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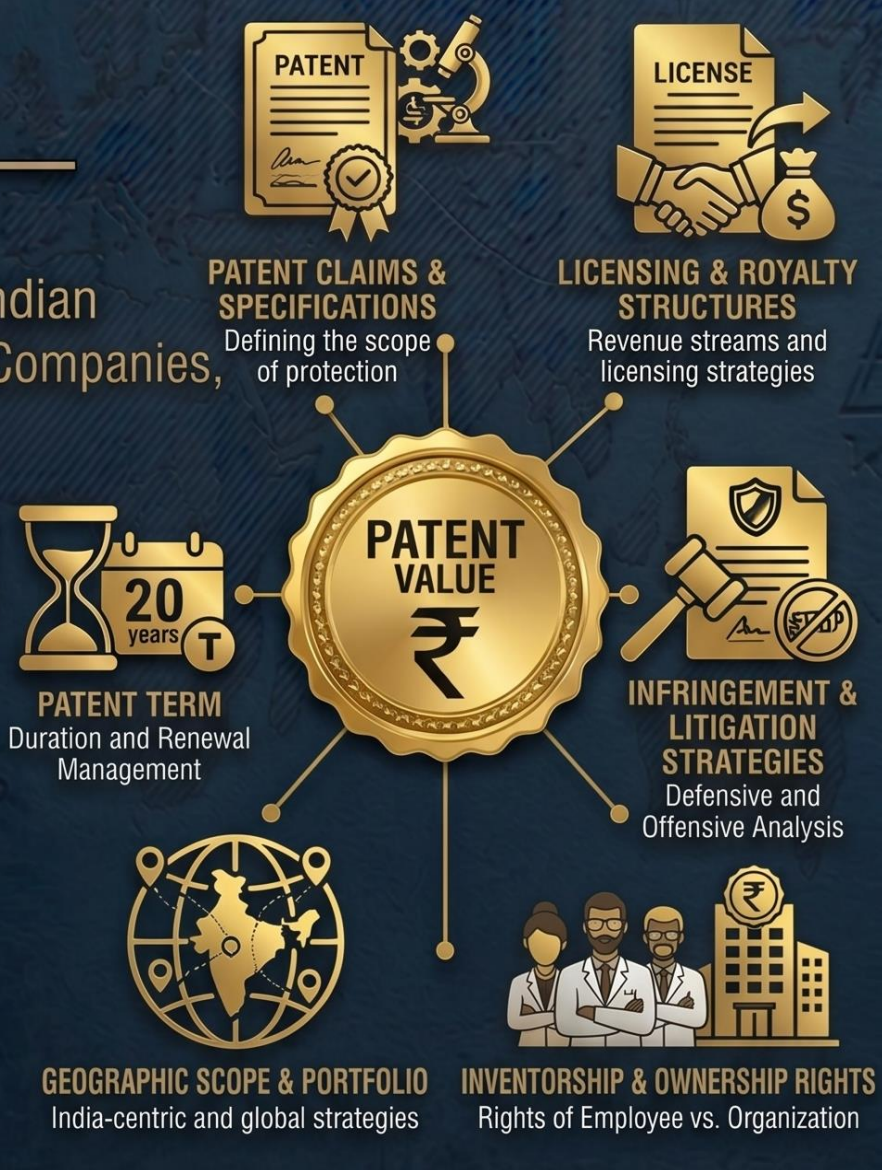
The Ultimate Guide on Patents Valuation in India — 2026 —

A Practitioner's Guide for Indian R&D Labs, Pharmaceutical Companies, Technology Firms, CFOs & Intellectual Property Lawyers



BY

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PATENT VALUATION SERVICES

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Sagar Shah is one of India's foremost intangible asset valuation specialists, with over 15 years of experience spanning transaction advisory, regulatory compliance, and litigation support mandates. He spent 9 years at Ernst & Young (EY) in the Transaction Advisory and Valuation practice, where he led intangible asset identification and valuation exercises for some of India's largest technology, pharmaceutical, and industrial M&A transactions. His work on patent and IP valuation spans Purchase Price Allocations under Ind AS 103, FEMA-compliant cross-border technology transfer pricing, income tax disputes under Section 35A of the Income Tax Act, and standalone IP monetisation mandates.

At Elite Valuation, the practice advises technology companies, pharmaceutical firms, R&D-intensive corporations, IP holding companies, licensing intermediaries, and legal counsel on the valuation of patent portfolios, technology licences, trade secrets, and other forms of registered and unregistered intellectual property. Every engagement is anchored in methodology rigour, regulatory defensibility, and deep sector understanding.

DESIGNATION	ACHIEVEMENT	REGULATOR	PRIOR FIRM
| CS	All India Rank Holder	IBBI Registered Valuer	9 Years at EY

> *"A patent without a credible valuation is a legal right without an economic anchor. Whether you are licensing your technology, transferring IP across borders, defending against infringement, or acquiring an innovation-driven business, the quality of the valuation opinion determines the outcome."*
> **— Sagar Shah, CA | CS | IBBI Registered Valuer | Ex-EY**

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OUR SERVICES

Patent and IP Valuation — Full Practice Coverage

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01

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02

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03

FEMA-Compliant Cross-Border IP Valuations

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04

Patent Infringement Damages Quantification

Litigation support valuations for patent disputes — lost profits, reasonable royalty, and unjust enrichment analyses under Section 108 of the Patents Act, 1970, for Indian courts and arbitration.

05

R&D Pipeline and Pre-Grant Patent Valuations

Probability-weighted expected value (rNPV) models for pharmaceutical, biotech, and technology R&D pipelines — valuing the option value of pending patent applications and development-stage IP.

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Income Tax and Regulatory Valuations

Section 35A know-how acquisition valuations, Section 56(2)(x) fair market value certificates, and APA and MAP support for IP-related transfer pricing disputes before the CBDT.

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IP Impairment Testing — Ind AS 36

Annual impairment reviews for capitalised patent and technology assets — recoverable amount computation and impairment charge determination for financial reporting under Indian accounting standards.

08

IP Securitisation and Collateral Support

Valuation opinions for patent-backed financing, IP mortgage structures, and securitisation of royalty streams — supporting lenders and borrowers in IP monetisation and structured finance transactions.

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WHY ELITE VALUATION

What Sets Our Patent Practice Apart

Independence, sector depth, and regulatory precision are the hallmarks of every Elite Valuation engagement. The following six attributes distinguish our patent and IP valuation practice from general advisory or accounting firm approaches.

Regulatory-Grade Independence	Every report is signed by an IBBI Registered Valuer and compliant with IVS, ICAI Valuation Standards, and applicable SEBI, FEMA, Income Tax, and Patents Act regulatory requirements.
Sector Depth Across IP-Intensive Industries	From pharmaceutical R&D pipelines to industrial technology portfolios and software IP, our practice brings granular knowledge of royalty benchmarks, patent economics, and IP deal structures across every sector.
Proprietary Royalty and Licence Database	We use authorized database of Indian technology licence transactions, ITAT royalty adjudications, APA-confirmed arm's-length rates, and comparable uncontrolled royalty benchmarks built over years of active practice.
Litigation-Proven Expert Testimony	Our patent infringement damages analyses have been accepted by Indian courts and arbitration tribunals. We provide independent, evidence-based expert witness reports structured to withstand rigorous cross-examination.
Full Regulatory Spectrum Coverage	FEMA, Ind AS 103 / 36 / 38, Income Tax Act (Sections 35A and 56(2)(x)), Patents Act 1970 (Section 108), Transfer Pricing (Sections 92 to 92F), and SEBI regulations — all handled under one advisory roof.
Process Transparency and Defensibility	Our valuation process includes a patent audit, technology life cycle analysis, methodology triangulation, and sensitivity analysis on every engagement — producing conclusions that withstand scrutiny by auditors, regulators, and courts.

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WHO WE SERVE

Industries and Client Types

Our patent valuation practice serves a broad cross-section of IP-intensive businesses, innovation-driven corporations, and legal and financial advisers across India's technology, pharmaceutical, and industrial sectors.

- Technology and Software Companies
- R&D-Intensive Industrial Corporations
- Licensing Intermediaries and Aggregators
- CFOs and Investment Bankers
- Academic and Research Institutions
- Pharmaceutical and Biotech Firms
- IP Holding Companies and NPEs
- Legal Counsel and Patent Attorneys
- Private Equity and Venture Funds
- Government and Public Sector R&D Bodies

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Get in Touch with US for Patent Valuation

Whether you are planning a technology M&A, structuring a cross-border IP licence, responding to a Transfer Pricing audit, quantifying infringement damages, or seeking IP-backed financing, our team is ready to advise. Reach us through any of the channels below.

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PART I: PATENTS IN INDIA — LAW, ECONOMICS & STRATEGY

Chapter 1: The Indian Patent Landscape — Legal Framework, Grant Trends, and Economic Significance

India's relationship with patents has undergone a fundamental transformation since the country amended its Patents Act in 2005 to comply with the TRIPS Agreement under the WTO framework. From a system designed primarily to protect process inventions in the pre-2005 era, India now grants product patents across all fields of technology — with limited exceptions that reflect the country's developmental priorities, particularly in the pharmaceutical and agricultural sectors. The economic significance of this transformation is substantial: Indian companies, multinationals operating in India, and research institutions are filing and receiving patents at a rapidly increasing rate, and the value of patent portfolios held by Indian entities has grown commensurately.

For IP owners, corporate legal teams, CFOs, and valuation professionals, understanding both the legal architecture and the economic dimensions of India's patent system is the essential starting point. A patent's legal validity, its remaining term, its scope of claims, and its competitive landscape in the market all determine its economic value — and these legal dimensions cannot be separated from the valuation exercise.

1.1 The Legal Framework — Patents Act, 1970 and Its Amendments

The Patents Act, 1970, as amended by the Patents (Amendment) Act, 2005 and subsequent amendments, is the primary legislation governing the grant, maintenance, assignment, licensing, and enforcement of patents in India. Key statutory provisions relevant to patent valuation include: Section 2(1)(m) — definition of 'invention' requiring novelty, inventive step, and industrial applicability; Section 3 — non-patentable subject matter including discoveries, mathematical methods, business methods, computer programmes per se, and the contentious Section 3(d) exclusion for pharmaceutical modifications without enhanced efficacy; Section 69 — compulsory assignment and licensing provisions; Section 84 — compulsory licensing for patented inventions not worked adequately; and Sections 108–111 governing infringement remedies.

Patent Type	Legal Basis	Term	Key Eligibility Criterion
Product Patent	Patents Act, 1970 (S.2(1)(m))	20 years from filing	Novel, inventive step, industrial applicability
Process Patent	Patents Act, 1970 (S.2(1)(m))	20 years from filing	New process not obvious to skilled person
Pharmaceutical / Drug Patent	S.3(d) restriction applies	20 years (if granted)	Must show enhanced efficacy vs. known substance

Patent Type	Legal Basis	Term	Key Eligibility Criterion
Software / Computer Programme	S.3(k) — not patentable per se	N/A (software alone excluded)	Must have technical effect beyond software
Biological / Biotech Patent	TRIPS-compliant, bio-diversity rules apply	20 years from filing	Micro-organisms patentable; plants/animals not
Utility Model (Petty Patent)	Not available in India	N/A	Not part of Indian IP system

Table 1.1: Patent Types under the Indian Patents Act, 1970 — Eligibility and Term

1.2 Patent Filing and Grant Trends in India

India's patent filing landscape has evolved significantly. The Indian Patent Office (IPO) — with offices in Mumbai, Delhi, Chennai, and Kolkata — processes applications under the Patent Cooperation Treaty (PCT) as well as direct national filings. Total patent filings in India have grown at a CAGR of approximately 12–15% over the past five years, driven by: increased domestic R&D investment by Indian corporations (particularly in pharma, IT, and auto); the Make in India and AtmaNirbhar Bharat policy push encouraging domestic innovation; growing awareness among startups and MSMEs about IP protection; and increased PCT national phase entries from global multinationals seeking Indian market protection.

The grant rate in India — historically lower than in comparable jurisdictions — has improved meaningfully following the IPO's examination capacity expansion and accelerated examination provisions. Pharma and biotech remain the most patent-intensive sectors in India by filing volume, followed by electronics, telecommunications, and mechanical engineering. The average pendency from filing to grant has been reduced to approximately 5–6 years for regularly examined applications, with a fast-track examination route available for startups, small entities, and women inventors.

1.3 The Economic Significance of Indian Patents

The economic value embedded in Indian patent portfolios spans a wide spectrum. At one extreme, a single blockbuster pharmaceutical patent protecting a high-revenue drug in the Indian market may be worth hundreds of crores of rupees — reflecting the exclusivity premium it commands in a large, price-sensitive market. At the other extreme, many granted patents have minimal economic value because the underlying invention was never commercialised, has been superseded by alternative technologies, or faces design-arounds that effectively neutralise the legal protection.

This wide value spectrum makes rigorous, methodology-based patent valuation both necessary and complex. India's corporate sector is increasingly recognising patent portfolios as genuine balance sheet assets — not merely defensive tools — and this recognition is driving demand for credible, independent patent valuations across multiple use cases: M&A transaction support, transfer pricing compliance, litigation damages, IP monetisation, and financial reporting.

KEY INSIGHT

We have observed a persistent disconnect between the legal value and economic value of Indian patent portfolios. We frequently encounter patent portfolios where 80–90% of the granted patents have near-zero economic value — the inventions were never commercialised, the market moved on, or the patent scope is so narrow that it offers no meaningful exclusivity. Identifying and concentrating value on the 10–20% of patents that actually drive commercial advantage is the most important first step in any Indian patent portfolio valuation. Filing volume is not a proxy for portfolio value.

1.4 Key Stakeholders in Indian Patent Valuation

Patent valuation in India is a multi-disciplinary exercise that involves legal, technical, and financial professionals working in concert. The primary stakeholders and their roles are: the patent attorney or IP counsel (assessing legal validity, claim scope, and enforceability); the technical expert (assessing the technology's competitive position, substitutability, and remaining useful life); the financial valuer or registered valuer (applying economic valuation methodologies and preparing the valuation report); and the CFO or corporate treasury team (integrating the patent valuation into financial reporting, tax planning, or deal execution).

PRO TIP

Before commissioning any patent valuation, conduct a 'patent audit' — a systematic review of every patent in the portfolio to classify each as: core (actively used in current products or processes), licensing (generating or capable of generating royalty income), defensive (blocking competitor designs but not actively used), pending (applications not yet granted), and non-core (granted but commercially irrelevant). This classification informs the valuation methodology and ensures the valuation effort is focused on the patents that actually matter economically.

PART I: PATENTS IN INDIA — LAW, ECONOMICS & STRATEGY

Chapter 2: What Makes a Patent Valuable — Technical, Legal, and Commercial Value Drivers

Every patent valuation exercise must begin with a rigorous assessment of the patent's value drivers — the specific technical, legal, and commercial characteristics that determine how much economic benefit the patent creates and for how long. A patent valuation that skips this qualitative assessment and proceeds directly to quantitative modelling will produce a number without foundation. The value drivers framework is the bridge between the legal instrument (the patent grant) and the economic model (the valuation).

Understanding what drives patent value also helps practitioners avoid the most common error in patent valuation: treating all patents in a portfolio as equivalent and applying a uniform methodology to every patent regardless of its commercial relevance, legal strength, or technical lifecycle stage. Premium patents — those that are broad, legally robust, commercially significant, and technically current — require a different (and typically more income-based) methodology than marginal patents that have limited commercial use.

2.1 The Three Dimensions of Patent Value

Value Driver Category	Specific Factor	Value Impact	Assessment Method
Legal Strength	Claim breadth and scope	High — broad claims = higher exclusivity	Patent attorney claim mapping
Legal Strength	Remaining patent term	High — longer term = more valuable	Days-to-expiry calculation
Legal Strength	Jurisdictional coverage	High — multi-country = greater monopoly	Patent family mapping
Technical Position	Design-around difficulty	High — hard to design around = stronger	Technical expert assessment
Technical Position	Technology lifecycle stage	High — early-stage tech = longer relevance	Technology S-curve analysis
Commercial Position	Revenue attributable to patent	Very High — primary value driver	Isolation analysis / contribution
Commercial Position	Licensing market depth	Medium — active licensees = better comps	Licence transaction database
Commercial Position	Infringement risk landscape	Medium — active infringers = enforcement value	Freedom-to-operate analysis

Table 2.1: Patent Value Drivers — Technical, Legal, and Commercial Dimensions

2.2 Legal Value Drivers — Claim Scope, Validity, and Enforceability

The legal dimension of patent value is fundamentally about exclusivity — how broad is the monopoly that the patent grant confers, and how defensible is that monopoly against challenge? The most economically valuable patents are those with broad independent claims that cover the commercially important embodiment of the invention, not merely a specific technical implementation.

In India, patent claims are interpreted by the courts based on the specification and drawings, with reference to the prosecution history. The scope of protection is what the claims expressly state, unlike some jurisdictions where the doctrine of equivalents extends protection beyond literal claim language. This makes claim drafting quality a critical determinant of Indian patent value — a narrowly drafted patent that does not cover the commercially important forms of the invention may have little practical exclusivity value even if it is valid and in force.

- Independent claim count and breadth: fewer, broader independent claims typically indicate a stronger patent
- Prior art density: a patent granted in a crowded prior art landscape has lower validity confidence and higher invalidation risk
- Divisional and continuation families: a well-managed patent family with divisionals covering different aspects of the invention provides more comprehensive protection
- IPO prosecution history: a clean prosecution history without significant claim amendments strengthens validity confidence
- Opposition and post-grant challenge history: a patent that has survived a Section 25 post-grant opposition has enhanced validity credibility

2.3 Technical Value Drivers — Lifecycle, Substitutability, and Innovation Position

The technical dimension of patent value asks: is the underlying technology still relevant, and is the patent the best available protection for that technology? A patent on a genuinely novel and disruptive technology that solves a significant commercial problem has high technical value. A patent on an incremental improvement to an obsolete technology has low technical value regardless of its legal strength.

The technology lifecycle concept — the classic S-curve of emergence, growth, maturity, and decline — is directly relevant to patent valuation. Patents on technologies in the growth phase of their lifecycle have the highest expected remaining utility and highest economic value. Patents on technologies in the decline phase may still have litigation or defensive value but diminishing commercial value. Valuers should obtain an independent technical expert opinion on where the patented technology sits in its lifecycle at the valuation date.

KEY INSIGHT

We have encountered multiple patent portfolio valuations where the valuer applied the same relief-from-royalty methodology to both core patents (protecting the company's primary products) and peripheral patents (protecting minor product variants with negligible sales). The

result was a highly misleading portfolio value that bore no relationship to economic reality. We segment every patent portfolio into at least three tiers — core, secondary, and non-core — and apply appropriate methodologies and effort levels to each tier. Core patents typically represent 5–10% of portfolio count but 60–80% of portfolio value.

2.4 Commercial Value Drivers — Revenue Attribution and Market Position

The commercial dimension is ultimately the most important determinant of patent value, because patents derive their value from the economic benefits they generate — whether through exclusive product sales, royalty income, or litigation outcomes. A technically brilliant patent on a technology that the market does not want or cannot afford is economically worthless.

Revenue attribution — identifying what portion of a product's revenue is specifically attributable to the patent's exclusivity — is the central challenge of commercial patent value assessment. The tools used include: the '25% rule' (a rule of thumb that 25% of operating profit is attributable to the licensed IP — widely used but theoretically contested); profit isolation analysis (comparing margins on patented vs. non-patented products); industry royalty rate benchmarks; and the analytical method (building up from the patent's specific contribution to the product's value proposition).

PRO TIP

Never apply the 25% rule mechanically in an Indian patent valuation without first testing whether it is consistent with actual market royalty rates for the specific technology sector. The 25% rule was developed for US technology licensing markets and has been rejected by several US courts as an unreliable starting point. In Indian pharma and agro-chemical licensing markets, actual royalty rates typically range from 2–8% of net sales — far below what the 25% rule would imply. Always anchor your royalty rate to actual market data first, then use the 25% rule as a cross-check at best.

PART II: CORE PATENT VALUATION METHODOLOGIES

Chapter 3: The Income Approach — Relief from Royalty and Discounted Cash Flow Methods

The Income Approach is the most widely used and most theoretically rigorous methodology for patent valuation, and it is the primary approach for any patent that has commercial significance — a patent that generates revenue, saves costs, or commands a royalty in the market. Two variants of the Income Approach are used in practice: the Relief from Royalty (RfR) method and the Incremental Cash Flow (or Excess Earnings) method. Each has specific strengths, limitations, and appropriate use cases.

3.1 The Relief from Royalty Method — Mechanics and Application

The Relief from Royalty (RfR) method values a patent by reference to the hypothetical royalty payments that the patent owner would have to pay to license the technology if it did not already own the patent. The logic is straightforward: by owning the patent rather than licensing it, the owner is 'relieved' of having to pay royalties. The present value of this royalty relief, over the remaining life of the patent, is the patent's value.

Patent Value (RfR) = Σ [Revenue Base × Royalty Rate × (1−Tax Rate)] / (1+WACC)^t

The three key inputs to the RfR model are: (1) the revenue base — the net revenue of products or processes covered by the patent; (2) the royalty rate — the arm's-length rate at which the technology would be licensed in the open market; and (3) the discount rate — reflecting the risk of the royalty stream over the patent's remaining life. Each of these inputs requires careful judgement and documentation.

3.2 Determining the Royalty Rate — The Most Critical Input

The royalty rate is the single most impactful and most contested input in any RfR-based patent valuation. It represents the rate at which a willing licensor and willing licensee, dealing at arm's length with full knowledge of the patent's scope and the technology's commercial relevance, would agree to license the technology. In practice, royalty rates are determined by reference to: published royalty rate databases (ktMINE, RoyaltySource, RoyaltyStat); comparable licence agreements disclosed in SEC/SEBI filings, court records, or company annual reports; industry norms for the specific technology sector; and the analytical method (building up from the patent's specific contribution).

In India, additional data sources for royalty rate benchmarking include: the Royalty Approval Circulars issued by DPIIT (Department for Promotion of Industry and Internal Trade) for automatic route technology transfers; Transfer Pricing assessments and APAs involving IP-related royalty payments disclosed in public court records; and sector-specific studies published by ICRA, CARE, and academic institutions. The DPIIT automatic route ceiling — historically 5% of domestic

sales and 8% of export sales for technology collaboration agreements — provides a useful regulatory reference point, though it is not a valuation constraint.

KEY INSIGHT

We have seen patent valuation disputes in Transfer Pricing assessments where the tax authority challenged a royalty rate of 6% on the grounds that it exceeded the DPIIT automatic route ceiling of 5%. This reflects a fundamental misunderstanding of the regulatory framework — the DPIIT ceiling is an approval threshold, not a market rate cap. We have successfully supported our clients in establishing royalty rates of 8–15% for genuinely differentiated technology licences by building a comprehensive comparable transaction database and technical value-driver analysis. The royalty rate must reflect the economic reality of the specific patent's contribution, not a regulatory ceiling designed for a different purpose.

3.3 The Incremental Cash Flow Method

The Incremental Cash Flow method values a patent by computing the present value of the additional cash flows that the patent owner generates specifically by virtue of the patent's exclusivity — compared to a 'but for' scenario without the patent. The incremental cash flow is the difference between: the actual profit earned by the patent owner on products or processes covered by the patent, and the profit that would have been earned if the technology were freely available (i.e., the market became fully competitive immediately upon patent expiry).

Patent Value (ICF) = PV of [Actual Operating Profit – Competitive Market Profit] over Remaining Patent Life

The Incremental Cash Flow method is most appropriate for: patents covering the core product of a business where the exclusivity premium is directly observable; pharmaceutical patents where the generic entry scenario can be modelled with precision; and situations where the incremental profit attributable to the patent can be isolated from other value drivers.

PRO TIP

When applying the Incremental Cash Flow method to an Indian pharmaceutical patent, model the 'patent cliff' scenario explicitly: project the revenue and margin trajectory assuming the patent continues (exclusivity scenario) versus assuming the patent were to expire immediately and generics entered at 50–80% price erosion within 12–24 months. The present value difference between these two scenarios is the patent's economic value. This approach gives a more intuitive and defensible result than applying an abstract royalty rate to a revenue base, particularly for litigation support valuations where the court needs to understand the actual economic harm.

3.4 Setting the Discount Rate for Patent Valuations

The discount rate for patent valuations must reflect the specific risk profile of the patent's cash flow stream — which is typically higher risk than the risk profile of the underlying business as a whole. Patent-specific risks include: validity risk (the patent may be invalidated in a future IPR or court proceeding); enforceability risk (the patent may be unenforceable due to prosecution history issues); obsolescence risk (the technology may be superseded before the patent expires); and

revenue concentration risk (if the patent covers a single product with a concentrated customer base).

In practice, many practitioners use the WACC of the patent owner's business as the discount rate for patent valuations. This is appropriate for core patents that are well-integrated into the business's operations and whose cash flows are correlated with the business's overall risk. For early-stage or development-stage patents with higher uncertainty, a premium above the business WACC — typically 200–500 basis points — is warranted.

PART II: CORE PATENT VALUATION METHODOLOGIES

Chapter 4: The Market Approach — Comparable Licence Transactions and Patent Sale Data

The Market Approach values a patent by reference to observable market transactions involving comparable patents or technology licences. It is grounded in the principle that the market, through arm's-length transactions between informed buyers and sellers, provides the most objective evidence of value. For patent valuation, the Market Approach is applied through two primary techniques: the Comparable Licence Transaction method (benchmarking royalty rates from comparable licence agreements) and the Comparable Patent Sale method (benchmarking lump-sum prices paid in arm's-length patent transactions).

The primary challenge with the Market Approach in the Indian context is data availability. Unlike the United States and Europe, where large databases of patent licence transactions and patent sale prices have been built over decades, India's patent transaction market is less transparent and less documented. However, the data landscape is improving, and skilled valuers who know where to look can build a credible comparable data set for most technology sectors.

4.1 Data Sources for Market-Based Patent Valuation in India

Data Source	Type of Data Available	Reliability	India Relevance
ktMINE / RoyaltySource	Licence agreements by industry and IP type	High — curated database	Limited India-specific data; global benchmarks
SEC / SEBI Filings	Disclosed royalty rates in related-party disclosures	High — regulatory disclosure	SEBI disclosures for listed Indian companies
Court Records (IP Cases)	Royalty rates established in Indian patent litigation	High — judicial determination	Strong India relevance — precedent value
DPIIT Technology Approval Records	Approved royalty rates for technology imports	Medium — approval ceiling context	Direct India relevance — sector benchmarks
Transfer Pricing APAs / MAPs	Arm's-length royalty rates in TP assessments	High — tax authority acceptance	Strong India relevance — TP benchmark
Industry Publications / ICRA / CARE	Sector royalty rate surveys	Medium — directional only	Good India context — sector-specific

Table 4.1: Data Sources for Market Approach Patent Valuation — India and Global

4.2 Comparable Licence Transaction Method — Building the Database

The Comparable Licence Transaction method requires identifying arm's-length licence agreements for technology sufficiently similar to the patent being valued. 'Sufficiently similar' means: same or adjacent technology sector; comparable scope of exclusivity (exclusive vs. non-exclusive, territorial

scope); comparable stage of development (granted patent vs. application, core product technology vs. peripheral improvement); and broadly comparable market conditions at the time of the licence.

Once the comparable licence database is assembled, the valuer must adjust the observed royalty rates for differences between the comparable licences and the subject patent. Material adjustments include: exclusivity premium (exclusive licences command higher royalties than non-exclusive); territorial scope adjustment (global or pan-India exclusive licences command higher rates than limited-territory licences); remaining term adjustment (licences on older patents with shorter remaining terms typically command lower rates); and patent quality adjustment (licences on broader, higher-quality patents command higher rates).

KEY INSIGHT

We use authorized database of Indian technology licensing transactions sourced from SEBI annual report disclosures, DPIIT technology approval records, Income Tax Appellate Tribunal decisions, and IP-related court judgements. This database is invaluable for Market Approach patent valuations in India because it reflects actual arm's-length transactions between Indian and foreign parties — not global benchmarks that require large, poorly documented adjustments. We strongly encourage Indian companies engaged in regular IP licensing to build and maintain their own internal transaction database for Transfer Pricing and valuation support purposes.

4.3 Comparable Patent Sale Method — Lump-Sum Transaction Benchmarking

In patent sale transactions — where a patent is sold outright rather than licensed — the consideration paid represents the buyer's assessment of the present value of all future royalty income or exclusivity benefits the patent can generate. Comparable patent sale data is used to calibrate lump-sum valuations and to cross-check RfR-based valuations.

Patent auction results (from platforms like Ocean Tomo, IP Group, and the Indian Patent Office's online auction portal) and patent sale transactions disclosed in M&A filings provide the most reliable market data for this approach. However, patent sale prices are highly transaction-specific — the price reflects the specific strategic value to the particular buyer, which may differ materially from the standalone economic value of the patent.

4.4 Technology Royalty Rate Benchmarks by Sector

While every patent valuation must be grounded in the specific facts of the patent and the transaction, industry royalty rate benchmarks provide useful orientation points. Based on publicly available data from DPIIT approvals, court judgements, and published licence databases, the following sector ranges are illustrative (not definitive) starting points for Indian patent royalty rate assessments:

- Pharmaceutical — Active Pharmaceutical Ingredients (APIs): 2%–6% of net sales, reflecting highly competitive generic market structure
- Pharmaceutical — Novel Drug Formulations / NCEs: 5%–12% of net sales, reflecting higher exclusivity premium
- Agricultural Chemicals and Pesticides: 3%–7% of net sales

- Electronics and Semiconductor Technologies: 1%–5% of net sales for individual patents; 10%–15% for core platform technologies
- Telecommunications / Standard Essential Patents (SEPs): FRAND rate determinations — typically 1%–3% at the component level
- Automotive Technology: 2%–5% of net sales for specific technology patents
- Information Technology and Software Methods: 1%–4% of net sales for patented methods; higher for platform technologies

PRO TIP

When using sector royalty rate benchmarks in an Indian patent valuation, always 'size-adjust' the benchmark to reflect the relative importance of the subject patent to the overall product. A benchmark royalty rate derived from a licence covering the entirety of a technology platform cannot be applied directly to a single patent that covers only one feature of that platform. The 'apportionment principle' — dividing the platform royalty by the number of patents in the licensed portfolio (or by their relative importance) — is a defensible way to disaggregate portfolio-level royalty rates to individual patent levels.

PART II: CORE PATENT VALUATION METHODOLOGIES

Chapter 5: The Cost Approach — Replacement Cost, Historical Cost, and Limitations

The Cost Approach values a patent by reference to the cost that would be incurred to recreate or replace the patent — either through replicating the original R&D process that produced the invention (reproduction cost) or through developing an alternative technology that achieves the same commercial function (replacement cost). While the Cost Approach is widely used for certain categories of intangible assets — particularly assembled databases, internally developed software, and certain know-how assets — its application to patents has significant conceptual and practical limitations that valuers must understand and communicate clearly.

5.1 Understanding the Cost Approach — Logic and Variants

The fundamental premise of the Cost Approach is that a rational buyer would not pay more for an asset than the cost of acquiring or creating a substitute of equal utility. For a patent, this translates to: would a willing acquirer pay more than it would cost to independently develop an equivalent technology and obtain equivalent patent protection? If the patent's income-based value exceeds replacement cost, the excess represents the value of the market lead, the exclusivity period already elapsed, and the legal risk avoidance.

Cost Method Variant	Best Used For	Key Input	Limitation
Historical Cost	Accounting / balance sheet floor	Capitalised R&D expenditure	No relationship to economic value
Replacement Cost New	Early-stage, pre-revenue patents	Current cost to replicate R&D	Ignores probability of replication success
Reproduction Cost	Specific IP content (databases, software)	Cost to recreate exact IP asset	Rarely applicable to patents
Depreciated Replacement Cost	Cost-plus baseline for transactions	Replacement cost less obsolescence	Difficult to quantify obsolescence objectively

Table 5.1: Cost Approach Variants for Patent Valuation — Applications and Limitations

5.2 The Historical Cost Method — Accounting Context

Under Indian GAAP and Ind AS (specifically, Ind AS 38 — Intangible Assets), internally generated patents and development costs may be capitalised on the balance sheet when they meet the criteria of technical feasibility, intention to complete, ability to use or sell, probable future economic benefits, adequate resources to complete, and ability to reliably measure expenditure. Capitalised R&D costs on the balance sheet represent the historical cost of the patent — useful for accounting purposes but typically a poor proxy for economic value.

Historical cost understates value when: the patent was developed at lower historical cost than its current replacement cost would require; the patent has appreciated in value due to market demand

for the technology; or the patent was developed as part of a larger R&D programme and the cost cannot be cleanly attributed to the specific patent. Historical cost overstates value when: the underlying technology has been superseded; the patent has limited remaining term; or the initial R&D investment was inefficient relative to industry norms.

KEY INSIGHT

We are frequently asked to prepare 'cost-based' patent valuations for tax purposes because clients believe they will produce lower values than income-based approaches — thereby reducing stamp duty or gift tax exposure on IP transfers. This is a dangerous misconception. The Income Tax Act requires that intangible asset transfers be valued at 'fair market value', which is defined as the price a willing buyer would pay a willing seller — an economic concept that requires the income approach for revenue-generating patents. A pure cost approach that ignores income potential will be challenged by the tax authority and may result in an assessment adding the difference back as deemed income. Always use the income approach as the primary method for tax-purpose patent valuations.

5.3 The Replacement Cost Method — When It Is Appropriate

Replacement cost is most appropriate as a primary valuation method when: the patent covers an early-stage technology with no revenue history and uncertain commercialisation prospects; the patent is for a defensive or blocking purpose rather than a revenue-generating purpose; or the patent is being used as collateral for a loan, where the lender wants a conservative 'floor value' that does not depend on future revenue projections.

Computing replacement cost for a patent requires: identifying the current cost of the R&D programme that would recreate the invention from scratch; adjusting for the probability that a new R&D programme would successfully achieve the same result (the 'technical risk adjustment'); adjusting for the cost of navigating the patent application and prosecution process; and deducting an obsolescence factor for any technological or functional limitations compared to the state of the art.

Replacement Cost = (Current R&D Cost to Replicate × Probability of Success) + Patent Prosecution Cost − Obsolescence Adjustment

5.4 Limitations of the Cost Approach for Patents

The Cost Approach has a fundamental theoretical limitation when applied to patents: it measures the cost of creating the knowledge, not the value of the knowledge to its owner or to the market. A breakthrough pharmaceutical patent that took Rs. 5 Crore to develop but generates Rs. 500 Crore in annual exclusivity-protected revenue would be grossly undervalued by a cost approach. Conversely, a patent that cost Rs. 50 Crore to develop but covers a technology with no commercial application would be significantly overvalued.

For these reasons, IPEV Guidelines, IVS (International Valuation Standards), and ICAI Valuation Standards all recommend the Income Approach as the primary methodology for patents and other intangible assets with identifiable income streams. The Cost Approach is relegated to a supplementary or cross-check role in most professional patent valuation frameworks.

PRO TIP

Use the Cost Approach as a 'reasonableness floor' in any patent valuation — confirm that the Income Approach value is at least equal to (and ideally greater than) the replacement cost. If the Income Approach produces a value lower than replacement cost, investigate why: is the royalty rate too conservative? Are the revenue projections too pessimistic? Or is the patent genuinely worth less than its replacement cost (which would indicate a value impairment situation under Ind AS 36)?

PART III: TRANSACTION & REGULATORY APPLICATIONS

Chapter 6: Patent Valuation in M&A — Purchase Price Allocation under Ind AS 103

When a business combination involves the acquisition of a technology company or any company with a significant patent portfolio, the acquiring company is required under Ind AS 103 (Business Combinations) to identify and measure all identifiable intangible assets — including patents and related technology — at fair value on the acquisition date. This Purchase Price Allocation (PPA) exercise is one of the most technically demanding applications of patent valuation in Indian practice, and errors in PPA can have material consequences for the acquirer's post-acquisition financial statements.

6.1 The PPA Framework and Patent Recognition Requirements

Ind AS 103 requires the recognition of an intangible asset separately from goodwill if the asset meets either the 'separability criterion' (can be separated from the entity and sold, transferred, licensed, rented, or exchanged) or the 'contractual-legal criterion' (arises from contractual or legal rights regardless of separability). Patents clearly meet the contractual-legal criterion — they arise from a legal grant by the patent office. Accordingly, all patents of the acquired entity, including those not previously recognised on its balance sheet, must be identified and measured at fair value.

The key practical challenge in PPA is the completeness of patent identification. In technology-intensive acquisitions, the acquiring company must work with the target's IP counsel and technical team to identify: all granted patents (domestic and international); all pending patent applications; all licences received (third-party IP the company uses) and licences granted (IP it has licensed out); all know-how, trade secrets, and unregistered IP; and any patent co-ownership arrangements or joint development agreements that affect the scope of the IP's value.

PPA Component	Typical Patent-Related Items	Valuation Method	Ind AS Reference
Core Product Technology	Patents protecting primary products	Relief from Royalty / ICF	Ind AS 103 / Ind AS 38
In-Process R&D (IPR&D)	Development-stage patent applications	rNPV — probability-weighted DCF	Ind AS 103 para 24
Customer Relationships	Patents enabling customer-specific solutions	Multi-Period Excess Earnings (MPEEM)	Ind AS 38
Trade Secrets / Know-How	Unpatented proprietary processes	Relief from Royalty	Ind AS 38
Non-Compete Agreements	Founder / key scientist non-compete	With-and-Without Method	Ind AS 38
Goodwill	Residual after all identified intangibles	Residual computation	Ind AS 103

Table 6.1: Patent-Related Intangible Assets in M&A Purchase Price Allocations

6.2 Valuing In-Process R&D (IPR&D) in Indian M&A

In-Process R&D refers to R&D projects — including pending patent applications — that are under development at the acquisition date and have not yet been completed into commercially deployable products. Under Ind AS 103 (para 24), IPR&D acquired in a business combination must be recognised as a separate intangible asset regardless of whether it would meet the recognition criteria of Ind AS 38 if developed internally.

Valuing IPR&D requires a probability-adjusted approach that explicitly models: the technical risk (will the R&D project succeed and result in a grant?); the commercial risk (will the resulting patent support a commercially viable product?); and the development cost still to be incurred. The Risk-Adjusted Net Present Value (rNPV) model — commonly used in pharmaceutical M&A — is the standard approach for IPR&D valuation in Indian tech and pharma acquisitions.

IPR&D Value = Σ [Probability of Success × PV of Cash Flows on Success] – Remaining Development Cost

KEY INSIGHT

We advised on a PPA exercise for an Indian acquirer that purchased a mid-sized AI technology company for Rs. 380 Crore. Pre-PPA, the target had only Rs. 12 Crore of intangible assets on its books (software and customer databases). Our patent identification exercise uncovered 8 granted patents and 14 pending applications covering the company's core machine learning algorithms. The fair value assigned to these patents was Rs. 95 Crore, with a further Rs. 28 Crore attributed to IPR&D (pending applications). Post-PPA, the annual amortisation charge increased the acquirer's reported costs by Rs. 14 Crore per year — a material impact on reported profitability that the acquirer's finance team had not anticipated in their deal model. Always model the post-PPA P&L impact before finalising deal economics.

6.3 Useful Life Determination for Patent Assets in PPA

Under Ind AS 38, intangible assets with a finite useful life are amortised over that life; those with indefinite useful lives are tested for impairment annually. Patents, as a matter of law, have a finite term (20 years from filing). The useful life for amortisation purposes, however, is the shorter of the legal life and the expected economic useful life — the period over which the patent is expected to generate economic benefits for the acquirer.

For most product patents, the economic useful life is less than the remaining legal term — the technology may be superseded before the patent expires. The valuer should assess: the technology lifecycle stage at the acquisition date; the product development roadmap (when will the patent-protected product be replaced by a new generation?); and the competitive landscape (how quickly are competing technologies advancing?). Typical patent useful lives assigned in Indian PPA exercises range from 5–15 years for technology and product patents, and 3–7 years for software methods.

PRO TIP

In PPA exercises involving pharmaceutical or biotech companies, always distinguish between 'approved product patents' (patents protecting already-approved drugs — amortised over

> *remaining exclusivity period) and 'pipeline IPR&D' (patents on drugs still in development — not yet amortised, tested annually for impairment until commercial use begins). Conflating these two categories leads to material errors in the post-PPA P&L model and in the financial statement footnote disclosures required under Ind AS 103.*

PART III: TRANSACTION & REGULATORY APPLICATIONS

Chapter 7: TP and Cross-Border IP Valuations — OECD, FEMA, and IT

Cross-border patent transactions — royalty payments for technology licences, IP ownership transfers between group entities, cost-sharing arrangements, and R&D service agreements — are among the most scrutinised areas of international tax and Transfer Pricing (TP) enforcement globally and in India specifically. The Income Tax Act, 1961 (Sections 92–92F) and the Transfer Pricing Rules require that all international transactions between associated enterprises be conducted at arm's-length prices. For patent-related transactions, this means that royalty rates, lump-sum transfer prices, and cost-sharing contributions must be benchmarked against what unrelated parties would have agreed in comparable transactions.

The Indian Transfer Pricing landscape has evolved significantly since the formal TP regulations were introduced in 2001. The Central Board of Direct Taxes (CBDT) and the Indian Revenue authorities have been increasingly focused on IP-related TP adjustments — a trend driven by global Base Erosion and Profit Shifting (BEPS) concerns and India's experience with multinationals structuring IP ownership in low-tax jurisdictions to extract profit from Indian operations through royalty payments.

7.1 The OECD Framework for IP Transfer Pricing — DEMPE Analysis

The OECD Base Erosion and Profit Shifting (BEPS) Action 8 report fundamentally changed the global TP framework for intangibles, introducing the DEMPE (Development, Enhancement, Maintenance, Protection, and Exploitation) concept. Under DEMPE, the allocation of IP profits between group entities is determined not by which entity legally owns the patent, but by which entities perform and control the key functions, bear the economically significant risks, and contribute the assets that drive the development, enhancement, and exploitation of the IP.

TP Method	OECD Guideline Reference	Best Used For	Patent Valuation Connection
Comparable Uncontrolled Price (CUP)	Chapter II.A	Royalties with available third-party comps	Market approach — direct royalty benchmarks
Comparable Uncontrolled Transaction (CUT)	Chapter II.A variant	Royalties with internal comparables	Market approach — internal licence data
Profit Split Method (PSM)	Chapter II.C	Highly integrated, unique IP contributions	Contribution analysis of patent's profit share
TNMM (Net Margin)	Chapter II.C	Routine functions — not for unique patents	Residual profit attributed to IP after TNMM
DEMPE Analysis	Chapter VI	Value chain analysis for IP development	Identifies who owns IP value vs. legal title

Table 7.1: Transfer Pricing Methods Applicable to Patent Royalty Arrangements — OECD Alignment

7.2 Arm's-Length Royalty Rate Determination for Indian TP Purposes

Determining the arm's-length royalty rate for a related-party technology licence requires a benchmarking analysis that follows the same methodology as the Market Approach patent valuation described in Chapter 4 — but with additional rigour demanded by the TP regulatory context. The benchmarking must produce a range (the 'arm's-length range') rather than a single rate, and the taxpayer's actual royalty rate must fall within this range to be TP compliant.

The Comparable Uncontrolled Transaction (CUT) method — using actual third-party licence agreements for the same or comparable technology as the primary comparable — is the most reliable method for royalty TP benchmarking. Where CUT comparables are not available, the Comparable Uncontrolled Price (CUP) method using published royalty rate databases (ktMINE, RoyaltySource, DPIIT approvals) is the standard alternative. The Profit Split Method is used for unique and highly valuable IP where comparable licence transactions cannot be identified.

KEY INSIGHT

We have supported clients in Income Tax Appellate Tribunal (ITAT) proceedings involving TP adjustments on patent royalty payments. The most common source of TP dispute we encounter is not the royalty rate itself — it is the failure to document the arm's-length analysis contemporaneously, as required by Section 92D of the Income Tax Act. Tax authorities often make adjustments simply because the taxpayer cannot produce a documented benchmarking study at the time of assessment. A TP study for IP royalties is not optional — it is a statutory requirement, and it must be prepared before the return is filed, not after a notice is received.

7.3 FEMA Compliance for Cross-Border Patent Transfers

The transfer of patents across borders — whether through an outright sale, a licence, or a deemed transfer via business acquisition — is subject to FEMA's provisions governing foreign exchange transactions. Key FEMA provisions relevant to patent transactions include: the FEMA Non-Debt Instruments (NDI) Rules, 2019 for equity-linked IP transfer scenarios; the FEMA (Export of Goods and Services) Regulations for royalty remittances from India to foreign licensors; and the DPIIT (Department for Promotion of Industry and Internal Trade) automatic route for technology collaboration agreements involving royalty payments up to 5% on domestic sales and 8% on exports.

For outbound patent transfers (Indian company transferring IP to an overseas entity), the ODI framework under FEMA Overseas Investment Rules, 2022 applies. The transfer price must not be less than the fair market value of the IP as determined by a SEBI-registered Category I Merchant Banker or an IBBI Registered Valuer. This valuation requirement is both a compliance obligation and a protection mechanism — an Indian company transferring its valuable patents to an overseas group entity at below-market prices may face both FEMA enforcement action and Transfer Pricing additions under the Income Tax Act.

PRO TIP

When structuring a cross-border patent transfer or licensing arrangement involving an Indian company, always prepare a unified valuation report that serves all three regulatory purposes: FEMA compliance (ODI/FDI pricing requirement), Transfer Pricing documentation (arm's-length benchmarking), and financial accounting (Ind AS 38 / Ind AS 103 fair value). A single well-constructed patent valuation report can satisfy all three requirements and significantly reduce both cost and regulatory risk, compared to preparing three separate reports with potentially inconsistent conclusions.

PART III: TRANSACTION & REGULATORY APPLICATIONS

Chapter 8: Patent Infringement Damages — Quantification Methods under Indian Law

Patent infringement litigation in India has grown substantially in recent years, with both domestic and multinational patent holders increasingly willing to enforce their rights through the Indian courts. The Commercial Courts Act, 2015 and the designation of specialised IP courts in major metropolitan centres have improved the efficiency and sophistication of IP adjudication. As damages awards in patent cases have grown, the quality of the economic damages analysis presented by expert witnesses has become a critical determinant of litigation outcomes.

Section 108 of the Patents Act, 1970 provides for three categories of relief in infringement proceedings: injunctions (restraining further infringement), damages or account of profits (compensating the patent holder or disgorging the infringer's profits), and delivery up or destruction of infringing articles. Of these, the determination of damages or account of profits is the most economically complex and most frequently contested in Indian patent litigation.

8.1 Legal Framework for Patent Infringement Damages in India

Indian courts have historically been conservative in granting substantial patent damages, but the trend is clearly towards more rigorous economic analysis and larger awards. The Supreme Court and Delhi High Court have affirmed that damages in patent infringement cases should compensate the patent holder for the actual economic harm suffered — not merely nominal damages. The choice between 'damages' (patent holder's loss) and 'account of profits' (infringer's gains) is the plaintiff's election, and the choice significantly affects the quantum and the evidentiary burden.

8.2 The Lost Profits Method

The Lost Profits method compensates the patent holder for the sales it would have made but for the infringement. The Panduit test (originally from US patent law, increasingly cited in Indian infringement analyses) provides a framework for establishing lost profits: (1) demand existed for the patented product; (2) the patent holder had the manufacturing and marketing capacity to satisfy that demand; (3) no acceptable non-infringing substitute was available; and (4) the patent holder can quantify the profit it would have earned on the lost sales.

Lost Profits Damages = Lost Sales Volume × (Actual Price − Variable Costs per Unit)

In practice, establishing lost profits in Indian patent cases requires: market share analysis (demonstrating that the patent holder would have captured the infringing sales in the absence of infringement); capacity analysis (showing that the patent holder could have supplied the additional demand); and profitability analysis (computing the contribution margin on the lost sales). Expert economic witnesses must be prepared to defend each of these elements under cross-examination.

KEY INSIGHT

We have prepared patent damages expert reports for both plaintiffs and defendants in Indian commercial court proceedings. The most important lesson from this experience is that damages quantification must be grounded in actual business data — not in theoretical models built on assumptions. Courts are increasingly sophisticated about distinguishing between rigorous economic analysis and advocacy dressed as expert opinion. We always build our damages models from the patent holder's actual sales records, cost accounts, and contemporaneous business plans — not from post-litigation projections.

8.3 The Reasonable Royalty Method

Where lost profits cannot be established — because the patent holder does not compete in the same market, does not have capacity to supply the infringing market, or because an acceptable non-infringing substitute exists — the 'reasonable royalty' is the floor measure of damages. The reasonable royalty is the rate that a willing licensor and willing licensee would have agreed upon in a hypothetical licence negotiation conducted at the time infringement began.

The 'Georgia-Pacific factors' (15 factors originally articulated in a US patent case, but widely referenced in Indian damages proceedings) provide a structured framework for establishing the reasonable royalty. Key factors include: comparable licences granted by the patent holder; the established policy of the patent holder regarding licensing; the commercial relationship between the parties; the extent of infringement and its commercial impact; and the profit the infringer gained from the infringing product.

Reasonable Royalty Damages = Infringing Sales Revenue × Reasonable Royalty Rate

8.4 Account of Profits — Disgorgement of Infringer's Gains

Account of Profits is an equitable remedy that requires the infringer to disgorge the profit attributable to the infringement. Unlike compensatory damages (which focus on the patent holder's loss), account of profits focuses on the infringer's gain. The patent holder may elect account of profits when the infringer's profit exceeds the patent holder's provable lost profits — for example, if the infringer had lower costs or accessed a market the patent holder could not.

The attribution challenge in account of profits is establishing what portion of the infringer's total profit is specifically attributable to the infringing patent, as opposed to the infringer's own non-patented contributions (its brand, manufacturing efficiency, distribution network). Courts require the patent holder to provide a credible apportionment analysis — not merely to claim all of the infringer's profit on the infringing products.

PRO TIP

When advising a patent holder on whether to elect 'damages' versus 'account of profits' in an Indian infringement proceeding, model both remedies quantitatively before making the election. The choice is irrevocable once made, and the quantum difference can be substantial. In our experience, account of profits tends to produce larger awards when the infringer had

> *significantly lower manufacturing costs than the patent holder, or when the infringer gained market position through the infringement that the patent holder could not have exploited. Damages tend to be larger when the patent holder has high margins and provable market share loss.*

PART IV: SECTOR-SPECIFIC AND ADVANCED TOPICS

Chapter 9: Pharmaceutical and Biotech Patent Valuations — rNPV and Pipeline Models

Pharmaceutical and biotechnology patents are among the most economically significant and technically complex patents to value. A single approved drug patent protecting a high-revenue product in the Indian market may be worth hundreds of crores of rupees — the temporal monopoly the patent provides is the foundation of the entire pharmaceutical innovation ecosystem. Yet the vast majority of drug development programmes fail before reaching commercial approval, making pre-approval pharmaceutical patents highly uncertain assets that require probability-adjusted valuation methodologies.

India's pharmaceutical industry is the world's third-largest by volume and holds a unique position in global patent valuation. Indian companies are significant filers of both product patents (protecting their own new drug discoveries) and process patents (protecting innovative manufacturing processes for known drugs). The interplay between patent protection, the Section 3(d) patentability restriction, and the generic pharmaceutical market structure creates a distinctly Indian valuation context that cannot be addressed by mechanically applying Western pharmaceutical valuation norms.

9.1 The Risk-Adjusted NPV (rNPV) Model — The Industry Standard

The Risk-Adjusted NPV (rNPV) model, also known as Expected NPV or eNPV, is the industry standard for valuing pharmaceutical and biotech patents at any stage of development. The model explicitly adjusts each future cash flow in the development programme for the probability that the programme reaches that stage — recognising that the further into the future the cash flow, the lower the probability that it will actually be realised.

rNPV = Σ [Cash Flowt × Cumulative P(Success)t / (1+r)^t] – PV of Remaining Development Costs

The cumulative probability of success is the product of all stage-specific transition probabilities up to that point. For example, if a compound has a 50% probability of advancing from Phase I to Phase II, a 60% probability of advancing from Phase II to Phase III, and an 80% probability of regulatory approval from Phase III, the cumulative probability of reaching approval is 0.50 × 0.60 × 0.80 = 24%.

Development Stage	Technical Success Probability	Commercial Success Probability	Discount Rate Premium
Discovery / Pre-clinical	5%–15%	2%–8%	+800–1200 bps over WACC
Phase I (Safety)	40%–60%	15%–25%	+500–800 bps over WACC

Development Stage	Technical Success Probability	Commercial Success Probability	Discount Rate Premium
Phase II (Efficacy)	50%–70%	25%–40%	+300–500 bps over WACC
Phase III (Pivotal)	65%–85%	50%–70%	+150–300 bps over WACC
Regulatory Submission	80%–95%	70%–90%	+50–150 bps over WACC
Approved — On Market	N/A	100%	WACC of commercialised product

Table 9.1: Probability Parameters for Pharma/Biotech Patent rNPV Valuation by Development Stage

9.2 Building the Pharma Revenue Model — Indian Market Specifics

The revenue model for an Indian pharmaceutical patent must capture the unique dynamics of the Indian pharma market: a price-sensitive, volume-driven market with NPPA (National Pharmaceutical Pricing Authority) price controls on essential medicines; a robust domestic generics industry that competes aggressively on price; a significant export component (formulations exports to regulated and semi-regulated markets); and the 'patent cliff' dynamics when the Indian patent expires and local generics manufacturers enter.

Key Indian pharma revenue modelling considerations include: the impact of DPCO (Drug Price Control Order) on peak revenue achievable under patent protection; the speed and magnitude of generic entry after patent expiry in India (typically 6–24 months for faster generic entry than in US/Europe given India's established generics infrastructure); the contribution of export revenues (regulated markets — US, EU, Japan — are typically higher-margin but require separate regulatory approvals); and the potential for compulsory licensing under Section 84 of the Patents Act for medicines not worked adequately in India.

KEY INSIGHT

We have valued pharmaceutical patent portfolios for Indian companies that derived over 60% of their patent-protected revenue from exports to regulated markets (US FDA-approved, EU EMA-approved). In these valuations, the US patent portfolio and the Indian patent portfolio must be valued separately — they have different patent terms, different market sizes, different generic entry dynamics, and different royalty rate benchmarks. Blending them into a single revenue model without geographic segmentation produces a fundamentally misleading result. Always model Indian and export market revenues separately in pharma patent valuations.

9.3 The Section 3(d) Factor — Indian Pharma-Specific Valuation Adjustment

Section 3(d) of the Patents Act, 1970 — India's unique and controversial provision restricting patents on new forms of known substances without proof of enhanced efficacy — has direct valuation implications. A pharmaceutical company that relies on a patent that could be challenged

under Section 3(d) (for example, a patent on a polymorph, salt, or isomer of a known drug compound) must reflect this enhanced invalidation risk in the valuation.

The Section 3(d) risk is most appropriately incorporated through a probability adjustment in the rNPV model: instead of assuming a 100% probability of remaining protected throughout the patent term, the valuer applies a probability of Section 3(d) challenge success (typically 20–40% for patents covering modifications of known substances) and a corresponding 'early loss of exclusivity' scenario. This probability-weighted approach is more rigorous than simply applying a blanket discount to the RfR value.

> **PRO TIP**
> *When valuing an Indian pharmaceutical patent that is vulnerable to a Section 3(d) challenge, obtain a written opinion from a senior patent attorney on the estimated probability of a successful pre-grant or post-grant opposition under Section 3(d). Use this legal opinion as the basis for your probability adjustment in the rNPV model, and attach it as an appendix to the valuation report. This practice demonstrates the independence and rigour of the valuation and makes the probability assumption defensible to any regulator, court, or auditor who reviews the report.*

PART IV: SECTOR-SPECIFIC AND ADVANCED TOPICS

Chapter 10: Technology and Software Patent Valuations — SaaS, SEP, and FRAND Royalties

Technology patents — covering software methods, hardware innovations, telecommunications protocols, and internet-based business processes - present unique valuation challenges distinct from pharmaceutical or industrial patents. The most significant difference is pace of technological change in the technology sector: a software patent that is commercially relevant today may be superseded by a new architectural approach within 3–5 years, giving technology patents a fundamentally shorter effective economic life than their 20-year legal term would suggest.

India's technology sector is both a significant generator of technology patents (through its large IT, software, and telecommunications industry) and a major venue for technology patent licensing and enforcement. The rise of global Standard Essential Patent (SEP) disputes — where patents declared essential to international standards are licensed on FRAND (Fair, Reasonable, and Non-Discriminatory) terms — has brought Indian courts increasingly into the global IP royalty determination landscape.

10.1 Valuing Software and Business Method Patents in India

Software patents in India occupy a unique legal position. Section 3(k) of the Patents Act excludes 'a mathematical or business method or a computer programme per se' from patentability. However, computer-implemented inventions that have a technical character — meaning they produce a technical effect beyond the normal physical interactions between the programme and the computer — may be patented. The boundary between patentable computer-implemented inventions and excluded computer programmes per se has been the subject of considerable litigation and regulatory guidance in India.

For valuation purposes, software patents that are granted in India (having cleared the Section 3(k) patentability bar) carry an additional validity risk premium compared to hardware patents — they are more vulnerable to re-examination and invalidation. This validity risk should be reflected in the valuation through a higher discount rate or through explicit probability adjustments on the revenue stream.

KEY INSIGHT

We have conducted patent valuations for Indian IT companies that hold large portfolios of US and European software patents but relatively few Indian software patents — precisely because of Section 3(k)'s restrictions. In these cases, the valuation of the Indian patent assets is modest, but the company's competitive position in the Indian market is protected by trade secrets and know-how rather than patents. Our valuations of such companies include a separate 'trade secret / know-how' valuation component that is often larger than the patented IP value. The absence of patent protection in India does not mean the absence of IP value — it means the value is held in a different form.

10.2 Standard Essential Patents (SEPs) and FRAND Royalty Determination

Standard Essential Patents are patents that are technically necessary to implement an industry standard — such as 4G/LTE (3GPP standards), Wi-Fi (IEEE 802.11 standards), or USB protocols. Companies that hold SEPs are typically required by the standard-setting organisation (SSO) to commit to licensing their SEPs on FRAND (Fair, Reasonable, and Non-Discriminatory) terms. The determination of what constitutes a FRAND royalty rate is one of the most contested areas of IP valuation globally and increasingly in India.

The key methodologies used in FRAND determination are: the Top-Down Approach (starting from the aggregate royalty burden for all SEPs in a standard and apportioning to individual patents based on relative contribution); the Comparable Licence Approach (benchmarking against actual FRAND licences agreed by the SEP holder with other licensees); and the Incremental Value Approach (assessing the value of the patented technology relative to the next best alternative in the standard).

FRAND Royalty = (Patent Holder's SEP Count / Total Standard SEP Count) × Reasonable Aggregate Royalty Rate

10.3 SaaS Patent Portfolios — Specific Valuation Considerations

Software-as-a-Service companies increasingly hold patent portfolios covering their platform architecture, data processing methods, user interface innovations, and machine learning algorithms. Valuing these portfolios requires recognising that: the primary value driver is not the patent per se but the product ecosystem built around it; the relevant royalty rate is better estimated by reference to comparable SaaS technology licensing transactions than by generic software patent benchmarks; and the risk of design-around is particularly high in software, making the economic useful life of individual patents shorter than in pharma or chemicals.

10.4 AI and Machine Learning Patent Valuations — Emerging Frontier

Artificial Intelligence and machine learning patents are the fastest-growing category of technology patent filings globally, and Indian technology companies are increasingly active in this space. AI patent valuation requires grappling with several unique challenges: the difficulty of establishing clear patent scope for AI methods that are often described in functional terms; the rapid pace of advancement in the field, which shortens effective patent life; and the limited public transaction data for AI patent licences, making the Market Approach difficult to apply.

The Income Approach — specifically, a contribution-based analysis that estimates the proportion of a technology product's value attributable to the patented AI methods — is currently the most defensible approach for Indian AI patent valuations. This requires detailed technical analysis of how central the patented AI method is to the product's value proposition, relative to data assets, user experience, brand, and non-patented technical know-how.

> **PRO TIP**
> *For AI and machine learning patent portfolios, supplement the traditional patent valuation with a 'data asset valuation' — separately valuing the proprietary training data sets that give*

> *the patented algorithms their real-world performance advantage. In many AI businesses, the data assets are more valuable than the patents themselves, because the algorithms can often be replicated but the high-quality, labelled training data cannot. A complete IP valuation for an AI company should cover both the patent portfolio and the data asset portfolio.*

PART IV: SECTOR-SPECIFIC AND ADVANCED TOPICS

Chapter 11: IP Securitisation, Patent-Backed Financing, and Royalty Monetisation in India

India's patent monetisation ecosystem is at an early but rapidly developing stage. While the concept of treating patents as financial assets — capable of being pledged as collateral, securitised into tradeable instruments, or sold to specialist monetisation entities — is well established in the United States and Europe, the Indian market is only now developing the legal infrastructure, financial market sophistication, and institutional awareness required to support mainstream patent monetisation.

The Companies Act, 2013 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 have been interpreted to permit the mortgage and enforcement of intellectual property rights as secured assets, creating a legal basis for patent-backed lending. SEBI's securitisation framework provides a regulatory pathway for royalty securitisation. The Income Tax Act provides specific deduction provisions for patent-related income. Together, these frameworks create a multi-dimensional monetisation landscape that sophisticated IP owners are beginning to explore.

11.1 Patent Monetisation Structures — Overview

Monetisation Structure	Description	Regulatory Framework	Key Valuation Requirement
Outright Patent Sale	Sale of all rights in the patent	Income Tax Act S.55, FEMA if cross-border	FMV certificate for tax / FEMA purposes
Exclusive Licence	Exclusive right to use in defined territory/field	Income Tax — S.9(1)(vi) royalty withholding	Arm's-length royalty rate — TP documentation
Non-Exclusive Licence	Right to use alongside other licensees	Standard licensing contract	Market royalty rate — licence database
Patent-Backed Loan (IP Mortgage)	Patent pledged as collateral for loan	SARFAESI Act — IP as secured asset	Lending value / forced realisation value
Royalty Securitisation	Future royalties sold to SPV for upfront capital	SEBI / RBI securitisation norms	NPV of royalty stream — stress tested
Patent Donation (CSR / University)	Patent transferred to charitable / academic body	S.80GGA income tax deduction	FMV for deduction claim purpose

Table 11.1: IP Monetisation Structures in India — Regulatory Framework and Valuation Requirements

11.2 Patent-Backed Lending — IP as Collateral in India

The use of patents as collateral for bank or NBFC loans is a promising but underutilised monetisation mechanism in India. The fundamental challenge is that lenders are accustomed to

tangible collateral — land, buildings, equipment — whose value can be assessed with relative certainty and realised through established enforcement mechanisms. Patent collateral presents two distinct challenges: valuation uncertainty (what is the forced realisation value of a patent if the borrower defaults?) and enforceability uncertainty (can the lender effectively realise the patent in default, and to whom can it be sold?).

For patent-backed lending transactions, the valuation must address the 'lending value' — a conservative estimate of the value the lender could realise from the patent portfolio in a forced sale scenario within a defined enforcement timeline. The lending value is typically computed as a discount to the fair market value, reflecting: the illiquidity of the patent market; the time and cost required to identify a willing buyer in a distressed scenario; the risk of invalidity challenges reducing the patent's value during the enforcement period; and the lender's lack of technical expertise to manage and maintain the patent portfolio.

KEY INSIGHT

We have prepared patent portfolio valuations for Indian NBFCs and banks considering IP-backed lending to technology companies. The most important lesson from this work is that lenders need two valuation outputs — not one. First, the 'going concern IP value' (what is the portfolio worth in the hands of the current owner, generating its current revenue streams?), and second, the 'liquidation IP value' (what could the portfolio realistically be sold for in a 6–12 month forced sale to a third party?). The gap between these two values determines the appropriate loan-to-value ratio for IP-secured lending. In our experience, the liquidation value of Indian patent portfolios is typically 20–40% of going-concern fair value — a significant haircut that lenders must price into their credit decisions.

11.3 Royalty Securitisation — Monetising Future Royalty Streams

Royalty securitisation involves the assignment of future royalty income streams from a patent portfolio to a Special Purpose Vehicle (SPV), which raises upfront capital by issuing securities backed by those future royalties to investors. The patent owner receives immediate capital; investors receive periodic royalty payments over the life of the patent portfolio. This structure is well established in the US (David Bowie's music royalty securitisation in 1997 was an early famous example) and is beginning to attract interest in India.

The valuation of a royalty securitisation transaction requires: a detailed NPV analysis of the royalty stream under base, upside, and downside scenarios; stress testing for patent invalidity, competition from substitute technologies, and revenue concentration risk; and a 'credit enhancement' analysis determining what structural protections (reserve accounts, over-collateralisation) are needed to achieve the desired credit rating for the securitised instruments.

11.4 Patent Income Tax Treatment in India — Section 115BBF and Patent Box

India introduced a preferential tax regime for patent royalty income under Section 115BBF of the Income Tax Act, 1961, allowing income from patents developed and registered in India to be taxed at a concessional rate of 10% on gross royalty receipts. This 'patent box' regime is available to

Indian patent holders who have developed the qualifying patents in India — the development criterion excludes merely acquired patents.

The patent box benefit has direct implications for patent valuation: the after-tax royalty income of a qualifying patent holder is higher than it would be at the standard corporate tax rate, which increases the present value of the royalty stream and therefore the patent's value. Valuers must ensure that the tax benefit of the patent box regime is correctly reflected in the post-tax discount rate or cash flow model when valuing qualifying Indian patents.

> **PRO TIP**
> *Confirm the Section 115BBF eligibility of a patent before including the concessional 10% tax rate in your valuation model. The eligibility criteria require that the patent was developed and registered in India — imported technology licences and patents acquired from third parties do not qualify. An incorrect assumption about tax rate can overstate the RfR-based patent value by 15–20% relative to the correct after-tax calculation. Always obtain a tax counsel opinion on Section 115BBF eligibility and attach it to the valuation report.*

PART V: REPORTING, COMPLIANCE & GOVERNANCE

Chapter 12: The Patent Valuation Report — Standards, Disclosure, and Regulatory Defensibility

The patent valuation report is the culminating output of the valuation process — the document that translates the technical, legal, and financial analysis of the preceding chapters into a professional opinion that can be relied upon by transaction parties, regulators, courts, and auditors. The quality of the report is not merely an aesthetic consideration: it directly determines whether the valuation will withstand challenge, whether it will satisfy the specific regulatory requirements of the use case, and whether it will be accepted by the recipient as a credible, independent professional opinion.

Patent valuation reports in India are governed by a combination of professional standards: the International Valuation Standards (IVS) issued by the IVSC; the ICAI Valuation Standards issued by the Institute of Chartered Accountants of India; the IBBI's Registered Valuer conduct rules; and use-case specific requirements from SEBI, RBI/FEMA, the CBDT (Transfer Pricing), and the Courts. Understanding which standards apply to a specific valuation mandate is the first task of a professional patent valuer.

12.1 Applicable Valuation Standards for Indian Patent Valuations

The professional framework governing patent valuations in India is multi-layered. IBBI Registered Valuers are subject to the Valuation Standards issued under the Companies (Registered Valuers and Valuation) Rules, 2017. These standards align broadly with the International Valuation Standards (IVS) framework and require: adequate professional competence for the specific asset class being valued; adequate information to form a credible opinion; a clear and documented methodology; and an objective, impartial opinion free from bias.

For Transfer Pricing purposes, the OECD Transfer Pricing Guidelines (Chapter VI on Intangibles) are the primary international standard, supplemented by the CBDT's Transfer Pricing rules and guidance notes. For M&A PPA purposes, the relevant accounting standards are Ind AS 103, Ind AS 38, and Ind AS 113. For FEMA purposes, the FEMA NDI Rules and DPIIT guidelines apply. For litigation purposes, courts have been increasingly receptive to IVS-aligned expert opinions that are transparent about methodology and assumptions.

Report Section	Required Content	Standard Reference	Common Deficiency
Scope and Purpose	Intended use, standard of value, valuation date	IVS 101 / ICAI VS	Vague purpose statement creates regulatory risk
Subject IP Description	Legal details, claim summary, remaining term, family	IVS 210 / IPEV	Insufficient claim analysis
Value Driver Analysis	Technical, legal, commercial assessment per patent	IPEV Guidelines	Generic analysis not specific to subject patent

Report Section	Required Content	Standard Reference	Common Deficiency
Methodology	Primary method, secondary method, rationale for selection	IVS 105	Single method without cross-check
Key Assumptions	Royalty rate, discount rate, revenue base, useful life	IVS 104	Assumptions not independently supported
Sensitivity Analysis	Value range across key assumption variations	IVS 103 / Best Practice	Single-point value without sensitivity
Conclusion	Value range and conclusion, limitations, qualifications	IVS 101	Overly confident single-point conclusion

Table 12.1: Patent Valuation Report Structure — Required Sections and Common Deficiencies

12.2 The Independence and Objectivity Standard

A patent valuation report is only as credible as the independence of the valuer who prepared it. Independence in the context of patent valuations means: the valuer has no financial interest in the outcome of the valuation (no success fee, no equity stake in the patent owner, no relationship with the transaction counterparty); the valuer is not directed by the client to reach a predetermined conclusion; and the valuer's methodology and assumptions are driven by the evidence, not by the desired result.

These independence standards apply not only to the structural relationship between the valuer and the client, but to the process itself. A valuer who accepts the client's management projections for the revenue base without independent verification, who uses a royalty rate from a single comparable that the client identified, and who does not test the sensitivity of the conclusion to different assumptions is not providing an independent opinion — regardless of any formal independence declaration at the beginning of the report.

KEY INSIGHT

We have reviewed patent valuation reports prepared by other firms in the context of ITAT litigation and SEBI regulatory proceedings. The most frequently challenged element is the royalty rate determination — particularly when the report uses a single comparable and does not document why that comparable is the most appropriate benchmark. We always present a minimum of five comparables in any royalty rate determination, rank them by relevance and quality, and clearly explain the adjustments applied to each. A royalty rate that is the product of a rigorous, documented comparable analysis is far more defensible than one that appears to have been selected because it produces the desired output value.

12.3 Sensitivity Analysis — Communicating Valuation Uncertainty

Every patent valuation involves assumptions — about royalty rates, revenue forecasts, discount rates, and useful lives — that are inherently uncertain. A professional valuation report communicates this uncertainty honestly through sensitivity analysis: showing how the conclusion changes as key assumptions vary across a reasonable range.

For a Relief from Royalty-based patent valuation, the minimum sensitivity analysis should cover: royalty rate (±100–200 basis points); revenue base growth rate (±2–3%); discount rate (±100–150 basis points); and remaining useful economic life (±2 years). Presenting these sensitivities as a matrix — showing the value at each combination of key assumption variants — gives the report's users a clear picture of where the value is most exposed and what the realistic value range is.

12.4 Regulatory-Specific Report Requirements

Different use cases impose specific requirements on the patent valuation report that go beyond the general IVS framework. For FEMA valuations, the report must be dated not more than 6 months before the transaction, signed by an IBBI Registered Valuer or SEBI-registered Category I Merchant Banker, and explicitly state the valuation methodology and date of financial statements used. For Transfer Pricing documentation, the report must be prepared before the income tax return is filed and must cover all international transactions involving the subject IP. For Ind AS 103 PPA, the report must be prepared as of the acquisition date and must categorise each intangible asset in accordance with Ind AS 38's recognition criteria.

> **PRO TIP**
>
> *Maintain a 'regulatory requirements checklist' for each patent valuation mandate — listing the specific requirements of the applicable regulation (FEMA, IT Act, Ind AS, SEBI, IBC, Patents Act) and confirming compliance with each before the report is issued. A patent valuation report that is technically excellent but fails to include a required regulatory declaration, uses financial statements that are beyond the permitted age, or is signed by a valuer without the required registration for that use case will not achieve its purpose — and may create legal or regulatory liability for the client.*

CONCLUSION

Conclusion: Working With a Patent Valuation Expert

India's patent landscape is at a decisive turning point. Domestic innovation is accelerating, corporate IP strategies are maturing, cross-border technology transactions are increasing, and the regulatory and judicial frameworks governing patent rights are becoming progressively more sophisticated. In this environment, the ability to credibly and independently value patent assets is no longer a peripheral expertise — it is central to sound corporate decision-making, regulatory compliance, and the protection of shareholder value.

This playbook has provided a comprehensive, practitioner-grade reference for patent valuation across every major use case that Indian IP owners, technology companies, pharmaceutical firms, CFOs, legal counsel, and transaction professionals are likely to encounter. From the foundations of the Indian patent system and the drivers of patent value, through the three core valuation methodologies, to the specialised applications in M&A, Transfer Pricing, litigation, pharma, technology, and IP monetisation — the twelve chapters reflect the actual practice of professional patent valuation in India today.

When to Handle Patent Valuation Internally vs. When to Engage an Expert

The 70/30 principle applies in patent valuation as it does across professional advisory services. IP and finance teams should build internal capability for the 70% of patent valuation work that is directional — screening large portfolios to identify commercially significant patents, building preliminary financial models to inform licensing negotiations, and monitoring the performance of the patent portfolio against the original valuation thesis.

The 30% where an independent expert is essential: all regulatory filings that specifically require a registered valuer or independent professional certificate (FEMA, Income Tax, Ind AS 103 PPA); Transfer Pricing documentation for royalty arrangements subject to Indian TP regulations; litigation support valuations where the expert will be cross-examined in court or arbitration; IP monetisation transactions where the valuation opinion will be reviewed by lenders, investors, or buyers; and any situation where the patent valuation will be audited by a statutory auditor or reviewed by a regulatory authority.

The cost of an incorrect patent valuation — a FEMA penalty for under-valuing an outbound IP transfer, a Transfer Pricing addition for a royalty rate deemed too high or too low, a reduced damages award in infringement litigation because the damages analysis was not credible, or a goodwill impairment that should have been anticipated in a PPA exercise — is invariably far greater than the cost of a rigorous, independent valuation conducted at the outset.

What to Expect From an Elite Valuation Patent Engagement

A patent valuation engagement with Elite Valuation combines technical IP analysis, financial modelling rigour, and deep knowledge of the Indian and international regulatory framework. Our

process: a scoping discussion to understand the patent portfolio, its commercial context, and the specific regulatory and business purpose of the valuation; a document request covering patent certificates, prosecution histories, licensing agreements, commercialisation data, R&D records, and financial statements; technical expert consultation for pharmaceutical, biotech, or engineering patent portfolios requiring sector-specific expertise; application of the appropriate valuation methodology — Income, Market, or Cost Approach, or a combination — with full documentation of assumptions and comparables; a draft report shared for factual accuracy review; and a final, independent valuation report suitable for its intended regulatory or commercial purpose.

Our patent valuation reports are prepared to IVS and ICAI Valuation Standards, signed by an IBBI Registered Valuer, and designed to withstand the scrutiny of tax authorities, SEBI, the NCLT, the ITAT, and courts. We maintain our independence throughout every engagement — our conclusions are driven by the evidence, not by the client's preferred outcome.

KEY INSIGHT

The most important principle we bring to every patent valuation is that a patent is only as valuable as the economic benefit it enables — nothing more, and nothing less. Legal grants, patent certificates, and prosecution victories are prerequisites for value, not value itself. We have valued portfolios of thousands of patents whose economic value was concentrated in a handful of core assets, and we have valued single patents whose value exceeded the entire rest of the portfolio. Rigorous, methodology-driven analysis that separates legal appearance from economic reality is what distinguishes a credible professional patent valuation from a number with a letterhead.

How Elite Valuation Can Help

- Patent portfolio valuations for M&A and PPA — identification, classification, and fair value of all patent and technology assets under Ind AS 103
- Transfer Pricing documentation for royalty arrangements — arm's-length benchmarking, CUT/CUP analyses, and DEMPE value chain assessment
- FEMA-compliant cross-border IP transfer valuations — valuation certificates for ODI/FDI technology transfers compliant with FEMA NDI Rules and DPIIT guidelines
- Patent infringement damages expert reports — lost profits, reasonable royalty, and account of profits analyses for Indian commercial court proceedings
- Pharmaceutical and biotech rNPV pipeline models — probability-weighted valuations for clinical-stage and pre-clinical patent portfolios
- Technology patent valuations — SaaS, AI, SEP/FRAND, and software method patent analyses for licensing and transaction support
- IP impairment testing under Ind AS 36 — annual recoverable amount assessments for capitalised patent and technology assets
- Patent-backed financing support — going-concern and liquidation value assessments for IP collateral and royalty securitisation structures

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"A patent without a credible valuation is a legal right without an economic anchor. Whether you are licensing your technology, transferring IP across borders, defending against infringement, or acquiring an innovation-driven business, the quality of the valuation opinion determines the outcome."

— Sagar Shah, CA | CS | IBBI Registered Valuer | Ex-EY