

**9 KEY FACTORS  
THAT IMPACT  
PATENT VALUATIONS**

**ROBINS  KAPLAN<sub>LLP</sub>**

# 1 HOW BATTLE TESTED IS THE PATENT?



# 1 HOW BATTLE TESTED IS THE PATENT?

One of the most important considerations when valuing patents is whether they can be asserted, if necessary, in litigation. Prior litigation or extensive prosecution significantly reduces uncertainty related to patent validity and value and therefore creates greater predictability in assessing actual value.





## 2 HAS THE PATENT PREVIOUSLY BEEN LICENSED?



## 2 HAS THE PATENT PREVIOUSLY BEEN LICENSED?

The best predictor of future value is often past behavior—at least when that past behavior is the licensing of the patent. Although past license value is not necessarily determinant of present patent market value, it provides a strong indication of what value the market supports.





### 3 TECHNICAL MARKET ANALYSIS

The technology covered by a patent plays a strong role in determining value. Several methods for assessing technical value can be deployed including determining replacement value for covered technology (cost approach), potential income achievable through use of the technology (income approach), or review of like sales/licenses of similarly patented technology (market approach).





## 4 COVERAGE OF THE TECHNICAL MARKET





## 4 COVERAGE OF THE TECHNICAL MARKET

The scope of patent claims—in particular, whether the claims adequately cover the relevant technical market, is a strong indicator of value. Given the unpredictability of claim scope, diversity and breadth in issued claims can have a significant impact on valuation. In addition to claim scope, geographical reach can be an important factor. If the technical market has a significant international component, companion international patent coverage could substantially impact patent valuations.





# 5 FORWARD REFERENCES



## 5 FORWARD REFERENCES

Although not as reliable as a detailed claim analysis, the number of forward references (later issued patents that cite the patent as prior art) is often looked to as an indicator of relevance of a patent in a particular technical field. The more references, the more visible the patent and the broader its relevance to future patented technology.



# 6 PATENT ELIGIBLE SUBJECT MATTER?

```
62     ));  
63 </script>  
64 <?php  
65     if (is_singular() && get_option("thread_comments")) {  
66         wp_enqueue_script("comment-reply");  
67     }  
68 >>  
69 <?php wp_head(); ?>  
70 </head>  
71 <body <?php body_class(); ?>>  
72     <div id="header">  
73         <div class="wrapper">  
74             <h1>  
75                 <?php if (is_front_page() && Spaged < 2) : ?>  
76                     /images/logo.png" alt=">  
77                     <?php else : ?>  
78                           
79                     </img>  
80                 </h1>  
81             </div>  
82         </div>  
83     </body>  
84 </html>
```

## 6 PATENT ELIGIBLE SUBJECT MATTER?

Since the Supreme Court's 2014 decision in *Alice v. CLS Bank*, significant uncertainty has been introduced in the patentability of software or methods of conducting business. Uncertainty in patentability negatively impact valuation so patents within fields potentially covered by *Alice* can be negatively impacted.



```
61 s.parentNode.insertBefore
62 })
63 </script>
64 <?php
65 if (is_singular()) && get_option('thread_comments') {
66     wp_enqueue_script('comment-reply');
67 }
68 ?>
69 <?php wp_head(); ?>
70 </head>
71 <body <?php body_class(); ?>
72 <div id="header">
73 <div class="wrapper">
74 <h1>
75 <?php if (is_front_page()) && Spaged < 2): ?>
76 
82 <div>
83 <input accesskey="s" type="text" id="s" name="q" value="" />
84 <input type="submit" value="Find" />
```





## 7 HOW CROWDED IS THE PRIOR ART?

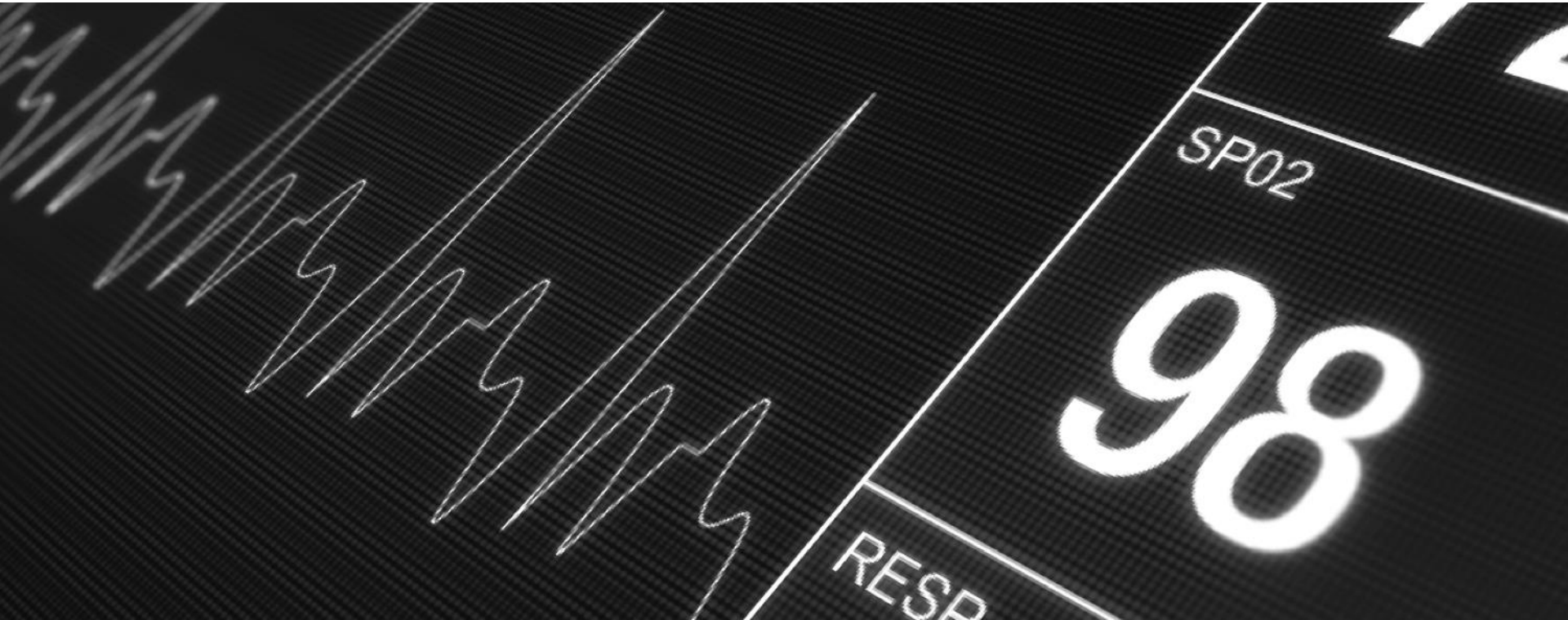


## 7 HOW CROWDED IS THE PRIOR ART?

Transformative patents, or patents that dramatically alter the technical landscape, possess significant value but are extremely rare. Incremental improvement patents, which build on existing technology, are far more frequent but the value can only truly be ascertained by review of the “prior art” or state of technology that existed at the time of the invention. The state of that art at the time of the invention could uncover that the patent claims a significant improvement warranting significant value or alternatively claim no improvement at all subsequently dramatically diminishing value.



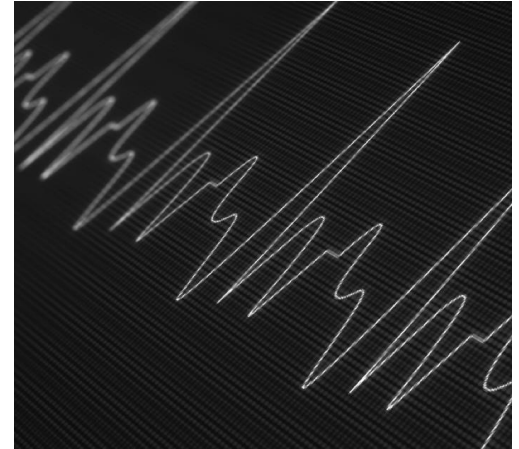
## 8 REMAINING LIFESPAN





## 8 REMAINING LIFESPAN

Patent owners enjoy a twenty year period of protection. The remaining duration of that protection is an important factor in determining patent value.





# 9 CONGRESS



## 9 CONGRESS

Pending legislation has the potential to dramatically alter the valuation calculus for patent portfolios. Staying on top of changes in the law may be the most critical component of properly valuing patents.



# ROBINS KAPLAN<sub>LLP</sub>

REWRITING THE ODDS



**SETH A. NORTHROP**

Mountain View

[SNorthrop@robinskaplan.com](mailto:SNorthrop@robinskaplan.com)

650.784.4012