Introduction to IP Valuation & Damages Analysis

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Agenda

- Part One – Scott Nammacher
  - Overview of Intellectual Property
  - General Valuation Approaches

- Part Two – John Finnerty
  - Data Sources
  - IP Valuation Example

- Part Three – Jeffrey Kinrich
  - Litigation Damages Analyses
Overview – Intellectual Property (IP)

- What Is Intellectual Property
  - Intangible asset – knowledge based
  - Some legally protected for limited life
    - Patents
    - Copyrights
  - Salable or Licensable
  - Enduring in Nature
Overview – IP Examples

- Typical IP Assets
  - Patents – process/products
  - Copyrights – film, literary, music, etc.
  - Trademarks/names, designs
  - Software
  - Databases/lists
  - Know-how/designs
  - Licenses – franchise, broadcast
Overview – Why Value It?

- Financial reporting
  - Allocation of purchase price
  - Impairment testing
- Bankruptcy
  - Value negotiations
  - Fresh start accounting
- Litigation (of course!)
- Transactions
  - Sale/acquisitions/joint ventures
  - Licensing
- Financing
- Portfolio management
Overview - Nature of Value

- Valuation for Non-litigation
  - Financial reporting – GAAP & economics driven
  - Transactions – economics
  - Portfolio management – economics

- Valuations Typically Focused on 100% Interest in Intangible Asset being Valued
Overview - Nature of Value

- Valuation for Litigation
  - Case law and “net economics” driven
  - Issue is damage not valuation
  - Damages Focus
    - Loss to Plaintiff
    - Benefit to Defendant (Disgorgement)

- Specific Facts & Circumstances
  - Nebulous
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General Valuation Overview

- **Basic Valuation Approaches for IP**
  - Cost/Asset Approach
  - Market Approach
  - Income Approach – Litigation’s Focus

- **Adjusted From Normal Business Valuation Approaches**
General Valuation Concepts

- Factors That Impact IP Value
  - Type of Protection
  - Stage of development/commercial success
  - Exclusivity
  - Advantages
  - Market size – current and future
  - Patent/license remaining duration
  - Licensee’s/licensor’s anticipated profits
  - Scope/geographic territory of license
  - Enforcement costs
General Valuation Concepts

- **Value is a Function of Expected Future Economic Returns**
  - Timing of these returns (assume annual)
  - Size of returns ($ measure and growth)
  - Risk related to returns (required rate of return)

- **Future Returns are Discounted to a Present Value (PV)**
  - Risk Adjusted, Time Value of Money Concept
    - Explicitly by DCF Method

- **Relevant for All Approaches**
  - Income, Market & Cost
Valuation Approach: Cost

- Cost Approach – Limited Use
  - Asset is newly created with limited protection
  - Commercially untested
  - Where reproduction cost best estimate of value
    - Buyer unwilling to pay more than cost to recreate or engineer around protected design

- Components of Value
  - Materials
  - Labor
  - Overhead
  - Developer’s/entrepreneur’s profit
  - Tax impact considered
Valuation Approach: Cost

- Typical Intangible/intellectual Property Valued Using Cost Approach
  - Software
  - Designs/patterns
  - Early stage tradenames/trademarks
  - Customer lists
  - Databases

- Need to Adjust for Various Forms of Obsolescence
  - Functional
  - Economic
  - Technical
Valuation Approach: Market

- **Market Approach – Limited Use**
  - Focus on market transactions – sales/licenses
  - IP transaction details highly confidential
  - Assets typically not comparable
    - Different underlying IP assets
    - Different compensation structures
    - Different geographic territories
    - Different market potentials/degree of success

- **Best for Deriving Income Approach Inputs**
  - Royalty rates in certain types of analyses
  - Benchmarking profits/costs of companies or brands
  - Source of other financial and market performance information
Valuation Approach: Income

- Various Methods Within Approach
  - Capitalization of historical cash flows
    - Adjusted historical performance with expectations for growth built into single formula
  - Discounted (future) cash flows (DCF)
    - Explicit forecast for future periods with long-term flows captured in single “horizon” formula (where appropriate)

- Litigation Valuations Generally Focus On Versions of DCF Method
Valuation Approach: Income (DCF)

- Most Versatile of Methods
  - Can explicitly forecast future cash flows of almost any financial asset or liability or “net” flow
  - Used to compare “before and after” and “but for” type analyses in damages analyses

- Large Potential for Error or Manipulation, and Misunderstandings as to Impacts of Assumptions
  - GIGO (Garbage in garbage out) Risk
Valuation Approach: Income (DCF)

- Valuation of 100% Interest in IP Asset
  - Direct Value of IP Asset Cash Flows
    - Intellectual asset’s contributory cash flow is identified
    - Economic life determined
      - Attrition/obsolescence/legal life issues
    - Discount rate determined on each type of asset
    - Depending on analysis - returns (cash “rent” charges) on contributing assets subtracted to determine net cash flow
    - Taxes may/may not apply
    - Tax shield value may/may not apply
    - Present value (IP value) determined
Valuation Approach: Income (DCF)

- Valuation of 100% Interest in IP Asset
  - “Relief from Royalty” method
    - Royalty rate for use of asset determined and applied to revenues being generated
    - Costs to maintain/protection license estimated
    - Economic life determined
      - Attrition/obsolescence/legal life issues
    - Discount rate determined on each type of asset
    - Taxes may/may not apply
    - Tax shield value may/may not apply
    - Present value (IP value) determined
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Data Sources for Industry Royalty Rates

- **Selected Licensed Royalty Rate Databases That Are Commercially Available Online**
  - RoyaltySource Database
  - RoyaltyStat Database
  - rDNA Alliances Database

- **Litigated Royalty Rates**
  - Use Lexis/Nexis to Research Legal Decisions
  - Proprietary Databases (e.g., Analysis Group)
  - Litigated Royalty Rates Usually Incorporate a Litigation Premium as Compared to Licensed Royalty Rates
RoyaltySource Database

- RoyaltySource.com
- Searchable database of IP transactions
- Compiled from public information such as SEC filings (EDGAR), internet news or other public media sources
- Provides transaction summaries
- Characteristics of database
  - Late 1980’s – 2005
  - More than 5,900 agreements
  - All industries
RoyaltyStat Database

- Royaltystat.com
- Database of IP transactions searchable by SIC code, keyword, territory or type of agreement
- Compiled from SEC filings (EDGAR)
- Provides transaction agreements and online statistics
- Characteristics of database
  - Mid 1990’s – 2005
  - More than 3,500 agreements
  - All industries
rDNA Alliances Database

- rDNA.com
- Searchable database of strategic corporate alliances
- Compiled from public information
- Provides transaction agreements and summaries

Characteristics of database
- Early 1980’s – 2005
- More than 19,000 agreements
- Concentrated in Pharmaceutical/Biotech industries
Median Royalty Rates for Selected Industries

<table>
<thead>
<tr>
<th>Industry</th>
<th>Median Royalty Rate (% of Sales)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media (19)</td>
<td>8.0%</td>
</tr>
<tr>
<td>Internet (47)</td>
<td>7.5%</td>
</tr>
<tr>
<td>Software (159)</td>
<td>6.8%</td>
</tr>
<tr>
<td>Pharma &amp; Biotech (528)</td>
<td>5.1%</td>
</tr>
<tr>
<td>Consumer Goods (90)</td>
<td>5.0%</td>
</tr>
<tr>
<td>Energy &amp; Environment (86)</td>
<td>5.0%</td>
</tr>
<tr>
<td>Healthcare Products (280)</td>
<td>4.8%</td>
</tr>
<tr>
<td>Telecom (63)</td>
<td>4.7%</td>
</tr>
<tr>
<td>Machines/Tools (84)</td>
<td>4.5%</td>
</tr>
<tr>
<td>Automotive (35)</td>
<td>4.0%</td>
</tr>
<tr>
<td>Computers (68)</td>
<td>4.0%</td>
</tr>
<tr>
<td>Electronics (122)</td>
<td>4.0%</td>
</tr>
<tr>
<td>Chemicals (72)</td>
<td>3.6%</td>
</tr>
<tr>
<td>Semiconductors (78)</td>
<td>3.2%</td>
</tr>
<tr>
<td>Food (32)</td>
<td>2.8%</td>
</tr>
</tbody>
</table>

Source: RoyaltySource as compiled by AnalysisGroup, Inc.
Median Royalty Rates for Selected Industries

<table>
<thead>
<tr>
<th>Industry</th>
<th>Median Royalty Rate (% of Sales)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media (22)</td>
<td>10.0%</td>
</tr>
<tr>
<td>Software (15)</td>
<td>5.0%</td>
</tr>
<tr>
<td>Pharma &amp; Biotech (265)</td>
<td>5.0%</td>
</tr>
<tr>
<td>Consumer Goods (21)</td>
<td>4.0%</td>
</tr>
<tr>
<td>Energy &amp; Environment (59)</td>
<td>4.0%</td>
</tr>
<tr>
<td>Healthcare Products (119)</td>
<td>3.0%</td>
</tr>
<tr>
<td>Telecom (8)</td>
<td>12.5%</td>
</tr>
<tr>
<td>Machines/Tools (44)</td>
<td>3.0%</td>
</tr>
<tr>
<td>Automotive (10)</td>
<td>4.4%</td>
</tr>
<tr>
<td>Computers (5)</td>
<td>4.5%</td>
</tr>
<tr>
<td>Electronics (58)</td>
<td>5.0%</td>
</tr>
<tr>
<td>Chemicals (30)</td>
<td>5.0%</td>
</tr>
<tr>
<td>Semiconductors (10)</td>
<td>5.0%</td>
</tr>
<tr>
<td>Food (45)</td>
<td>5.0%</td>
</tr>
</tbody>
</table>

Source: RoyaltyStat as compiled by AnalysisGroup, Inc.
Interquartile Range of Royalty Rates - Selected Industries

Source: RoyaltySource as compiled by AnalysisGroup, Inc.
Interquartile Range of Royalty Rates - Selected Industries

Source: RoyaltyStat as compiled by AnalysisGroup, Inc.
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    - Present value (IP value) determined
# Tradename Valuation Example

**XYZ Food Corporation**  
**Value of Trademarks/names - Snack Unit**  
**As of May 31, 2004**

<table>
<thead>
<tr>
<th>(numbers in 000s)</th>
<th>Projected 6/01/04-6/30/04</th>
<th>Projected FY 2005</th>
<th>Projected FY 2006</th>
<th>Projected FY 2007</th>
<th>Projected FY 2008</th>
<th>Projected FY 2009</th>
<th>Horizon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected product revenue</td>
<td>7,425</td>
<td>89,098</td>
<td>105,901</td>
<td>116,491</td>
<td>128,140</td>
<td>140,954</td>
<td></td>
</tr>
<tr>
<td>Times: % sales w/co. trademarks/names</td>
<td>0.97</td>
<td>0.97</td>
<td>0.97</td>
<td>0.97</td>
<td>0.97</td>
<td>0.97</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7,202</td>
<td>86,425</td>
<td>102,724</td>
<td>112,996</td>
<td>124,296</td>
<td>136,726</td>
<td></td>
</tr>
<tr>
<td>Times: Royalty rate</td>
<td>2.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td>2.0%</td>
<td></td>
</tr>
<tr>
<td>Company royalty savings</td>
<td>144</td>
<td>1,729</td>
<td>2,054</td>
<td>2,260</td>
<td>2,486</td>
<td>2,735</td>
<td></td>
</tr>
<tr>
<td>Less: Maintenance costs</td>
<td>(4)</td>
<td>(51)</td>
<td>(58)</td>
<td>(63)</td>
<td>(67)</td>
<td>(72)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>140</td>
<td>1,678</td>
<td>1,996</td>
<td>2,197</td>
<td>2,419</td>
<td>2,662</td>
<td></td>
</tr>
<tr>
<td>Less: Provision for taxes</td>
<td>(56)</td>
<td>(671)</td>
<td>(799)</td>
<td>(879)</td>
<td>(967)</td>
<td>(1,065)</td>
<td></td>
</tr>
<tr>
<td>Tax rate:</td>
<td>40.00%</td>
<td>40.00%</td>
<td>40.00%</td>
<td>40.00%</td>
<td>40.00%</td>
<td>40.00%</td>
<td></td>
</tr>
<tr>
<td>After-tax royalty income</td>
<td>84</td>
<td>1,007</td>
<td>1,198</td>
<td>1,318</td>
<td>1,451</td>
<td>1,597</td>
<td>25,311</td>
</tr>
<tr>
<td>Times: Discount factor</td>
<td>0.9963</td>
<td>0.9485</td>
<td>0.8662</td>
<td>0.7911</td>
<td>0.7225</td>
<td>0.6598</td>
<td>0.6598</td>
</tr>
<tr>
<td>Discounted after tax royalty income</td>
<td>84</td>
<td>955</td>
<td>1,038</td>
<td>1,043</td>
<td>1,048</td>
<td>1,054</td>
<td>16,700</td>
</tr>
</tbody>
</table>

Present Value of Discounted Royalty Streams: 21,921  
Times: Tax Amortization Benefit Factor 1.19  
Discounted after tax royalty income 84  

<table>
<thead>
<tr>
<th>Sensitivity Analysis</th>
<th>WACC Rate:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royalty</td>
<td>8.5%</td>
</tr>
<tr>
<td>Rate: 2.0%</td>
<td>9.5%</td>
</tr>
<tr>
<td>2.5%</td>
<td>10.5%</td>
</tr>
</tbody>
</table>

**Value of Trademarks/names - Snack Unit**  
$26,100

**Assumptions:**  
WACC: 9.5%  
Revenue growth: '07 to '09: 10% Total trademark/name expense: $360  
LT growth rate: 3.0% (revenue growth in FY '06)  
19% Unit/total TM/TN revenue: 14.3%  
Maint. costs % sales growth rate: 75.0% FY '05 Oper. Income Margin  
7.6% Trademark/name expense allocated: $51
### XYZ Food Corporation

**Tax Amortization Benefit Calculation**

**As of May 31, 2004**

<table>
<thead>
<tr>
<th>Tax Amortization Benefit Calculation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>WACC</strong></td>
<td>10.0%</td>
</tr>
<tr>
<td><strong>Tax life</strong></td>
<td>15.0</td>
</tr>
<tr>
<td><strong>Base intangible asset value</strong></td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Amortization/year</strong></td>
<td>6.7</td>
</tr>
<tr>
<td><strong>Tax rate</strong></td>
<td>40.0%</td>
</tr>
<tr>
<td><strong>Amortization benefit/year</strong></td>
<td>2.6667</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Period</th>
<th>Period to Year End</th>
<th>Mid Year Disc. Factor</th>
<th>Amort.</th>
<th>PV of Amort.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>0.5833</td>
<td>0.2917</td>
<td>0.9726</td>
<td>2.67</td>
<td>2.5936</td>
</tr>
<tr>
<td>2005</td>
<td>1.5833</td>
<td>1.0833</td>
<td>0.9019</td>
<td>2.67</td>
<td>2.4051</td>
</tr>
<tr>
<td>2006</td>
<td>2.5833</td>
<td>2.0833</td>
<td>0.8199</td>
<td>2.67</td>
<td>2.1864</td>
</tr>
<tr>
<td>2007</td>
<td>3.5833</td>
<td>3.0833</td>
<td>0.7454</td>
<td>2.67</td>
<td>1.9877</td>
</tr>
<tr>
<td>2008</td>
<td>4.5833</td>
<td>4.0833</td>
<td>0.6776</td>
<td>2.67</td>
<td>1.8070</td>
</tr>
<tr>
<td>2009</td>
<td>5.5833</td>
<td>5.0833</td>
<td>0.6160</td>
<td>2.67</td>
<td>1.6427</td>
</tr>
<tr>
<td>2010</td>
<td>6.5833</td>
<td>6.0833</td>
<td>0.5600</td>
<td>2.67</td>
<td>1.4934</td>
</tr>
<tr>
<td>2011</td>
<td>7.5833</td>
<td>7.0833</td>
<td>0.5091</td>
<td>2.67</td>
<td>1.3576</td>
</tr>
<tr>
<td>2012</td>
<td>8.5833</td>
<td>8.0833</td>
<td>0.4628</td>
<td>2.67</td>
<td>1.2342</td>
</tr>
<tr>
<td>2013</td>
<td>9.5833</td>
<td>9.0833</td>
<td>0.4207</td>
<td>2.67</td>
<td>1.1220</td>
</tr>
<tr>
<td>2014</td>
<td>10.5833</td>
<td>10.0833</td>
<td>0.3825</td>
<td>2.67</td>
<td>1.0200</td>
</tr>
<tr>
<td>2015</td>
<td>11.5833</td>
<td>11.0833</td>
<td>0.3477</td>
<td>2.67</td>
<td>0.9273</td>
</tr>
<tr>
<td>2016</td>
<td>12.5833</td>
<td>12.0833</td>
<td>0.3161</td>
<td>2.67</td>
<td>0.8430</td>
</tr>
<tr>
<td>2017</td>
<td>13.5833</td>
<td>13.0833</td>
<td>0.2874</td>
<td>2.67</td>
<td>0.7663</td>
</tr>
<tr>
<td>2018</td>
<td>14.5833</td>
<td>14.0833</td>
<td>0.2612</td>
<td>2.67</td>
<td>0.69666</td>
</tr>
</tbody>
</table>

**Total:** 37.33 19.4891

**PV of Amortization Benefits:** 19.5

**Add:** Base Value: 100.0

**Adjusted Asset Value:** 119.5

**Tax Amortization Benefit Factor:** 1.19
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Overview of Presentation

- Damages in Intellectual Property Cases, including:
  - Copyright
  - Trademark
  - Trade Secret
  - Patent
- Lost Profits
- Reasonable Royalty
### Intellectual Property: State v. Federal Jurisdiction

<table>
<thead>
<tr>
<th></th>
<th>Copyright</th>
<th>Trademark/Trade Dress</th>
<th>Trade Secret</th>
<th>Patent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>State</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

- Patent cases appealed to the Court of Appeals for the Federal Circuit (“CAFC”)
- Copyright and trademark cases appealed to Circuit Court level
## What Are Typical Types of Damages?

<table>
<thead>
<tr>
<th>MEASURE OF DAMAGES</th>
<th>COPYRIGHT</th>
<th>TRADEMARK</th>
<th>TRADE SECRET</th>
<th>PATENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disgorgement</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Lost Profits from Sales</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Lost Profit from Price Erosion</td>
<td>?</td>
<td>X</td>
<td>?</td>
<td>X</td>
</tr>
<tr>
<td>Lost Profits from Collateral Sales</td>
<td>“X”</td>
<td>?</td>
<td>?</td>
<td>X</td>
</tr>
<tr>
<td>Impairment of Goodwill</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertising Costs to Correct Confusion</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs to Restore Competitive Position</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Reasonable Royalty</td>
<td>“X”</td>
<td>X</td>
<td>“X”</td>
<td>X</td>
</tr>
<tr>
<td>Statutory Damages</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs of Litigation and/or Prejudgment Interest</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
Damages in Copyright Cases

- Profits realized by the infringer (i.e., disgorgement)
- Losses suffered by the copyright owner
  - Lost sales
  - Goodwill
  - Reasonable royalty (in certain situations)
- Costs of litigation and reasonable attorneys’ fees
  - OR -
- Statutory damages
  - $200/$750 to $30,000 per infringement
  - Up to $150,000 per infringement, if deemed willful
Damages in Trademark Cases

- Infringer’s profits
  - May be decreased/increased as the Court finds just

- Owner’s damages
  - Lost profits
  - Price erosion
  - Harm to reputation/goodwill up to trebled for willfullness
  - Costs of corrective action required by the infringement
  - Reasonable royalty

- Costs of the action/attorneys’ fees
  - Only in exceptional cases

- Counterfeiting: Trebled, attorney’s fees
Damages in Trade Secret Cases

- **Disgorgement/Infringer’s Profits**
  - Attributes all of defendant’s sales to misappropriation
  - Defendant’s burden:
    - Misappropriation did not result in all sales
    - Which costs to deduct from profits

- **Damages**
  - Lost sales and profits
  - Reasonable royalties (in lieu of proving actual damages or infringer’s profits)
  - Loss of value
  - Costs to restore
  - Increased expenses: start up costs, mitigation efforts, reduction in capital value
  - Interest, Attorneys’ fees (when appropriate)

- **Impact of injunction?**
Damages in Patent Cases

- Injunction
- Damages
  - Lost profits
  - Not less than reasonable royalty
  - Prejudgment interest
  - Other (treble damages, costs and fees, mixed awards - lost profit and reasonable royalty)
- Interest and costs as fixed by the court
- Reasonable attorneys’ fees, in exceptional cases
What are Infringer’s Profits?

- Revenue less costs
- Plaintiff’s burden: revenue
  - Related to infringement?
- Defendant: Costs and apportionment
  - Apportion to causes other than infringement
- For apportionment, see: Frank Music
  - Direct profits
  - Indirect profits
- Profits attributable to the infringement
Lost Profits: The Panduit Test for IP Cases

- *Panduit Corp. v. Stahlin Brothers Fibre Works, Inc.*
  - Factor 1 - Demand for the patented product
  - Factor 2* - No acceptable non-infringing substitutes
  - Factor 3 - Sufficient manufacturing and marketing capabilities
  - Factor 4 - The profit that would have been made

*Factor 2 has been modified over time*
Computing Lost Profits

- **Lost Profits** = **Lost Sales** - Incremental Costs

- **Lost Sales:**
  - But-for world
  - How “bad act” affected sales
  - Substitutability of plaintiff and defendant products
  - Similarity of underlying customer base

- **Incremental Costs:**
  - What costs would have been incurred?
Computing Lost Profits: Lost Sales

- Many methods
  - Direct computation
  - Before-and-after
  - Benchmark
  - Market comparable
  - Etc.
Market Share Analysis: Mor-Flo (1989)

Total Market: $388M

Court’s Allocation to State:  
\[
\frac{40}{100} \times 84M = 34M
\]

Corrected Allocation to State:  
\[
\frac{40}{(100 - 20)} \times 84M = 42M
\]

- Price matters
- Demand for infringer’s product matters
- Mere existence of patented feature not enough

- Look at economics
- Must show demand for the patented invention
- Even if new process not developed, it is a non-infringing alternative if:
  - Materials available
  - Technical process known
  - Defendant had necessary equipment, know-how, and experience
- Consider actual alternatives available at time of infringement
Incremental Costs: General Theory

- **What costs would have been incurred to make the lost sales?**
  - Incremental materials costs
  - Incremental manufacturing costs
  - Incremental sales costs

- **How can you figure it out?**
  - Account analysis
  - Statistical techniques
## Incremental Costs: Account Analysis

<table>
<thead>
<tr>
<th>Fixed/Variable</th>
<th>2002</th>
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<tbody>
<tr>
<td><strong>Indirect Labor</strong></td>
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<tr>
<td>Supervision F</td>
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<td>Chemical Engineers F</td>
<td>2,933,698</td>
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<td>Manufacturing Engineers V</td>
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<td>Purchasing V</td>
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<td>Production Control F</td>
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<td>Maintenance V</td>
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<tr>
<td>Indirect Costs F/V</td>
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<td>Overtime Premium V</td>
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<td><strong>Indirect Expenses</strong></td>
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<td>Utilities V</td>
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<td>Supplies V</td>
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<tr>
<td>Tooling F/V</td>
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<td>Transportation F/V</td>
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<td>Rentals V</td>
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<td>Selling/General &amp; Administrative F</td>
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<td>Insurance F</td>
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<td>Worker's Compensation V</td>
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<td>Payroll Taxes V</td>
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<td>Depreciation F</td>
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<tr>
<td><strong>Total</strong></td>
<td>$62,852,640</td>
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<tr>
<td><strong>Subtotal Variable Expenses</strong></td>
<td>$26,414,888</td>
</tr>
<tr>
<td>Variable Expenses as % of Total</td>
<td>42.0%</td>
</tr>
</tbody>
</table>
Incremental Costs: Statistical Techniques

\[ y = a + bx \]

- **a**: intercept - “fixed cost”
- **b**: slope - marginal cost
Reasonable Royalty Standard

- Patents, Copyrights, Trade Secrets
- Often used for an “innocent misappropriator”
  - Good faith
  - Inextricably incorporated into product/business
- Georgia-Pacific criteria - *Georgia Pacific v. US Plywood*
  - Established licenses
  - Royalties for comparable patents
  - Commercial relationship between licensor and licensee
  - Convoyed sales promoted by sale of patented product
  - Profitability of product
  - Hypothetical negotiation
Introduction to IP Valuation & Damages Analysis

National Litigation Support Services’ Spring Conference
San Francisco – June 10, 2005

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