

EVEREDGE IP[®]

Rembrandts and Time Bombs in the Attic

August 2013

About EverEdge IP

- **One of the top 3 intellectual property strategy, management and monetisation firms in the world.**
- **We work with leading businesses, investors and public sector organisations across three practice areas:**
 - **Advisory:** we provide independent, insightful advice from idea inception to value realisation.
 - **Transactions:** we broker the sale and acquisition of patents and other intangible assets.
 - **Investment:** we invest in intellectual property-rich technologies.

We help our clients make money from ideas.

Our Team.



Paul Adams (Auckland)

CEO & Chairman

Founded 1 of Top 10 incubators in world. IP Manager, BNT [NYSE: BC].



Paul Davies (Auckland)

Director - IP

Patent attorney; ex-Head of Patents for Deacons - largest law firm in Hong Kong.



Michael Masterson (Auckland)

Director - Strategy

Executive Team for OmniCom's most successful business unit [NYSE: OMC], CEO roles in logistics, F&B and finance.



Francis Rushford (CA, USA)

Director - Licensing

Executive VP, ICAP Capital Markets, Partner Christie Parker & Hale, Lucent.



Prof. Henry Bolanos (CT, USA)

Yale University, NPD & Innovation

Invented key hole surgery, 110+ patents, ex VP R&D US Surgical Corp, Johnson & Johnson



Steve Steger (IL, USA)

Managing Partner, GIPLG

US patent attorney, brokered sale of Nortel's patents for US\$4.5 billion.



Dr. Chris Donegan (London)

Director - Transactions

*Accenture, UBS, Euram Bank (AG).
PhD neuro-biology.*



Prof. Shirley Schaefer (Beijing)

Director - Brand

Brand Master, Represents over 40 luxury brands in China. Professor, Beijing University.

Principals



Our Difference.

Bridge the gap between
R&D and commercial
success.

Increase profit by
unlocking value in
technology / IP assets.

Make major investment
and business decisions
re: IP and R&D.

Reduce cost, risk and
uncertainty by bringing
IP under control.

Our Difference.

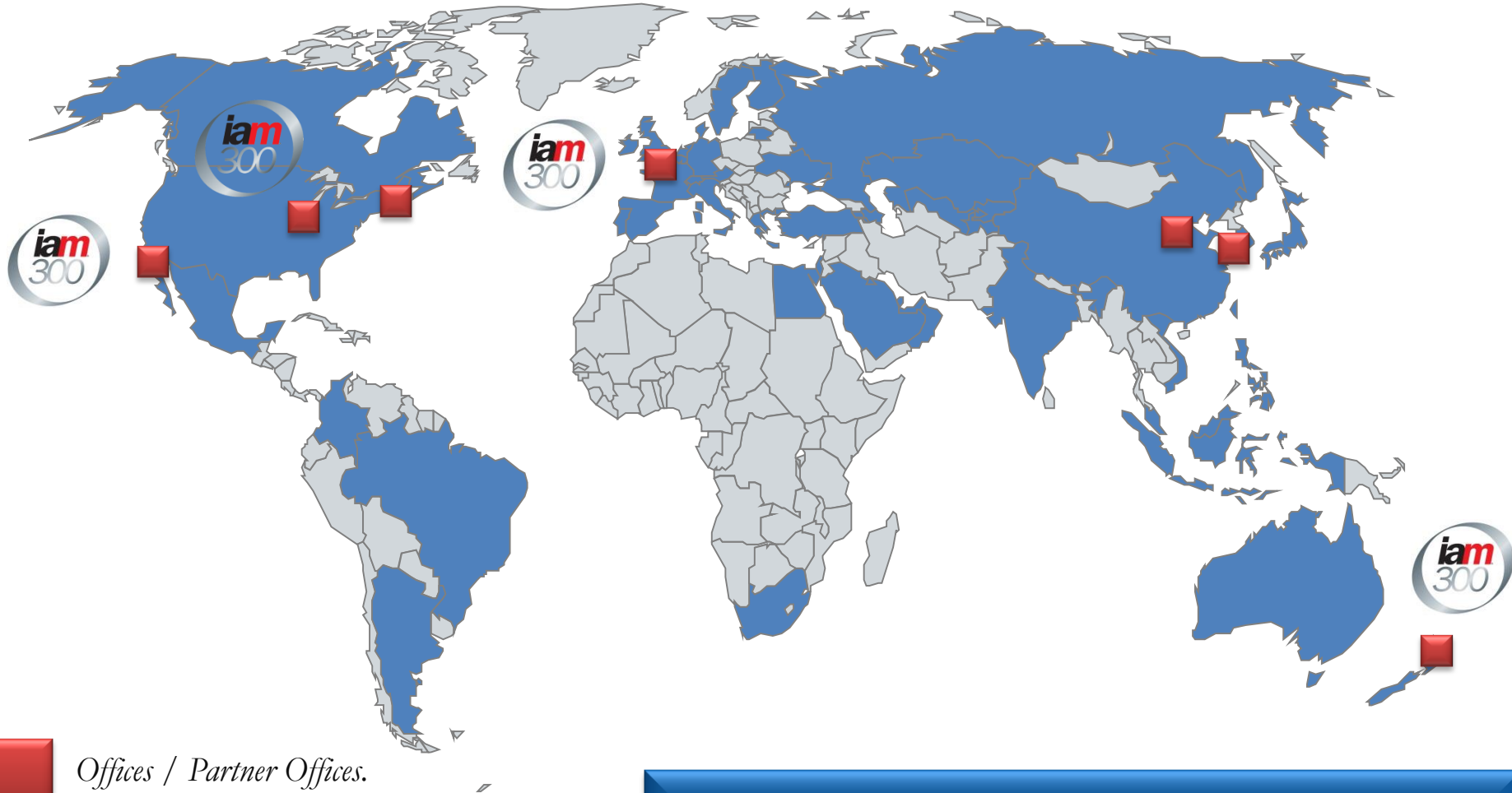
World Leading
Experience.

Multi-disciplinary
Team.

Pragmatic and
Commercial.

Objective and
Independent.

GLOBAL REACH



Offices / Partner Offices.



Territories EverEdge IP has commercialised in.

Four IAM300's places EverEdge IP in the top three IP strategy firms globally.

Rembrandts and Time Bombs in the Attic

- Speak on relevance and importance of IP to NZ business.
- Lessons based on experience advising 100's of companies.
- What I will talk about:
 - Importance of IP and concept of “IP Position”
 - Three commercialisation models: sale, license and deployment
 - Infringing IP and FTO
- What I will not talk about:
 - How to file, why you should file patents, trademarks etc
 - What the different classes of IP are (this is a patent, this is a TM etc)
 - Legal, tax or regulatory IP framework.

Why is intellectual property so important?

Intellectual property Drives Progress

- Every technology or improvement began as an idea.

Powered Flight » Wright Brothers, 1903

Antiseptics » Joseph Lister, 1867

Alternating Current » Nikola Tesla, 1886

Google » Larry Page, Sergey Brin, 1998

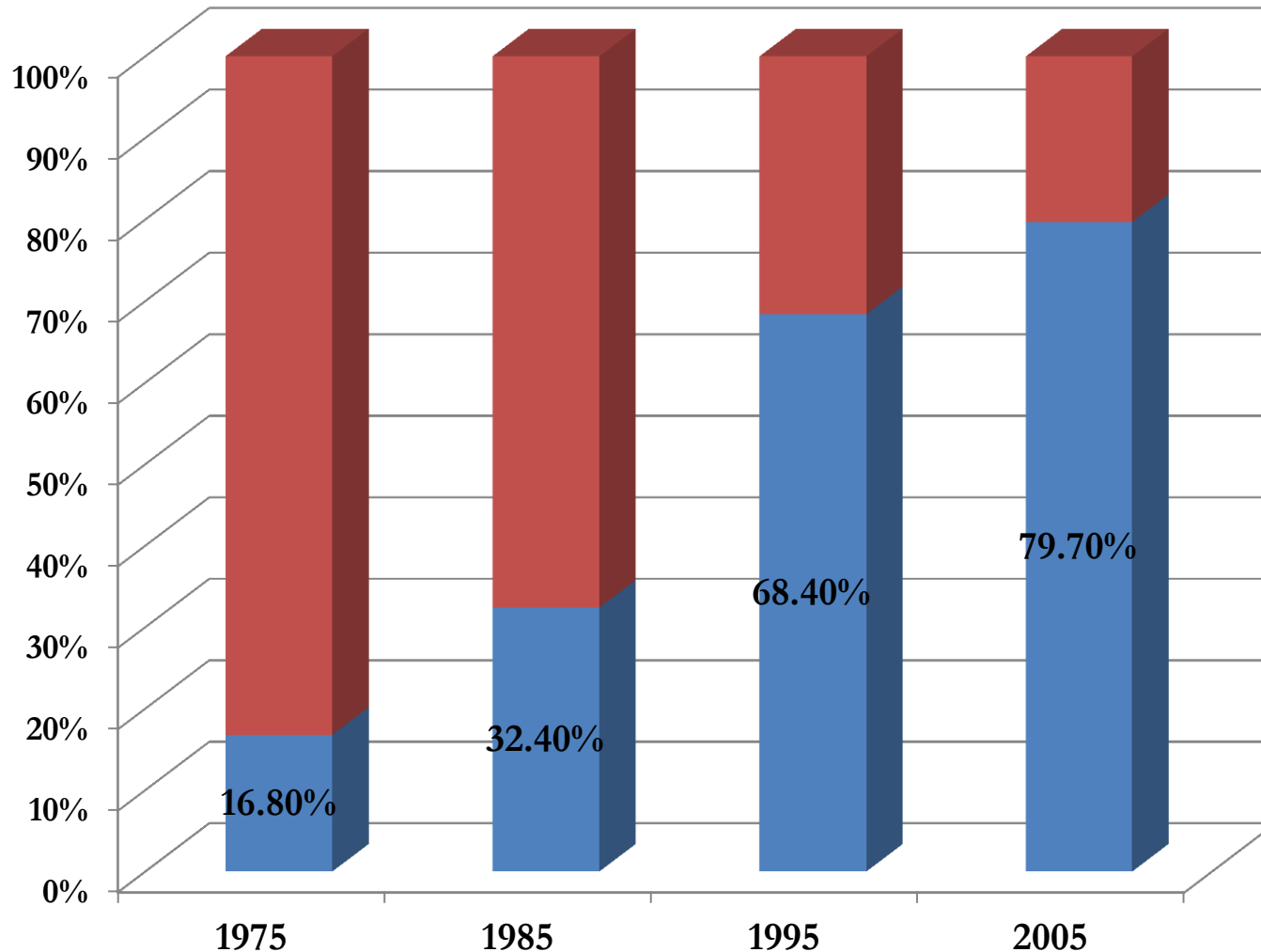
Optical Glasses » Salvino d'Armate, 1284

Refrigeration » William Cullen, 1708

Telephone » Alexander Bell, 1875

Every product begins as an idea (IP) but day to day we miss the wood (the IP) for the trees (tangible outputs i.e. the products)

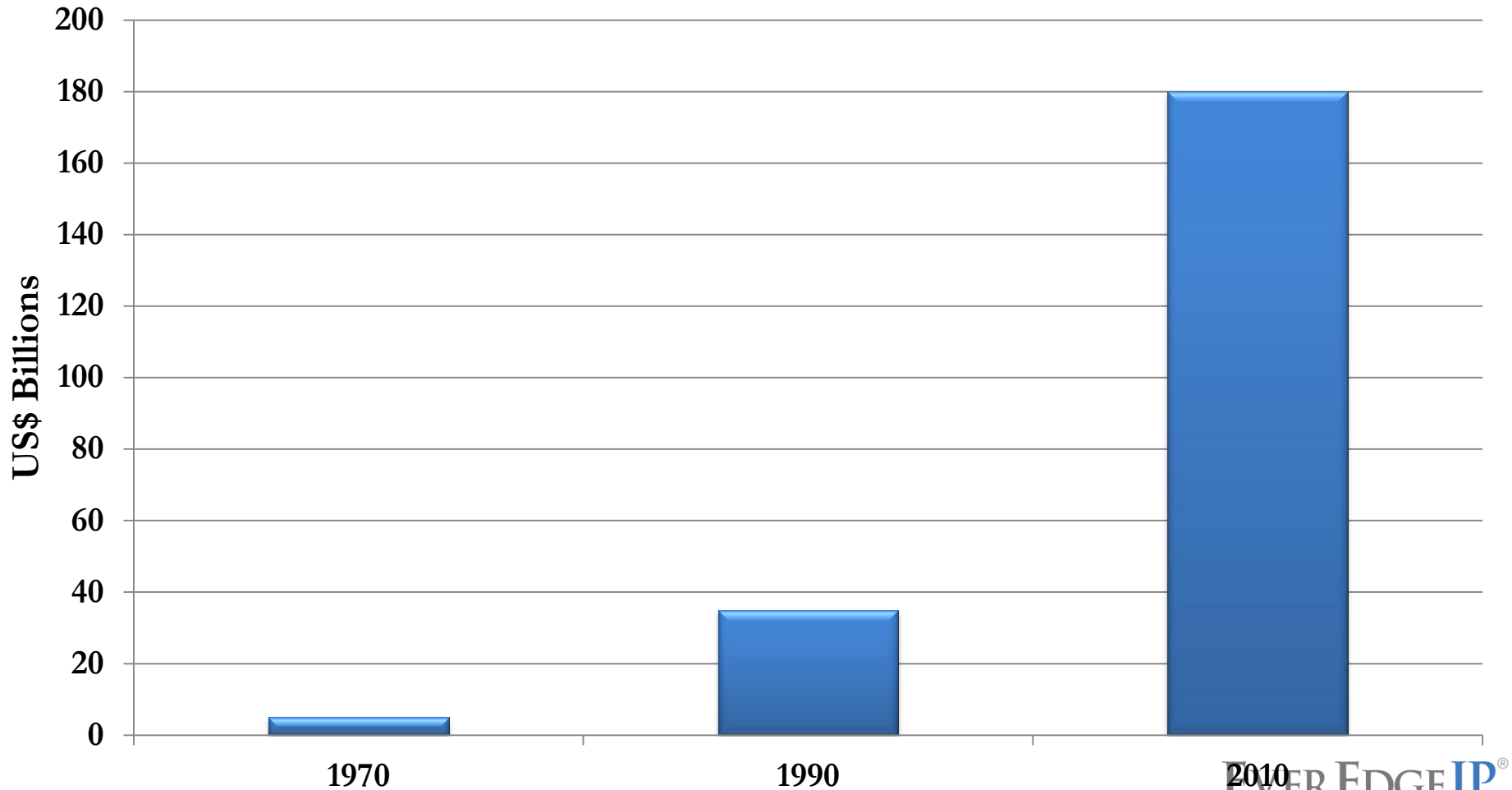
IP now dominant driver of economic value



- **Tangible Assets**
- **Intangible Assets**
- Global value of IP estimated at \$20 trillion.
- Global licensing value estimated at \$500 billion per year.

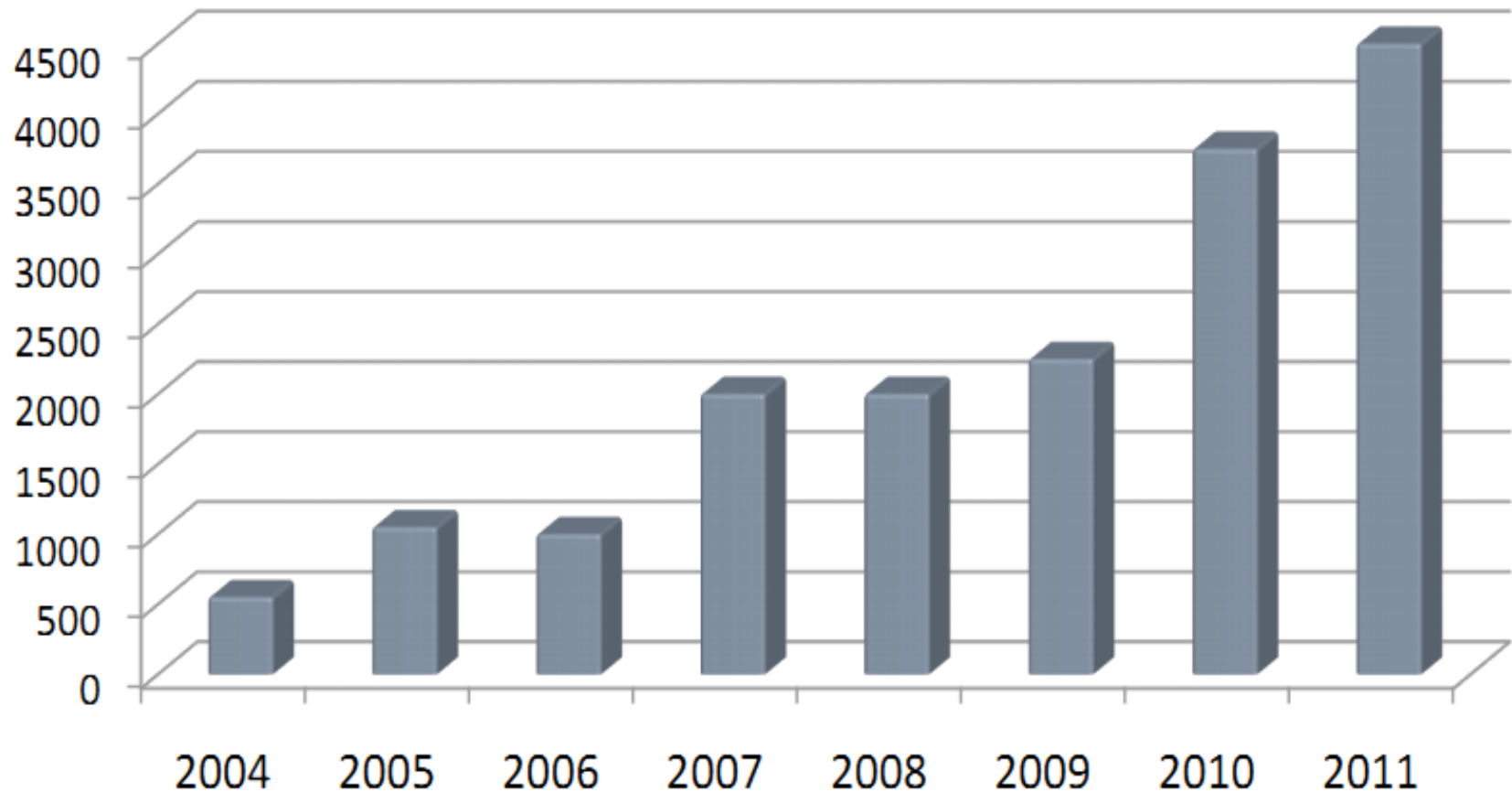
Market Growth is 60x since 1970

US Intellectual Property Licensing Market



NPE Activity increased 9x in 7 years

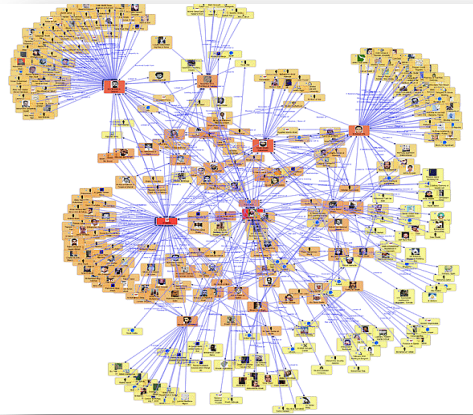
Number of Operating Companies Sued by NPEs



Recent IP Transactions

Transaction	US\$	Date	Assets
Microsoft acquires AOL patent portfolio	1.1bn (\$1.4M /pat)	4/2012	800 patents & 300 licenses
Lucent contributes patent portfolio to RPX for licensing to RPX members	\$1bn per annum	2/2012	29,000 patents
Kodak restructures and sues RIM/Apple	\$1bn (\$909K/pat)	1/2012	1,100 patents
Intel acquires Real Networks patent assets	\$120m (\$631K/pat)	1/2012	190 patents & 170 applications
HP acquires Autonomy	\$7bn (78% premium to share price)	10/2011	Patent & software copyright portfolio
Google acquires Motorola Mobility Holdings	\$12.5bn (\$735K/pat)	8/2011	17,000 patents
Microsoft, Apple, EMC, RIM, Sony acquire portfolio from bankrupt Nortel Networks	\$4.5bn (3x mkt cap) (\$750K /pat)	7/2011	6,000 patents
Microsoft, Apple, EMC and Oracle acquire Novell patent portfolios	\$450m (511K/pat)	4/2011	880 patents

Case Study: NZ IP Asset Sale



Client:

Software start up

Industry:

Software

Purchaser:

Fortune 200
Corporation

- Early 2000s software company developed game changing technology, filed a patent.
- Attempted to commercialise technology but was unsuccessful.
- Approached EverEdge with granted patent.
- EverEdge IP evaluated patent, determined highly valuable.
- Initiated sale process, identified key targets, negotiated with major industry players to successful conclusion.

RESULT

- **Sold patent to Fortune 200 for US\$00,000,000 sum. Highest price ever paid for US patent.**
- **Returned \$45 for every \$1 invested.**

**Hold on... when you say “IP”
what do you mean?**

Myth 1: “it’s all about patents”

Intellectual Property = Patents ✘

IP is more than patents...

**Intellectual
Property =**

- Trade Secrets / Confidential Info
- Copyright
- Unregistered trademarks
- Registered trademarks
- Patents
- Design Rights
- Domain Names
- Plant Variety Rights
- Approval Rights
- Integrated Circuit Layouts

IP in terms of volume & value

Intellectual
Property =

- Trade Secret / Confidential Info
- Copyright
- Unregistered trademarks

Free

Registered TMs

- Patents
- Approval Rights
- Design Rights
- Domain names
- Plant Variety Rights
- ICLs

Not free

Are there Rembrandts in the Attic?

- Most businesses have valuable IP.
 - Brand (trademarks)
 - Customer / supplier databases (confidential information)
 - Software code (copy right)
 - Systems and processes (know how)
 - Product designs (trade secrets / patents)
- Don't recognise it as "IP" but doesn't mean it isn't valuable.
- Irony: most businesses have Fixed Asset Register for desks, chairs, laptops but do not track often vastly more valuable IP.

First step in extracting value is understanding it's there.

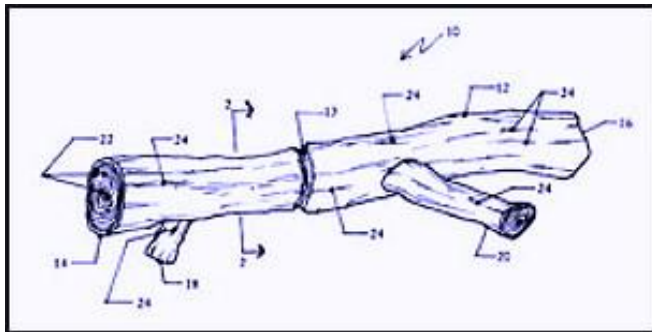
Myth 2: “Patents must be valuable”

“Patents are complex and expensive so they must be valuable & useful - right?”

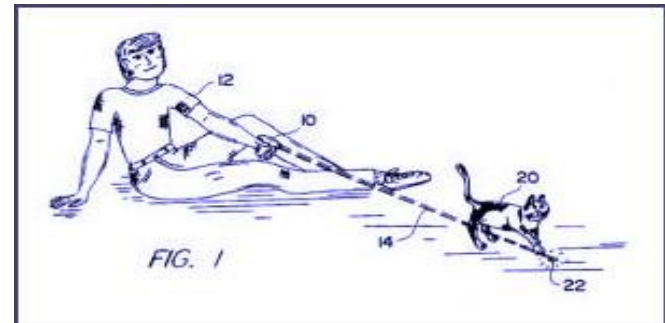


A patent is not always a silver bullet

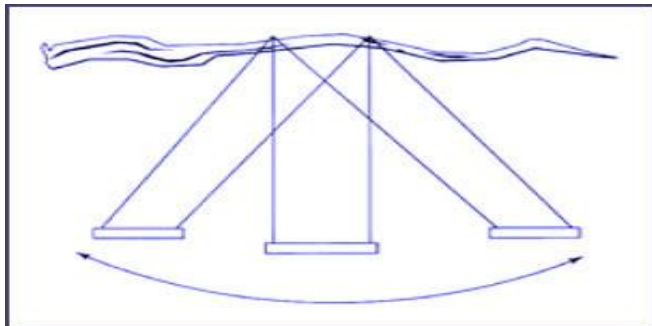
- Being granted a patent is surprisingly easy - you can patent just about anything.



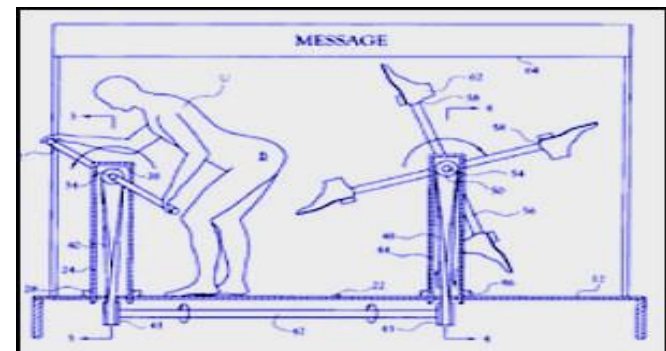
Animal toy, US6360693, 26/3/2002



Method of Exercising a Cat,
US5443036, 22/8/1995



Method of Swinging on a Swing,
US6368227, 9/4/2002



Amusement apparatus for kicking user's
buttocks, US 6293874, 25/9/2001

To patent or not to patent?

- Getting a commercially useful patent (broad, relevant, defensible) is a lot more challenging...
- Tricky part: patent attorney can always draft application to ensure you get a patent... but a narrow / irrelevant patent is valueless (but costs the same amount).
- Question to ask: not “can I get a patent?” but **“should I get a patent”?**

Commercial reality: suggest addressing this question to someone other than your patent attorney.

Reliance on one type of IP is risky

- NOT saying patents are “bad”. Can be extremely valuable... but can also be a waste of time and money.
- Easy to become distracted “sexy” end of IP (patents etc) without realising value of critical but mundane things in front of your nose (confidential information / know how)
- Be wary of providers who focus on narrow class of IP / who give superficial attention to *non-patent or non-trademark rights*.
- Best view:
 - patents are simply a business tool.
 - All intellectual property types have role to play.

Case Study: Non-Patent IP



Client:



Industry:

Nutraceuticals.

Markets:

NZ Australia
Europe USA

- VFL develops world leading kiwifruit based nutraceuticals.
- IP strategy driven by patent attorneys. Uncoordinated, lacked direction. Result: tangle of IP rights, increasing costs.
- Board engaged EverEdge to complete comprehensive audit of IP portfolio.
- Determined business value not in patents but in manufacturing know-how and trade secrets.
- Pruned back portfolio to pertinent, defensible patents + install systems to better manage IP in proprietary processing and manufacturing systems.

RESULT

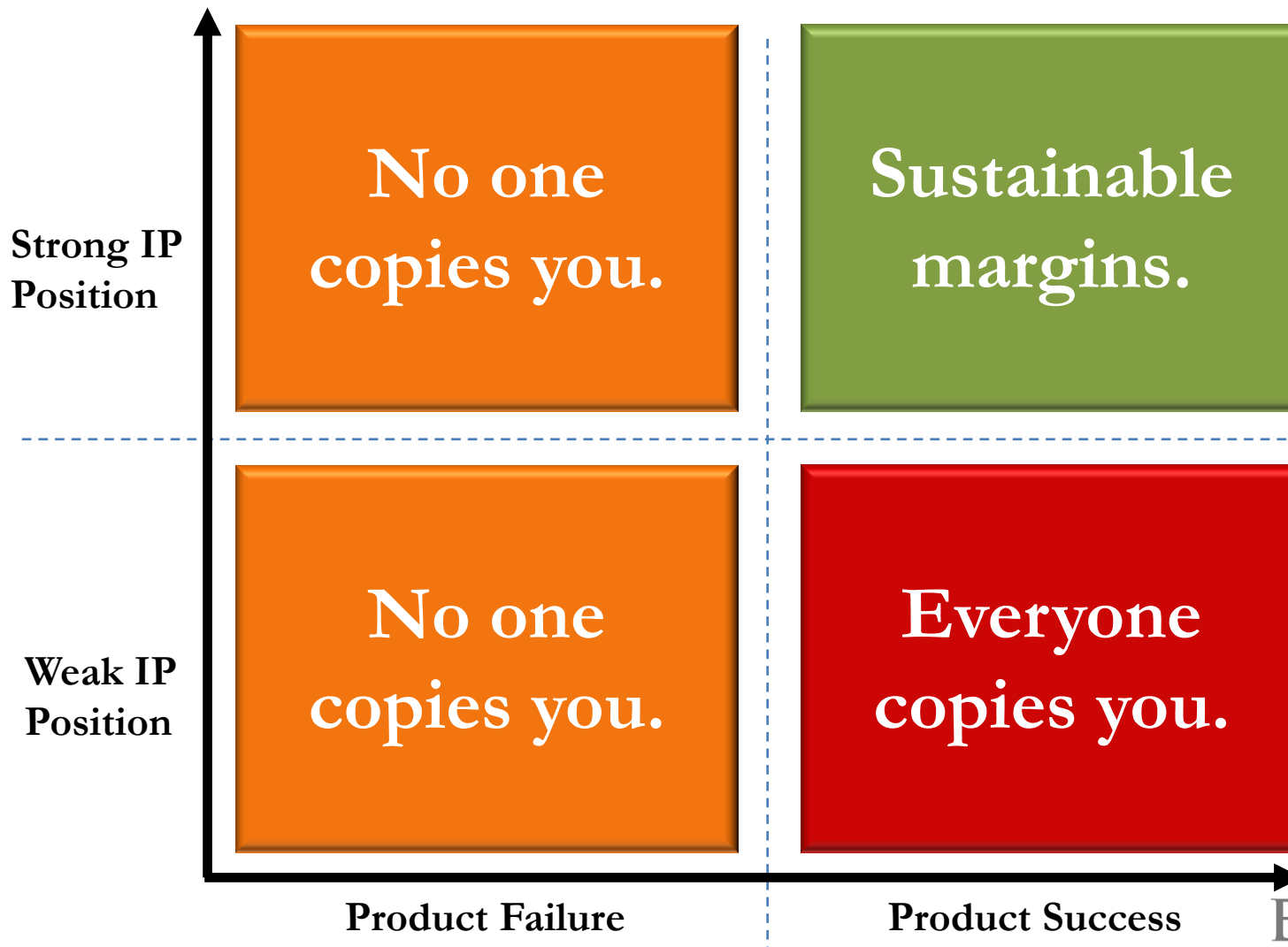
- **12 months after engagement MNC takes minority stake for 00,000,000 sum.**
- **CEO: “without having our IP portfolio in order, there wouldn’t have been nearly the same level of interest.”**

**So how does IP affect my
business?**

Concept: “IP Position”

- **IP Position:** *the combined strength of the various IP classes you control surrounding a technology or product.*
- IP Position directly impacts:
 1. **Commercial Opportunity Size:** the potential amount of wealth that can be created.
 2. **Commercial Options:** how this wealth can be created.
- These two factors influence other issues such as capital requirements, business model, strategy, distribution etc.

Strong vs Weak IP Position



IP Position directly impacts business success

- IP Position like the foundation of a building: weak foundations directly limit size and scope of building.

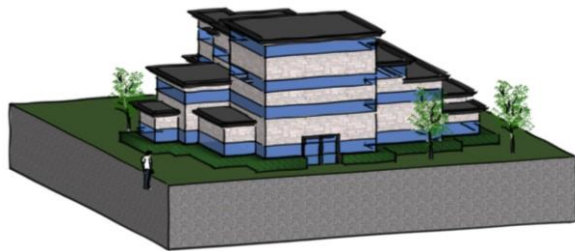


Weak IP Position

(Weak Foundations = Small Building)



1. **Smaller** commercial opportunity
 2. **Reduced** commercialisation options
- } **Decreased Value**



Strong IP Position

(Strong Foundations = Large Building)



1. **Large** commercial opportunity
 2. **Increased** commercialisation options
- } **Increased Value**

1. IP Position affects Commercial Opportunity



Market Share



Revenue



Profit

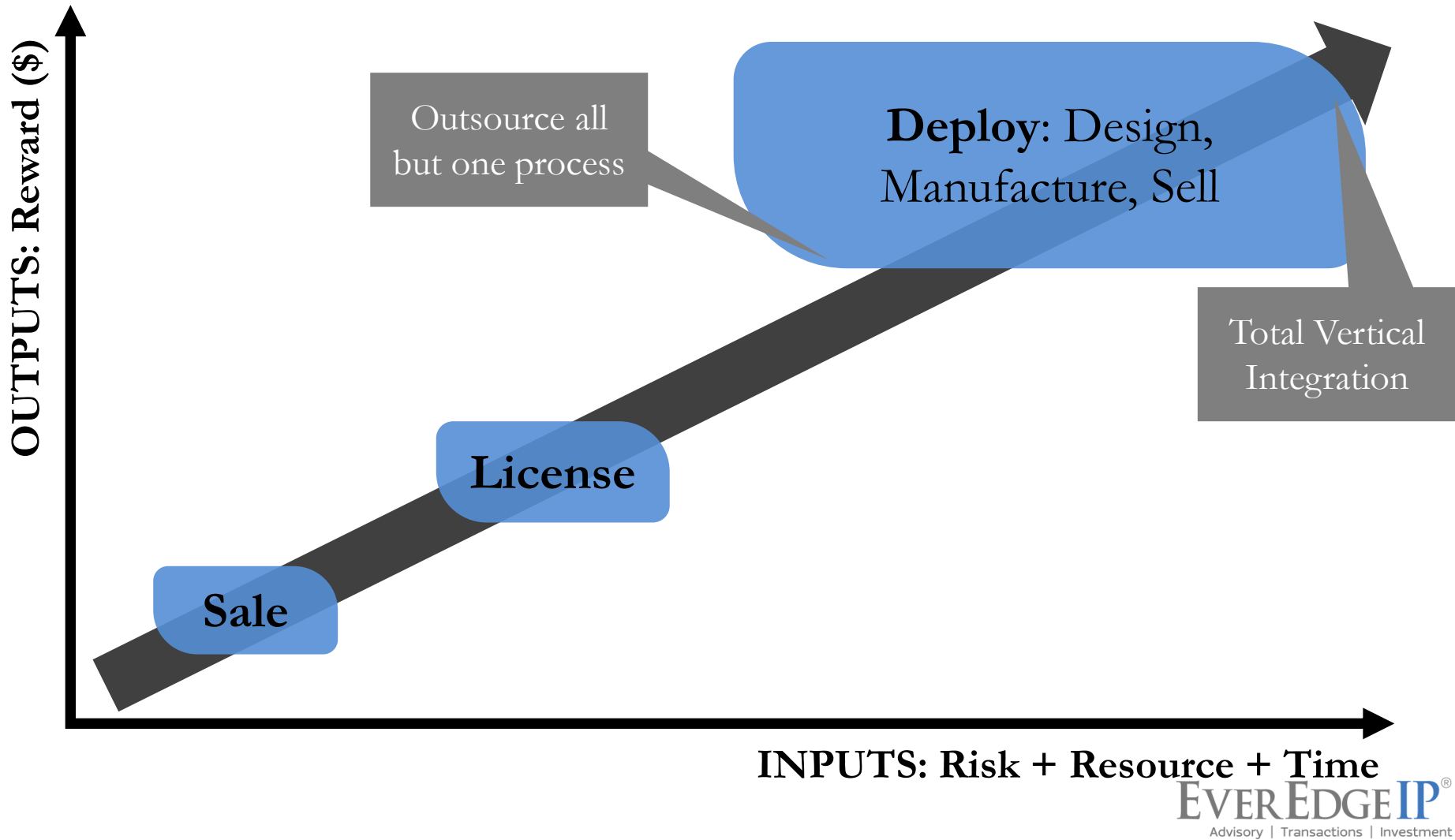


ROI

2. IP effects Commercial Options (a)

- IP (product *or* service based) can be commercialised via one of three fundamental models:
 1. **Deploy It:** incorporate IP into a product or service, manufacture it, market it, sell it.
 2. **License it:** allow someone else to do (1) in return they pay you a royalty.
 3. **Sell it:** sell the IP to someone who then either licenses the IP (2) to someone else or deploys the IP (1).

2. IP effects Commercial Options (b)



2. IP effects Commercial Options (c)

Seller: “Would you like to buy (or license) my IP/ tech?”



Buyer: “I’m not sure please tell me about your it and I’ll decide”

(1) ↩

↩ (2)

Seller: “I can’t tell you about
because it’s not very well
protected and you might copy it”



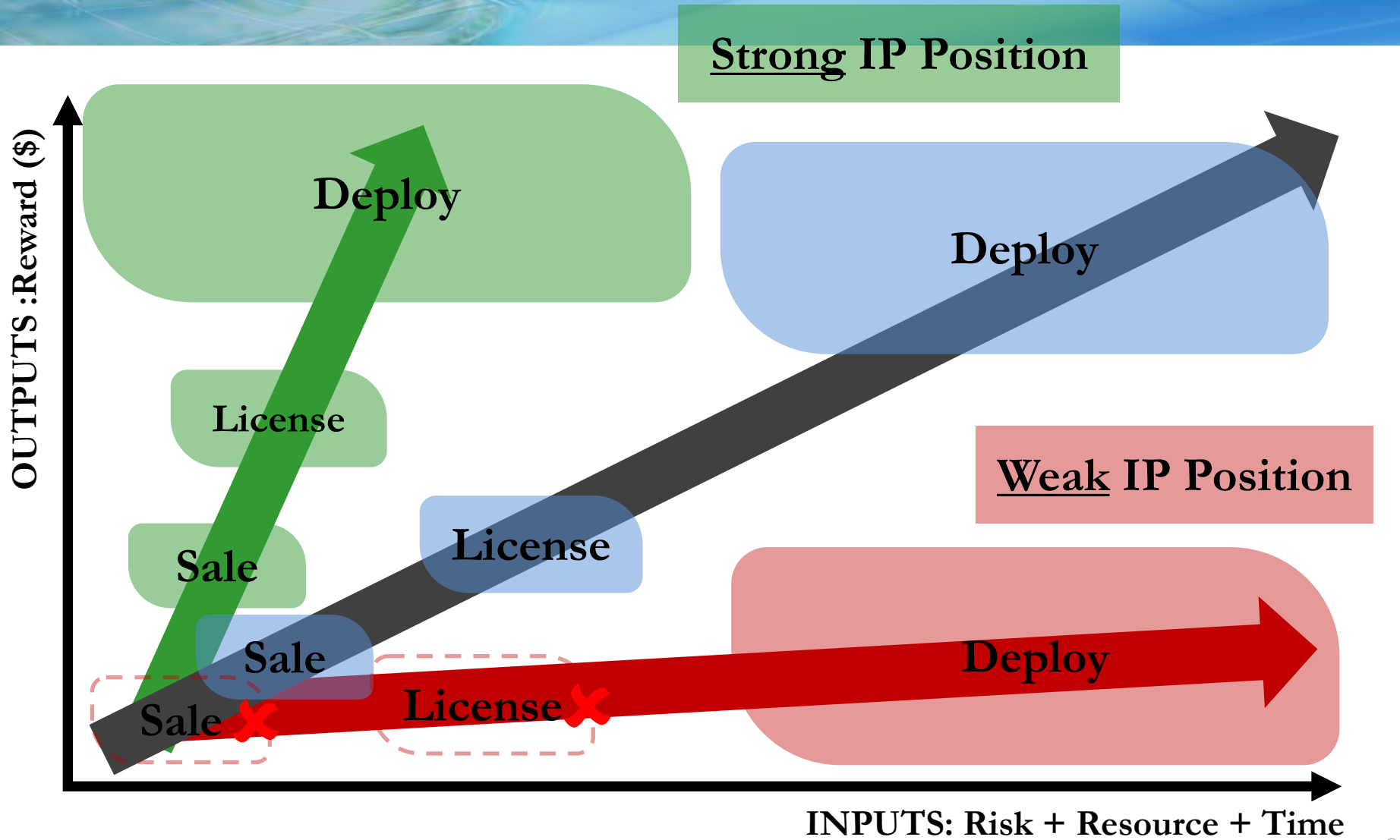
Buyer: “I’m not going to buy or
license something if I don’t
know what it is”

Seller: “ok, despite its weak
protection I’ll tell you about it”



Buyer: “Thanks! I no longer
need to buy or license it
because you’ve told me what I
need to know.”

IP Position bends the curve



Case Study: Strong IP = Highly Profit



Client:



Industry:

Packaging

Markets:

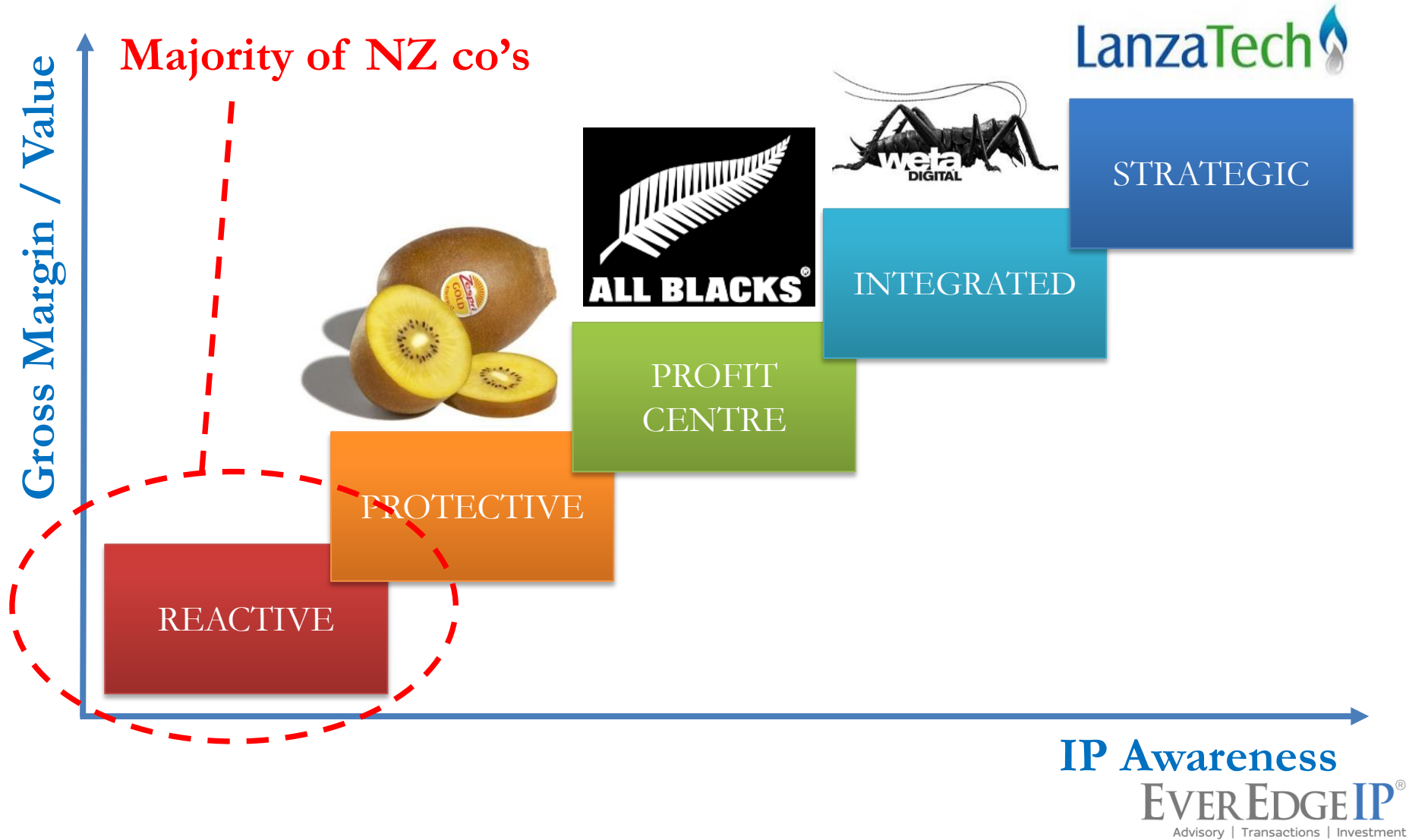
USA	Canada
Argentina	China
Mexico	S. Africa
Russia	Brazil

- Innovator approached EverEdge IP with concept: disposable cup could eat from with or without spoon.
- Assessed IP > funded 24 months research. Led to technology breakthrough: cup uses 35% less plastic than conventional cup.
- Researched market > developed licensing based commercialisation strategy.
- Executed plan > 2007 licensed to industry leader in NZ. 2009 licensed largest dairy player in world, 2011 licensed largest dairy company in China.

RESULT

- **600M+ units since '09, royalty paid on every unit.**
- **EBIT in 0,000,000's per year.**

Stages of IP Awareness



The Time Bomb in Your Attic

It's not just your IP that counts...

- If you are working on an idea you think is valuable good chance someone else thinks it's valuable too.
- If they think it's valuable reasonable odds they've protected it.
- More valuable idea more likely someone else protected it.
- Need to ensure Freedom to Operate (FTO) – that you are not infringing someone else's IP rights.
- Consequences: injunction against selling product, product seizure or recall, tradeshow booth shut down, damages.
- US law suit starts at US\$1M, common to spend \$8 – 12M.

New Zealand is not immune

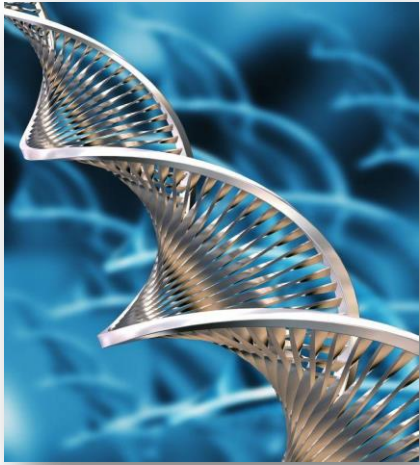
- Companies investing in innovation, with offshore ambitions (e.g. exit) or exporting needs to establish FTO.
 - Well known NZ company sued three times in four weeks following acquisition by US company.
 - NZ tech company spent NZ\$15M defending infringement suit before settling and paying license fees.
 - NZ company effectively forcibly acquired following patent litigation by offshore competitor.
 - NZ tech company bankrupted by another NZ company following litigation over disputed IP.

Managers and directors can be directly liable for failing to manage FTO risk.

Key FTO tips

- Ignorance is not a strategy. A “see no evil, hear no evil” approach to FTO is a major mistake.
- FTO is not just about patents. Any IP can be infringed: copyright, trademarks, design rights, confidential info.
- Having your own patent does not grant you FTO.
- Don’t seek FTO clearance from the same people who file your patents.
- Be wary of advisors who focus FTO analysis primarily on New Zealand.
- It’s hard to defend yourself from FTO threats if you do not have weapons (valuable IP) of your own.

Case Study: All that glitters...



Client:

Technology investor.

Industry:

Bio-technology.

- Client had invested \$3M+ in company with innovative product.
- Company spending \$500K per year on IP, building 10 patent portfolio.
- Costs spiralling, investor wanted independent assessment of IP, strategy and opportunity.
- Interviewed R&D staff, management & attorneys, analysed market, technology & patents.
- Identified highly relevant prior art (invalidate patents) and significant US infringement threats. Recommended liquidating company.

RESULT:

- **Advice rejected. 12 months later company liquidated after spending additional \$750K.**

IP not an adjunct to business, it is the core

- IP is fundamental to wealth creation.
- IP increasingly recognised as:
 - (1) valuable, tradable asset in itself
 - (2) major driver of exit value
 - (3) source of residual enterprise value.
- IP sitting on shelf has no value. Management and Board responsible for proactively managing IP (as an asset to generate value) and IP risk.
- IP is no longer exclusive domain of lawyers, patent attorneys.
- Realising IP value fundamentally about business, financial and strategic decisions, not legal.

Questions to ask

- How much IP do we have or create on a daily basis?
- Is it being used? If so what are doing we with it?
- If it is not being used, what is happening to it?
- How much do we spend on IP protection? What is our ROI?
- Are we generating revenue or strategic leverage from IP?
- How robust is our IP Position for core products? What are the strengths / weaknesses? Do we have FTO?
- Who is responsible for IP / IP risk at SMT and Board level?
- Who is driving our IP strategy? Are they independent?

EverEdge IP

LAM300 - Top 300 IP Strategist in the World (peer and client feedback).

Winner - Outstanding IP Leader - IP Focus Awards, Shanghai, China, 2012.

Winner - Best Commercialisation of IP - NZ International Business Awards 2012.

▪ **Thank You.**

Paul Adams

Chairman and CEO

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