

Evolving Global IP Marketplace

The Opportunity for LES to Contribute to Developing Business Models and a Global IP Economic Infrastructure

James E. Malackowski

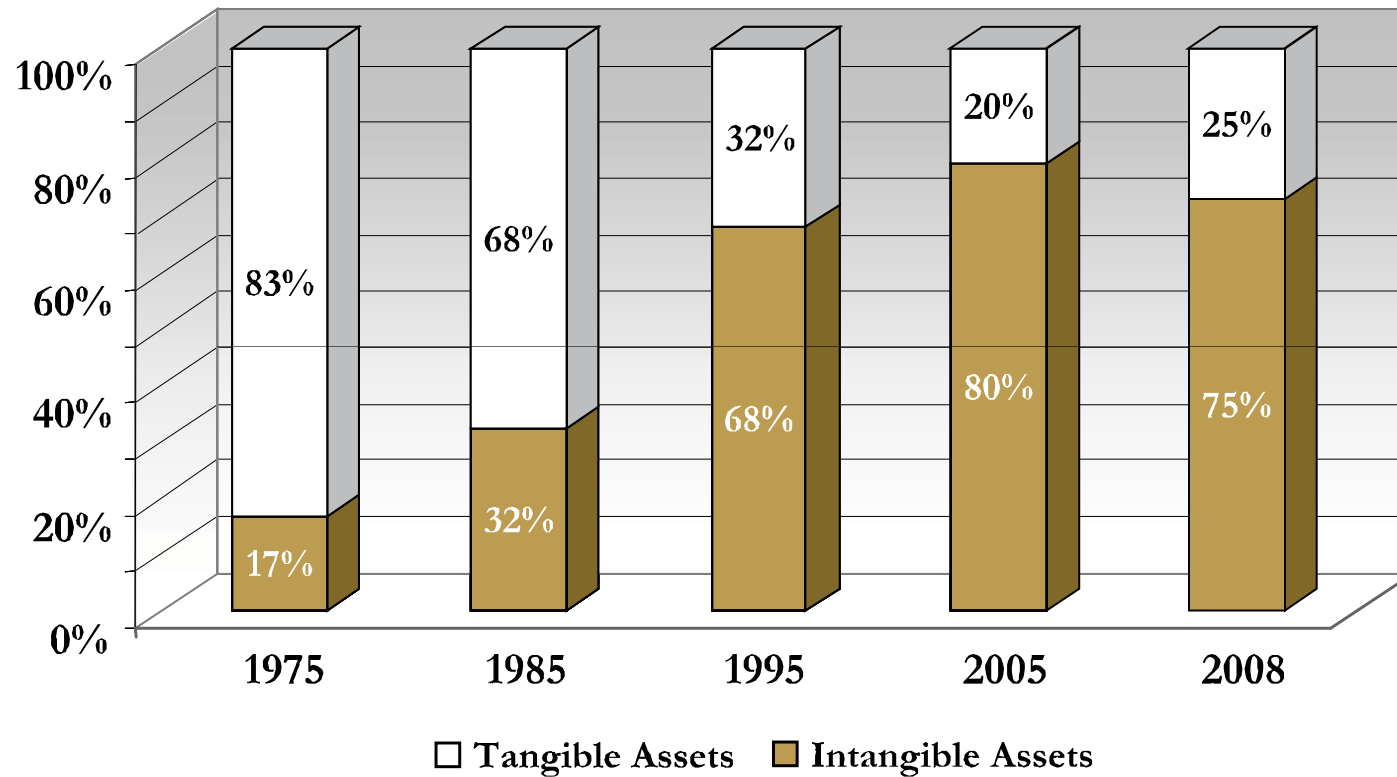
LESI Manila Conference, June 2009



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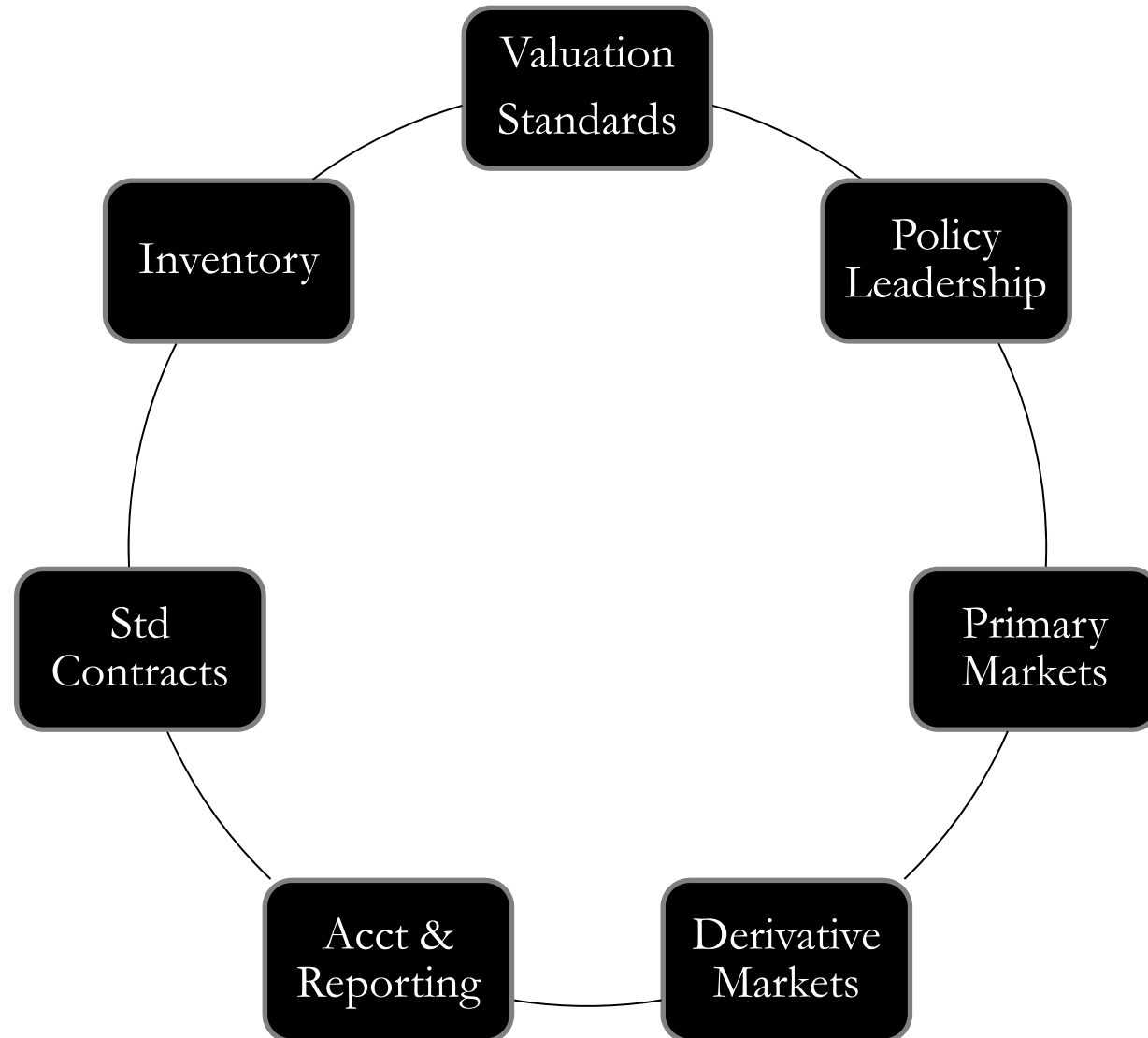
US Economic Inversion Extending Globally

Components of S&P 500 Market Value

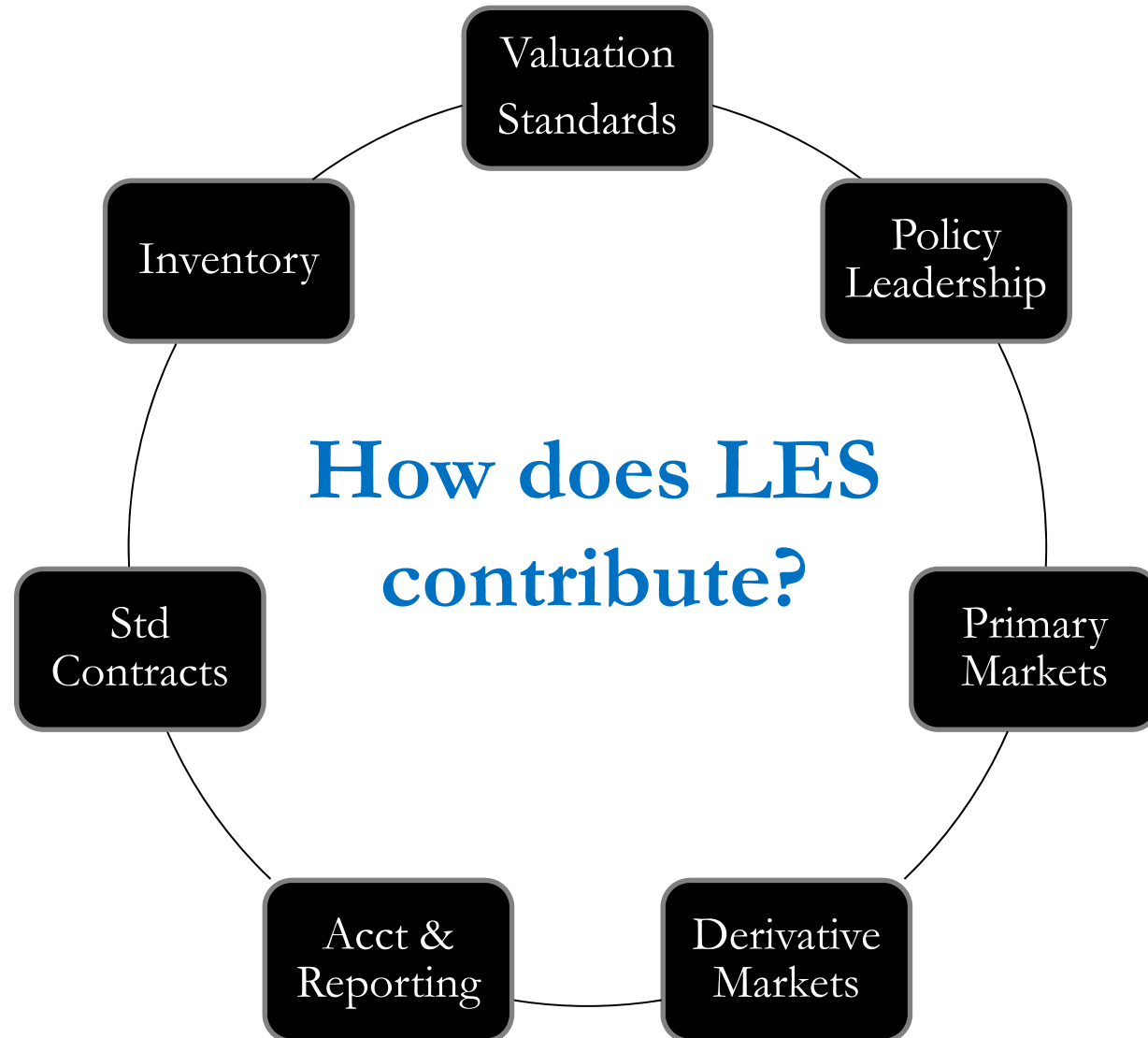


Source: Ocean Tomo

FTC Discussion on IP Infrastructure

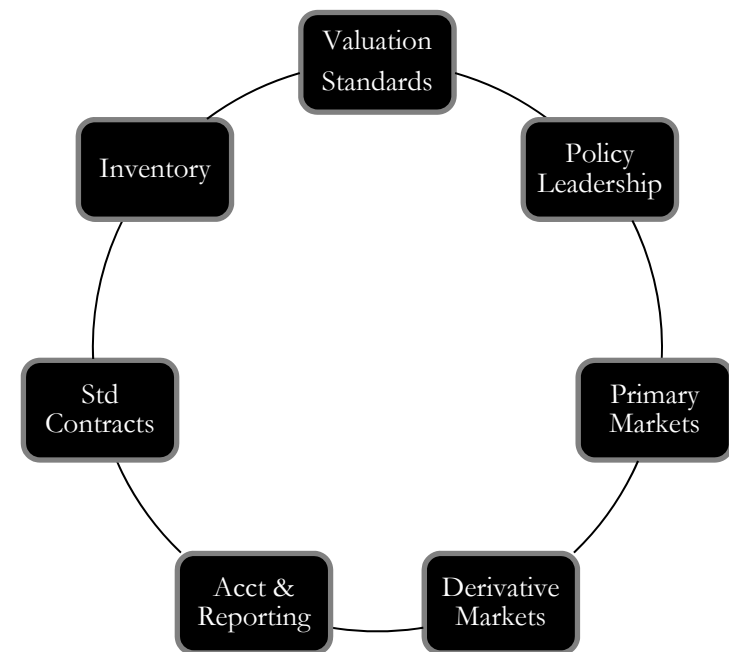


Key Question



Valuation Standards

- Traditional appraisal standards
- Patent scoring reports



Traditional Valuation Standards (US Examples)

- 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.

IPQSM Score: **180.5**

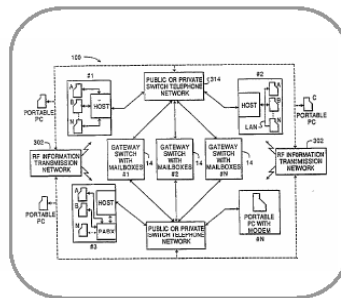
Overall Rating: **A+**

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 (IPQSM): 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 _a 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
Life Exp. (Years)	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
Exp. Survival	-	-	-	-	98%	-	-	-	97%	-	-	-	89%

IMPORTANT NOTICE

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^aFor application notes on this page please refer to Appendix 1 attached hereto.

PATENT DUE DILIGENCE REPORT

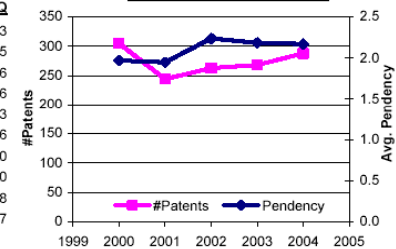
REPORT DATE: January 11, 2006

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	▲	~0.9
345	Computer graphics processing	0.837	▲	~0.8
128	Surgery	0.777	▲	~0.7
607	Surgery: light, thermal...	0.766	▲	~0.7
400	Typewriting machines	0.702	▲	~0.7
600	Surgery	0.688	▲	~0.6
341	Coded data generation...	0.627	▲	~0.6
273	Amusement devices: games	0.554	▲	~0.5
324	Electricity: measuring and testi	0.513	▲	~0.5
601	Surgery: kinesitherapy	0.303	▲	~0.3

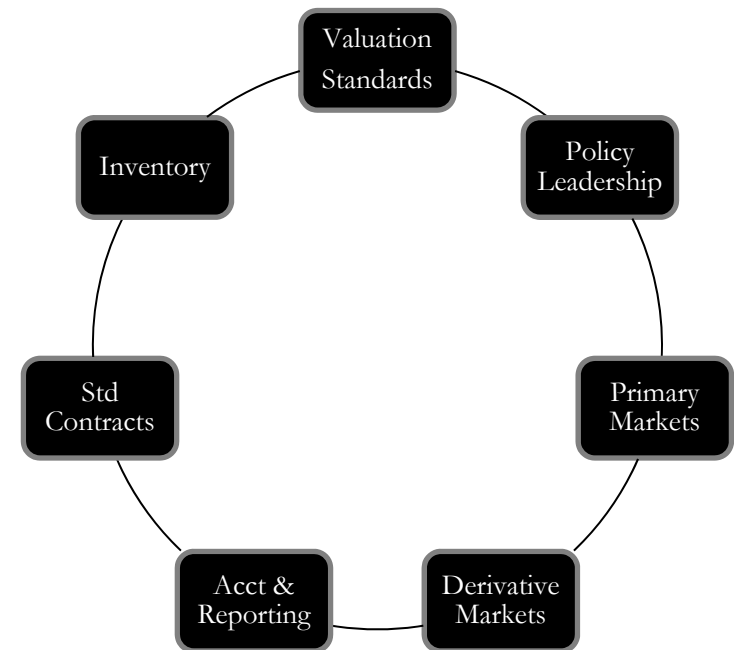
^aTrend data represents patent issue rates in a trailing 5-year period.

Valuation Standards – How Does LES Contribute?

- Further educational programming on traditional standards
- Comparisons of local valuation requirements and practice across Member Societies
- Encourage peer review publication on patent scoring reports and ratings methodologies in *les Nouvelles*
- Test valuation standards as a meaningful part of Certified Licensing Professional (CLP) qualification

Inventory

- National / Government IP inventory and listings
- Private company inventory and marking



National 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

Revised Patent Marking Standards (US Example)

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

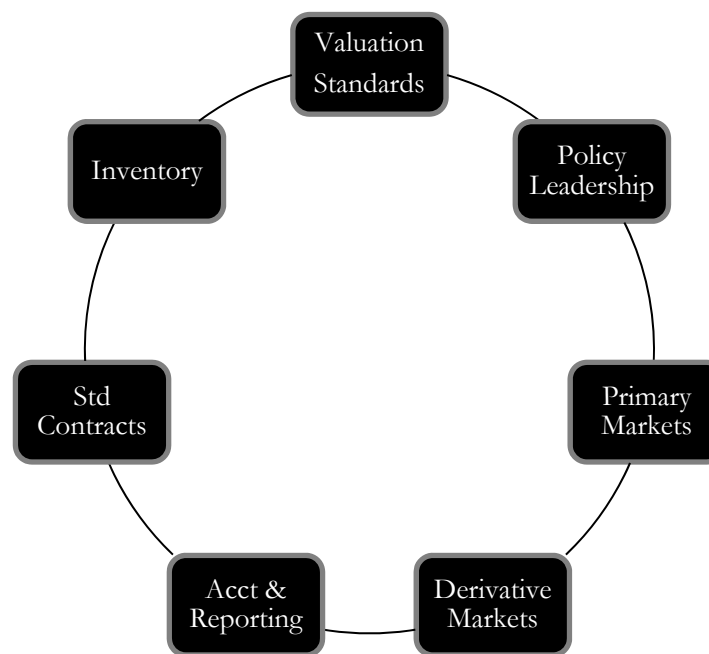
- Potential for near-universal patent marking
- Improved access to patented technology after a patent expires
- Substantial savings in patent marking costs to responsible manufacturers
- An ability to provide constructive notice for products that cannot otherwise be marked
- An increased likelihood of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

Inventory – How Does LES Contribute?

- Develop a best practice inventory process and training program for Government and quasi-governmental entities
- Target governmental technology transfer professionals for LES membership growth
- Use of LESI website as portal to list or search of national inventories
- White paper preparation addressing patent marking

Policy Leadership

- National Patent & Trademark Office policy
- Labor policy
- Trade policy

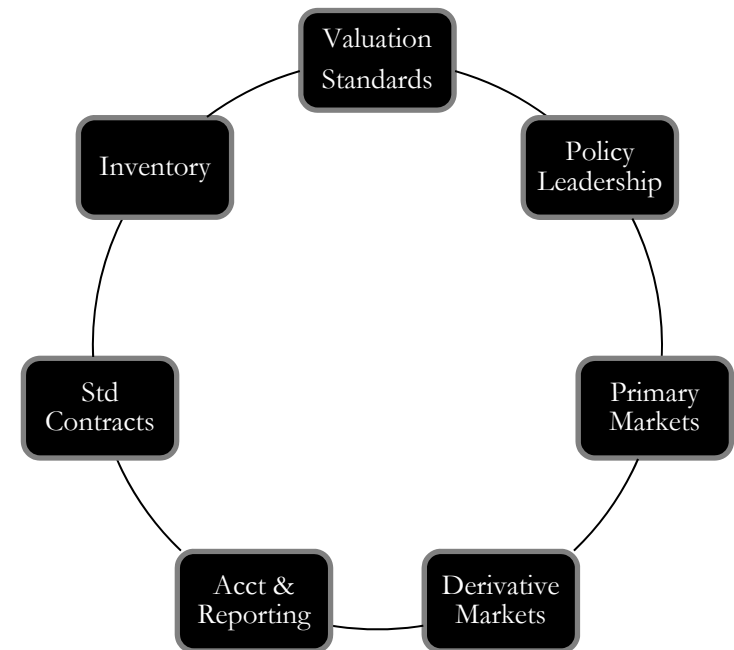


Policy – How Does LES Contribute?

- “Just Do It” – Develop a stronger policy voice
- List of core policy principals that represent LES beliefs
- On-going expanded efforts of LESI External Relations Committee
- Forum for debate on key policy questions or national differences
- Educational resource for policy makers
- Develop actual pro-IP policy recommendations

Standard Contracts

- Corporate IP license
- Government IP licenses
- Patent or IP 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

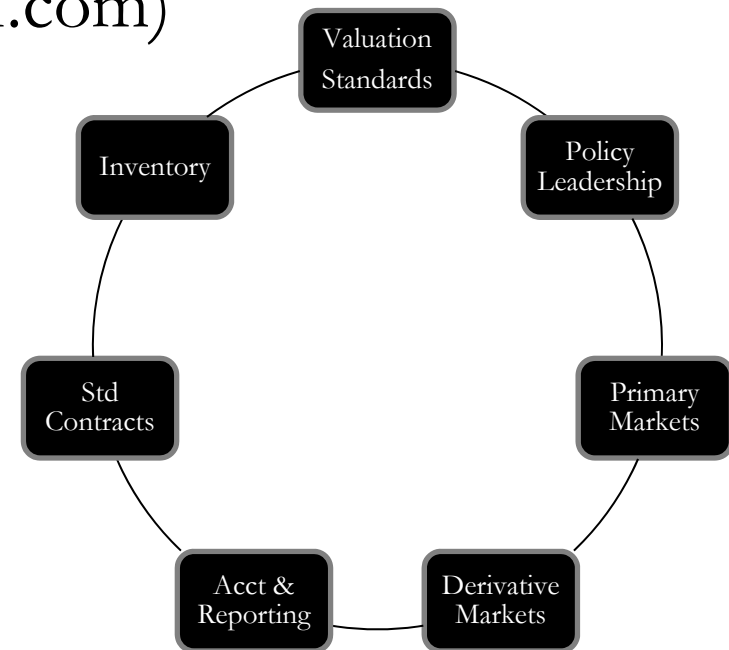
- Disclosure of encumbrances due to confidentiality provisions
- Understanding full scope of existing licenses / cross-licenses
- Communication of believed use or infringement
- Developing standard of reasonable disclosure and diligence
- Protecting buyer identity
- Know-how transfer

Standard Contracts – How Does LES Contribute?

- Create a set of LES Standard Form Agreements (updating previous efforts to do so by Robert Goldscheider and collection of LES Past Presidents)
- Contracting as a meaningful part of Certified Licensing Professional (CLP) examination

Primary Markets

- Sale (eg. auctions; www.PatentBidAsk.com)
- Licensing (eg. yet2.com)
- Traded exchange (eg. www.IPXI.com)



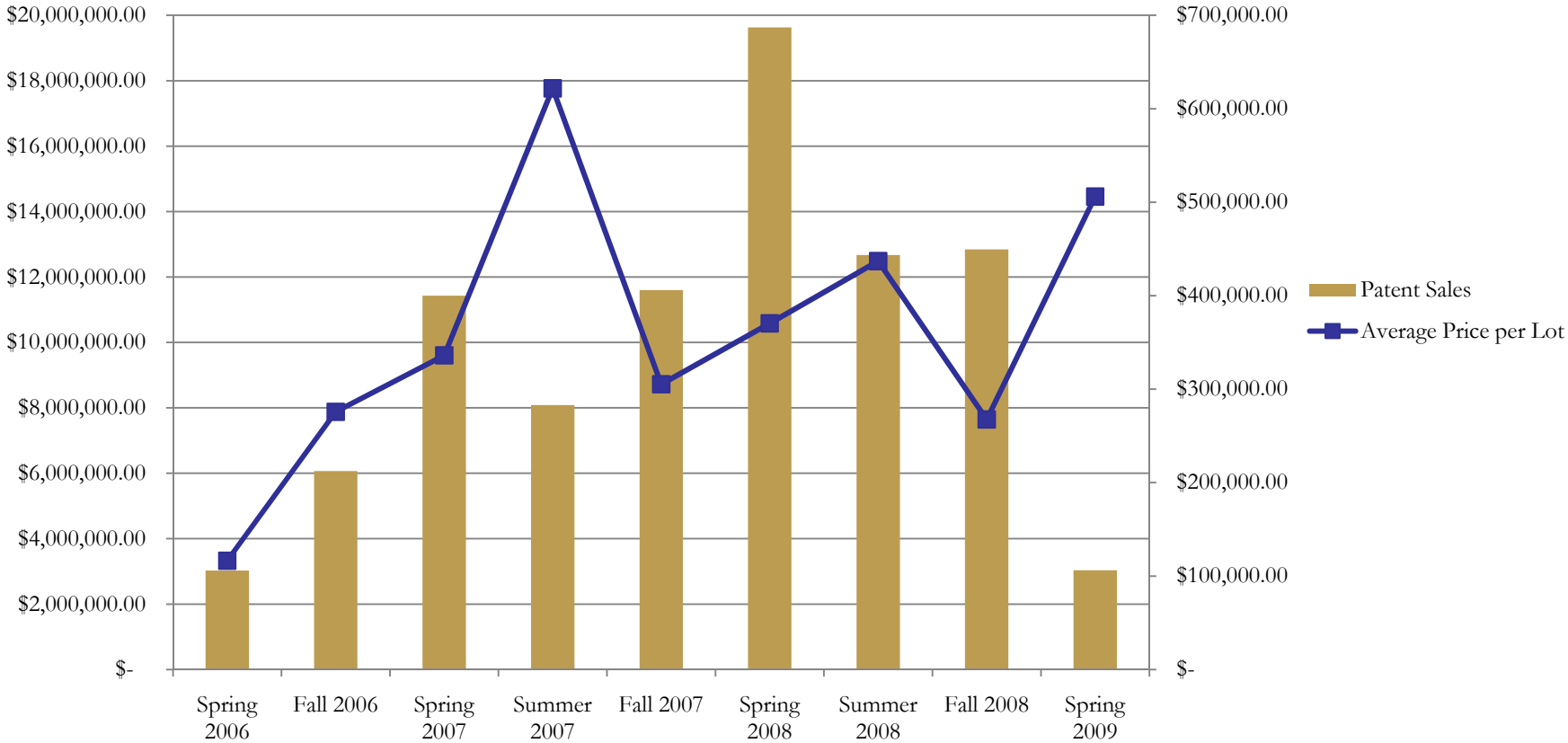
Ocean Tomo Auctions



\$100+ million in auction volume

Auction Results - Patents

Ocean Tomo Auction Results





March 12, 2008

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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.
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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)

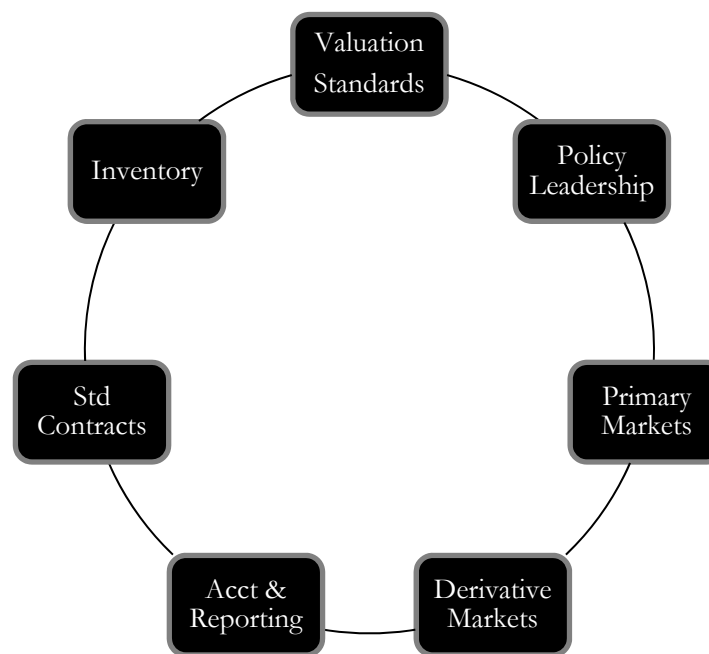
U137C: 3 million ULR's at an initial offering price of \$1 per unit (eg unit 2,000,001)

Primary Markets – How Does LES Contribute?

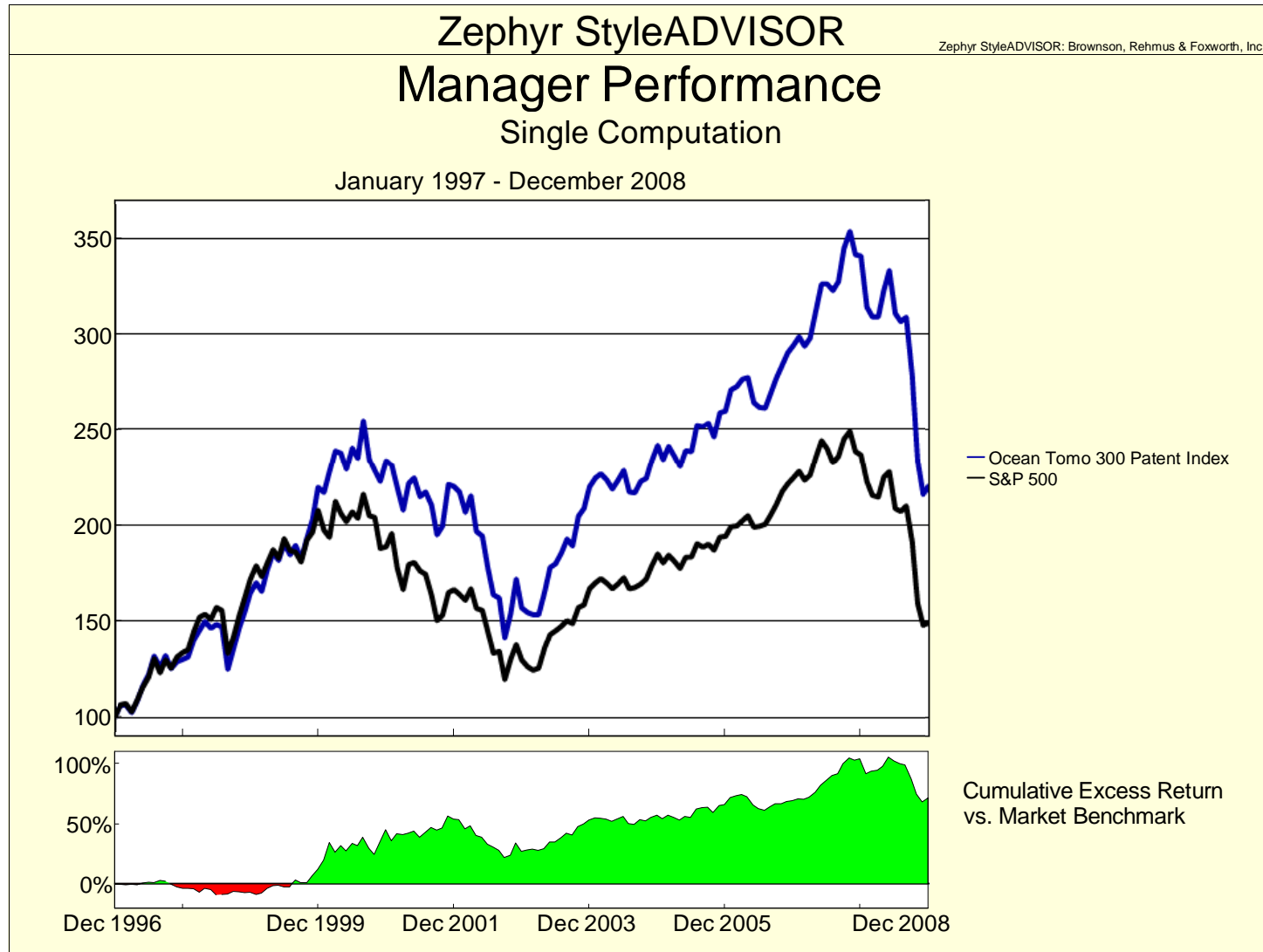
- Develop specific LES educational content on developing market tools
 - Valuation
 - Due diligence
- Consider events (eg auction) as adjunct to LES Conferences
- Imbedded on-line LES educational content (event driven or webinars linked to primary market sites)
- Standard LES approved disclosures / offering documents

Derivative Markets

- Equity indexes
- Patent indexes

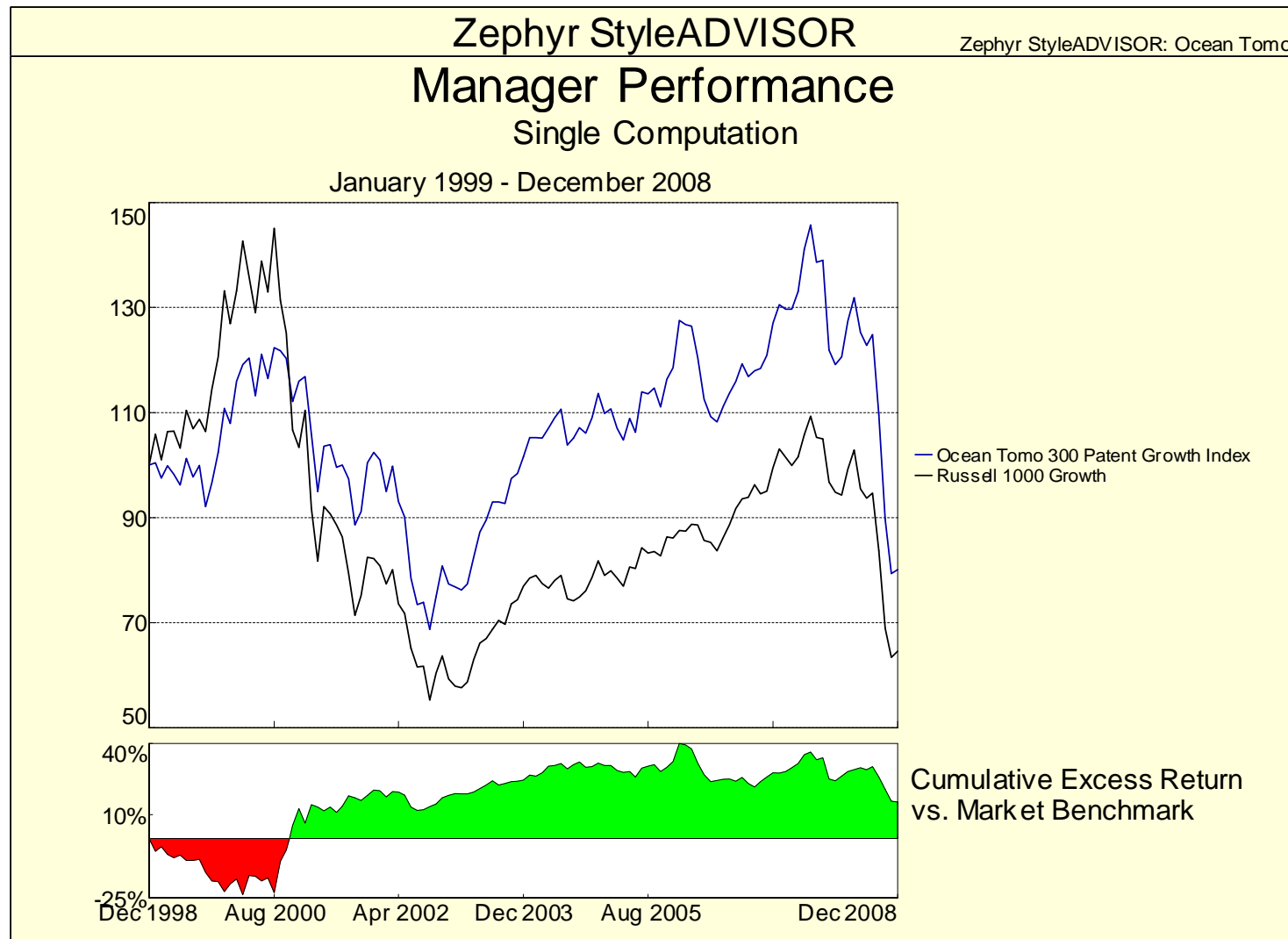


Broad Market Public Equity Indexes

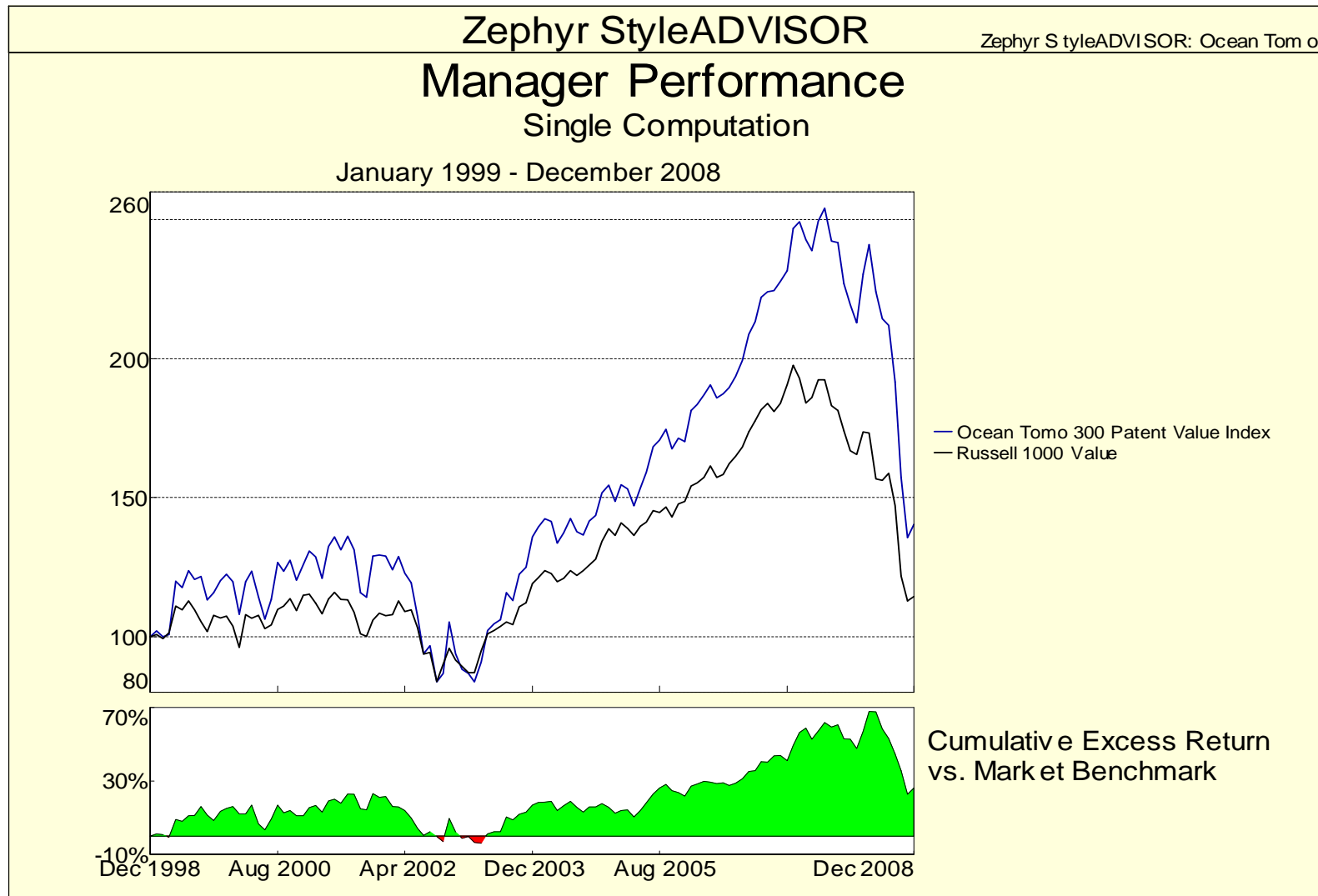


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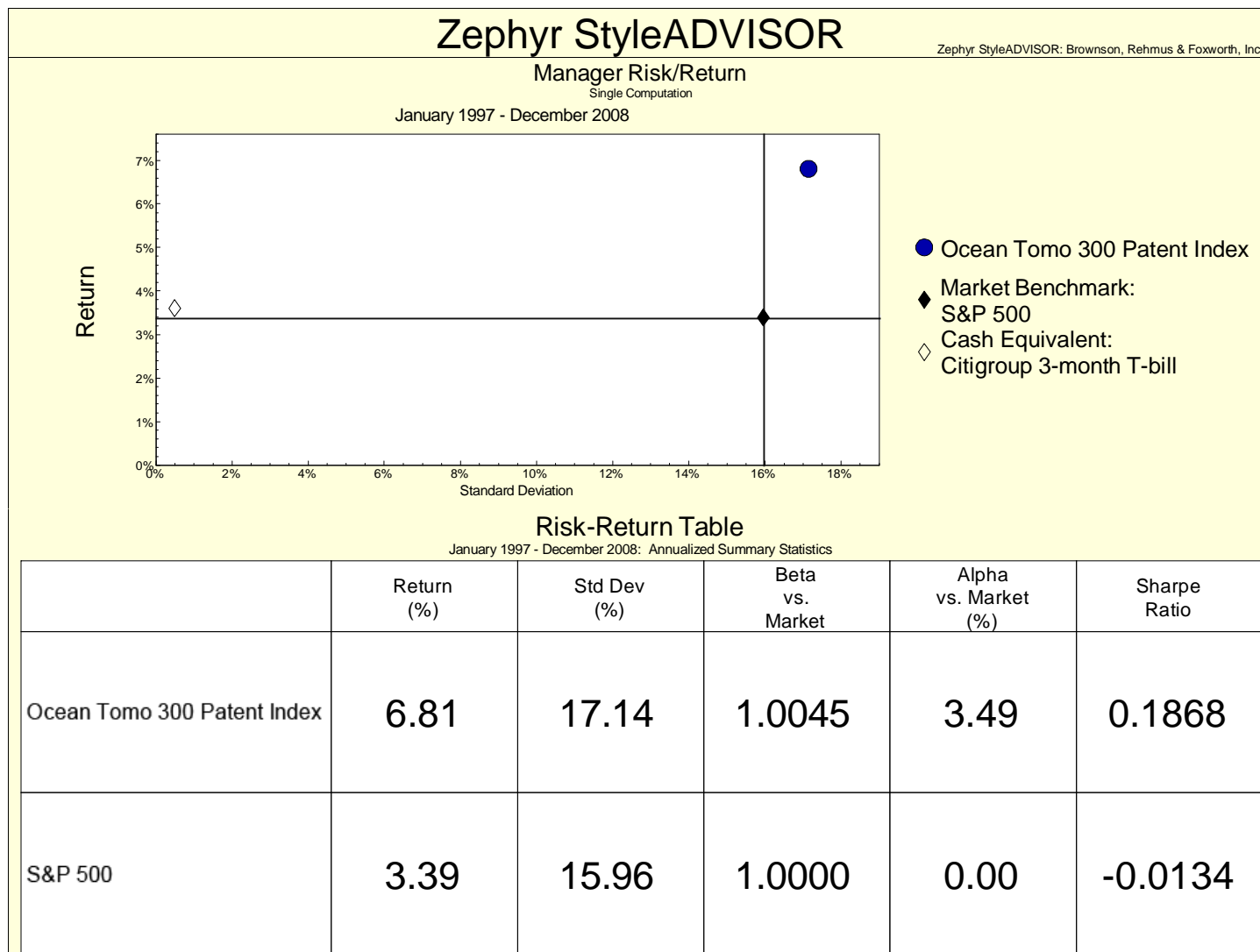
Growth Equity Indexes



Value Equity Indexes



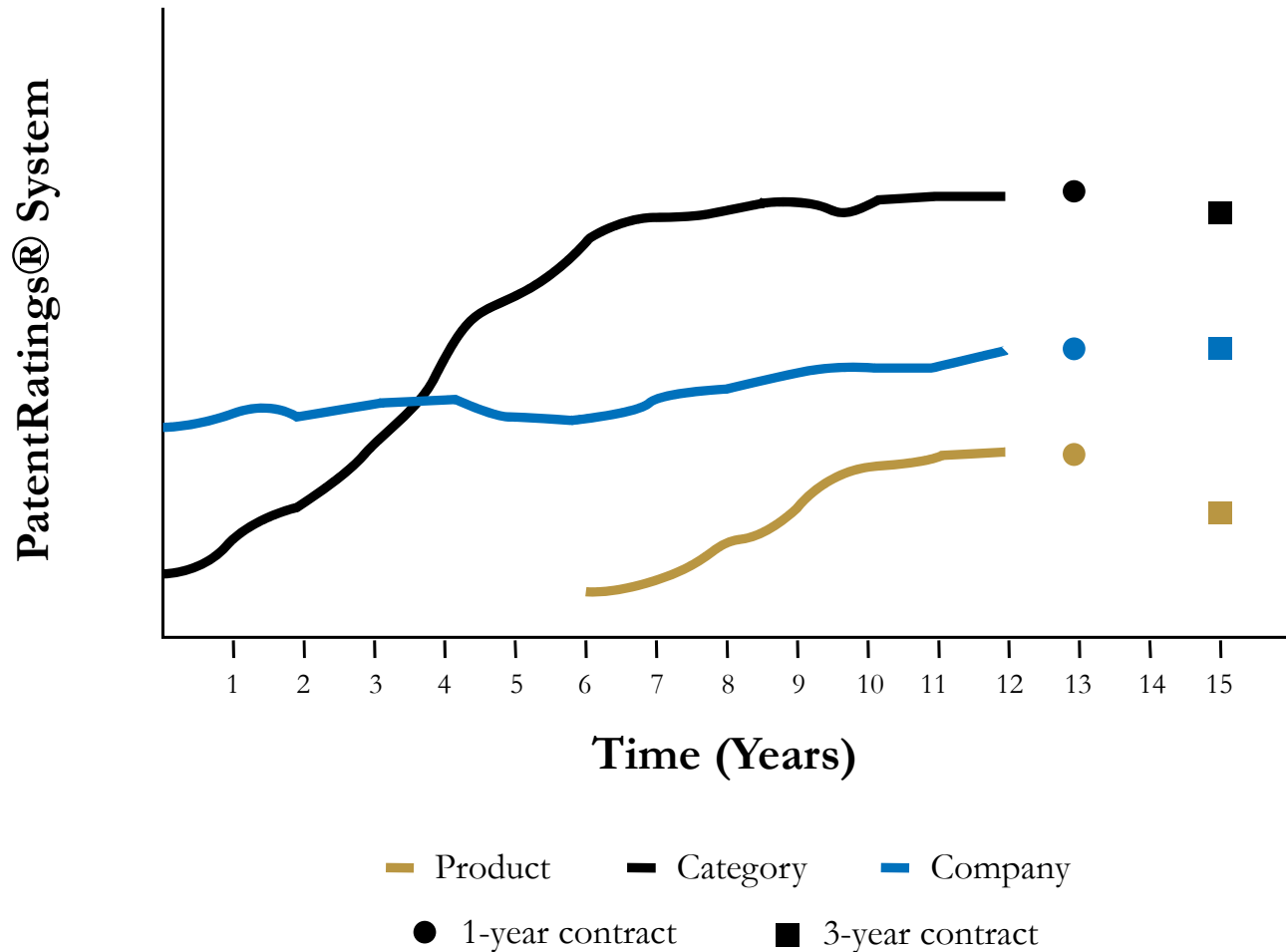
Proven IP Risk Adjusted Returns



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Patent Indexes

Tradable Technology Baskets™ Illustration

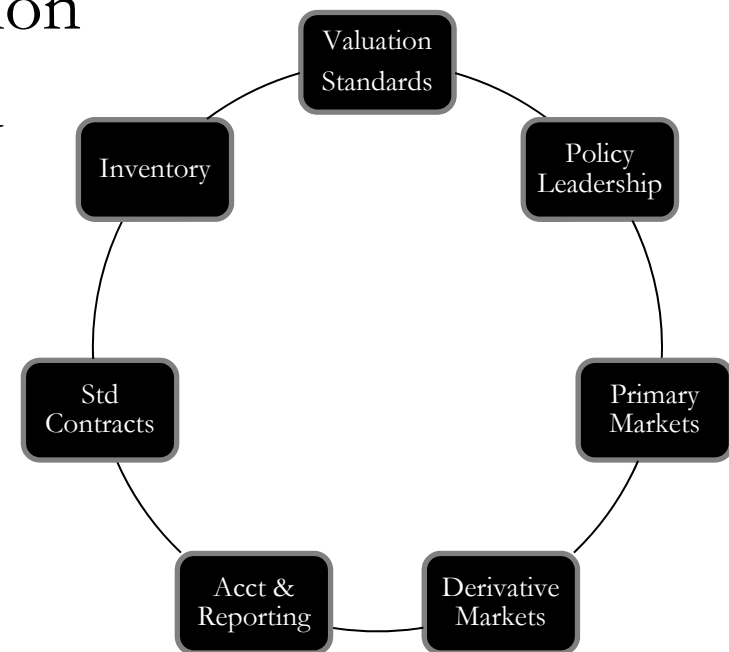


Derivative Markets – How Does LES Contribute?

- Educated voice to regulatory authorities (eg. SEC, CFTC, Congress)
- Structured development forums
- Peer review articles

Accounting & Reporting

- Update current IP disclosures
- Evolving tax policy
- Potential public equity qualification
- Data transparency and discovery
- 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 technology to international buyers which is today hidden in royalty free licenses

Potential Equity Qualification

- 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 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/IPXI (5)', 'RoyaltySource (25)', 'News (9)', and 'Blog (7)'. The 'Research & Ratings' section is highlighted, showing a list of patent results. Each result includes a title, an IPQ@ score, a patent number, a filing date, and the inventor's name. A brief description of the patent is provided, followed by a 'Purchase a PatentRatings Report for this patent. (More information)' link.

OTI.COM GLOBAL IP MARKET DATA

ABOUT ADD WIDGET MY PROFILE LOGOUT

Company Code Patent **Free Text**

vacuum hose

Show international results

Search

Patents (50,000) **Research & Ratings (10)** Patent-Bid/Ask (130) Finance/IPXI (5) RoyaltySource (25) News (9) Blog (7)

Research & Ratings

The IPQ@ score is an objective measure of patent quality. [Read more](#) at PatentRatings.com

10 item(s) found.

[Process for coloring granite](#)
IPQ@: **259.8**
US4695487 (A), filed Jun 17, 1986 - CHO YU H
A process for coloring granite a which comprises dissolving in a solvent a metallic salt formed by reacting a metal with a strong acid to form a solution, introducing the solution to a vacuum container charged with granite to permeate the solution into the...
[Purchase a PatentRatings Report for this patent. \(More information\)](#)

[Aspirating/ventilating apparatus and method](#)
IPQ@: **255.2**
US4569344 (A), filed Jul 23, 1984 - BALLARD MED PROD
A ventilating and aspirating assembly comprising an aspirating catheter tube internally disposed within and coextensive with a surrounding flexible collapsible sterility preserving film envelope, a connector by which ventilating air is involuntarily delivered...
[Purchase a PatentRatings Report for this patent. \(More information\)](#)

[Vacuum finger harvester for strawberries or the like](#)
IPQ@: **254.6**
US4524573 (A), filed Feb 13, 1984 - KINNEY DAVID J
There is disclosed a crop harvester for strawberries or other fruits or vegetables including a wheeled vehicle, preferably self propelled, adapted to pass along beds or rows of the crop and having a rotating perforated support element with hollow retractable...
[Purchase a PatentRatings Report for this patent. \(More information\)](#)

[Method and device for impregnating especially natural stones](#)
IPQ@: **253.1**
US4620989 (A), filed Sep 12, 1984 - JOHANN STIEGLER KG GMBH CO
Method and device for impregnating plates (5) with a dispersion (D), whereby the plates (5) are saturated with dispersant (M) in a device (1) and the plates (5) are dried with dry air in a drying system (2) from the surfaces (51) to be impregnated down to a...
[Purchase a PatentRatings Report for this patent. \(More information\)](#)

[Temperature and/or pressure resistant hose](#)
IPQ@: **246.6**
US5439035 (A), filed May 20, 1994 - ITALIANA SERRATURE TORINO
A hose including a number of circumferential corrugations substantially parallel to one another when the hose is unbent, separated by grooves, and connected in a longitudinal direction by ribs, so that each corrugation is connected to at least one adjacent...
[Purchase a PatentRatings Report for this patent. \(More information\)](#)

Accounting & Reporting – How Does LES Contribute?

- Public position and standard recommendation on disclosures
- Leverage LES website to collect transactional information
- Expanded LES surveys and related publication

Final Thoughts

- The developing IP infrastructure addresses the essence of LES
 - Business focus
 - Requires global consideration
- There will never be a better time or opportunity to make a difference
- Challenge and opportunity for both LESI and each member Society

**How does LES
contribute?**

Contact Information



OCEAN TOMO[™]
INTELLECTUAL CAPITAL EQUITY[®]

James E. Malackowski
200 West Madison
37th Floor
Chicago, IL 60606
(312) 327-4410 Ph
(312) 327-4401 Fx

jmalackowski@oceantomo.com

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CHICAGO
200 West Madison
37th Floor
Chicago, IL 60606
(312) 327-4400 Ph
(312) 327-4401 Fx

GREENWICH
500 W. Putnam
Suite 400
Greenwich, CT 06831
(203) 542-7299 Ph

ORANGE COUNTY
19200 Von Karman Ave.,
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Irvine, CA 92612
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PALM BEACH
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Suite 1
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(561) 309-0011 Ph
(561) 805-8765 Fx

SAN FRANCISCO
101 Montgomery Street
Suite 2100
San Francisco, CA 94104
(415) 946-2600 Ph
(415) 946-2601 Fx