology

- Determine the royalty rate

- Determine valuation base

- Subtract taxes

- Calculate Present value of royalty savings

Relief from royalty rate

Example

Royalty 4%, Discount rate 10%, tax 30%

		Year 1	2	3	4
Sales		250	250	250	250
Royalty rate	4%				
Earnings from royalties		10	10	10	10
Tax	30%	3	3	3	3
After tax		7	7	7	7
	10% disc. rate	0,95	0,87	0,79	0,72
DCF		6.7	6.1	5.5	5.0

Uncertainty

- Potential Value 1000

Development phase (Success 60%)

Patent approval (Success 70%)

Launch of product (success 90%)

Market scenario (positive 25%, normal 50%, negative 25%)

Competition (Positive, normal, negative X3)

Calculation of expected value

Qualitative Characteristics

- Legal Status, Legal certainty
- Freedom to operate
- Geographical coverage
- Litigation History
- Scope of Protection, Number and type of claims
- Organisation behind
- Sector
- Inventors
- Citations (citing and cited)
- Years of annual renewals, remaining patent life
- Value of similar/alternative patents

Economic and strategic rating	Market and technology rating	Legal rating
Economic value	Sector	Legal status
Capability against invalidation litigation	Competitive advantage	Claims coverage
Capability against oppositions	FTO	Patent lifecycle

Valuation and evaluation



Patent Value

Purple: the job of Patent Attorney

The role of Patent Attorney

Advisors to companies and inventors on how to use the IP System

- ☐ Technical (understand and translate the idea to a patent application)
- ☐ Legal (prosecute patent applications, setup right legal framework)
- ☐ Strategic (foresee the future, identify key areas with commercial interest)
- ☐ Commercial (make business plans, arrange for value creation)
- ☐ Valuation and evaluation (Find the right amounts)

Patent Attorney approach

- Analysis of claims.
- Analysis of specification.
- File History and relevant families
- Prosecution history

Consistency, clarity, conflicting applications, SR, possibility for work around patents, inventive step, patentability in different jurisdictions, non obviousness, technical difficulty, plausibility

In practice

- Estimate an income for the patent's life.
- Adjust for non patent factors.
- Adjust for patent inherent strength and weaknesses.
- Adjust for todays value of future cash flows

Methodology example

Estimate Income

- Identify claims that lead to products
- Obtain commercial value of products during 20 years and net income.
- Identify aspects of the products not covered by the patent and deduct.
- Identify other costs related to products d deduct

Adjust for other factors

- Adjust for royalty rates for other territories
- Adjust for co-ownership.
- Subtract patent fees and costs.

Methodology example

Adjust for patent validity

- Are there ground for invalidity (opposition or national courts)? Possibility of success
- Are there strong competitors who will challenge patent?
- Are there grounds for defence?
- What resources are required for litigation?

Adjust for enforceable rights

- Can the claims be enforced?
- Can infringement be detected?
- Market experience for litigation in the field?
- Can we wait?

Adjust for Time value of money

- Discount cash flows
- Using WACC for the company

Methodology example

Year		1	2	3
Turnover		100000	200000	300000
Selling price / item	200			
Production cost/item	100			
Gross Margin unit (%)		50%	50%	50%
Net sales		50000	100000	150000
Adj. for non patent factors 33%	33%	16500	33000	49500
Legal Risk 22%	78%	12870	25740	38610
Expected royalty		12870	25740	38610
Discount factor WACC 8%		100%	92%	85%
Discounted Royalty		12870	23681	32819
Value		69369		

Adjusted from Barrett et al, FICPI Journal Issue 1, Nov. 2020



**THANK YOU
FOR YOUR ATTENTION**



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