

Select USA
Going to the USA: IP Risks and
Opportunities

November 2015

Who We Are

EverEdgeIP is a global intangible asset advisory & transaction specialist.

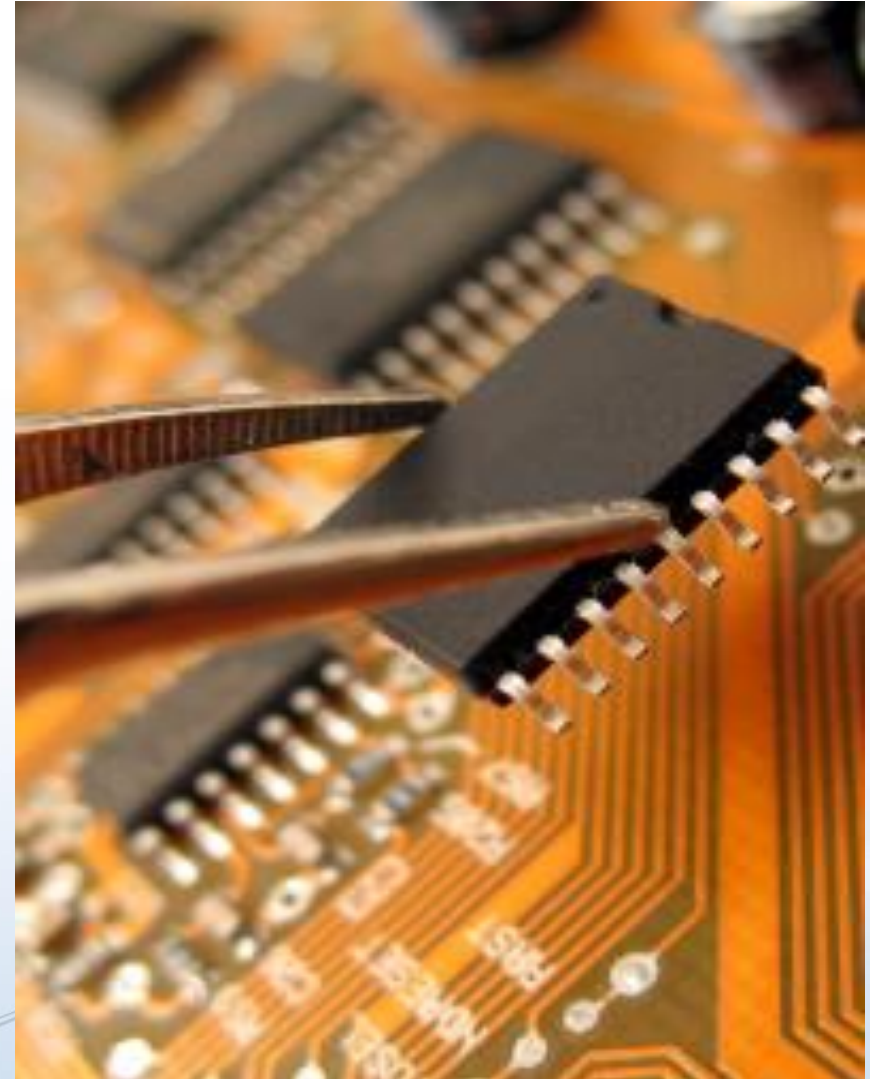
We assist senior management, Boards & investors to identify, manage & generate value from intangible assets.

- Deliver more of World's top intellectual property strategists than any other firm.
- Fortune 100 & 500 clients.
- Offices in the US, UK, Australia & NZ
- No patent or trademark filing. Ensures independent, business-centric advice.



Track Record

- 900 client engagements
- 130 portfolios transacted
- 500 license transactions
- 100,000 patents reviewed
- Advisor to over \$500M of investment into IP rich deals



Today: Importance of IP in the US Market

- Talk from experience advising 100's of companies on IP strategy and commercialisation in the US.
- **Goal: generate high margin, defensible US revenues.**
- Most companies do not realise that critical role IP plays in successful US strategy.
 - Far more active patents in US (much higher FTO risk)
 - Larger, better resourced, more savvy competitors
 - More mature IP market with more capable service providers
 - Lawsuits to enforce IP rights extremely expensive, damaging
 - More aggressive business, technology and legal culture

US is completely different from NZ: IP is mission critical. Can't take NZ approach into US.

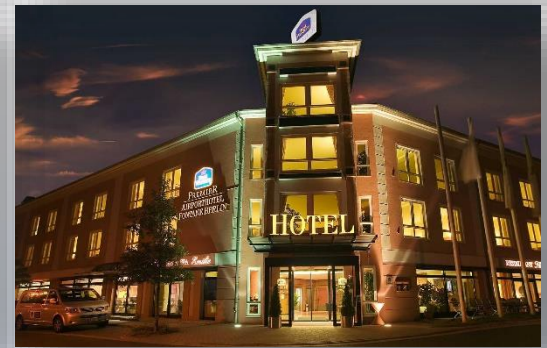
We're not in Kansas anymore...

US highly competitive, no holds barred, environment. Two key rules:

- 1) If you can't stop or slow down the competition you will be copied.
- 2) Even if you don't care about IP you can guarantee someone in the US cares very deeply

What is **IP** and why is it so important in the US?

Balance Sheets: 35 Years Ago



Balance Sheets: Today

CLIENTS

Close Print Find New Flags Sort Split Del Top Bott Help

Browse Detail History Options

First Last

Name Jane Doe

Title Suite 220

Company

Address 1 25 Treelined Boulevard

Address 2

City Green City State CALIFORNIA

Zip 09210 Country

Customer No. TST1006

Phone Numbers

Phone 310-101-999

Ext.

Fax 310-101-1001

Mobile

Last Purchase 11/30/2008

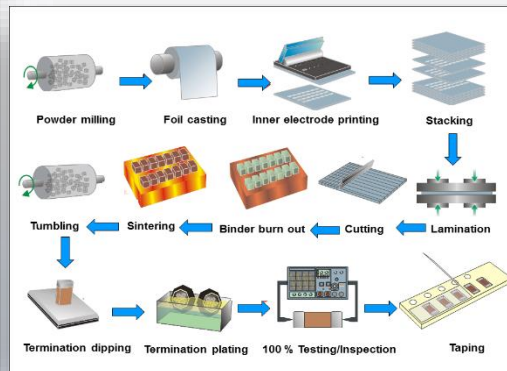
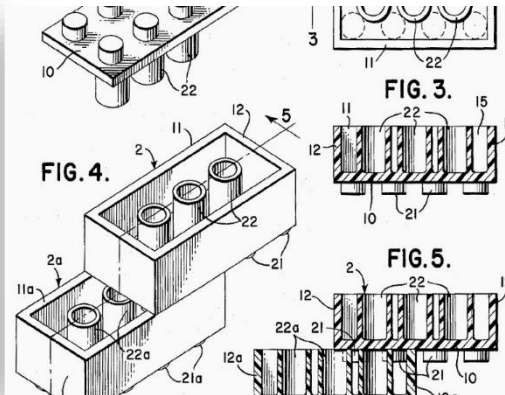
Last Mailing 11/01/2008

Birthdate 09/30/2009

Cust Type WHOLESALE

Email jane.doe@alljanes.com Go

Web Site www.janedoe.com Go



IP is more than patents...

**Intellectual
Property =**

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

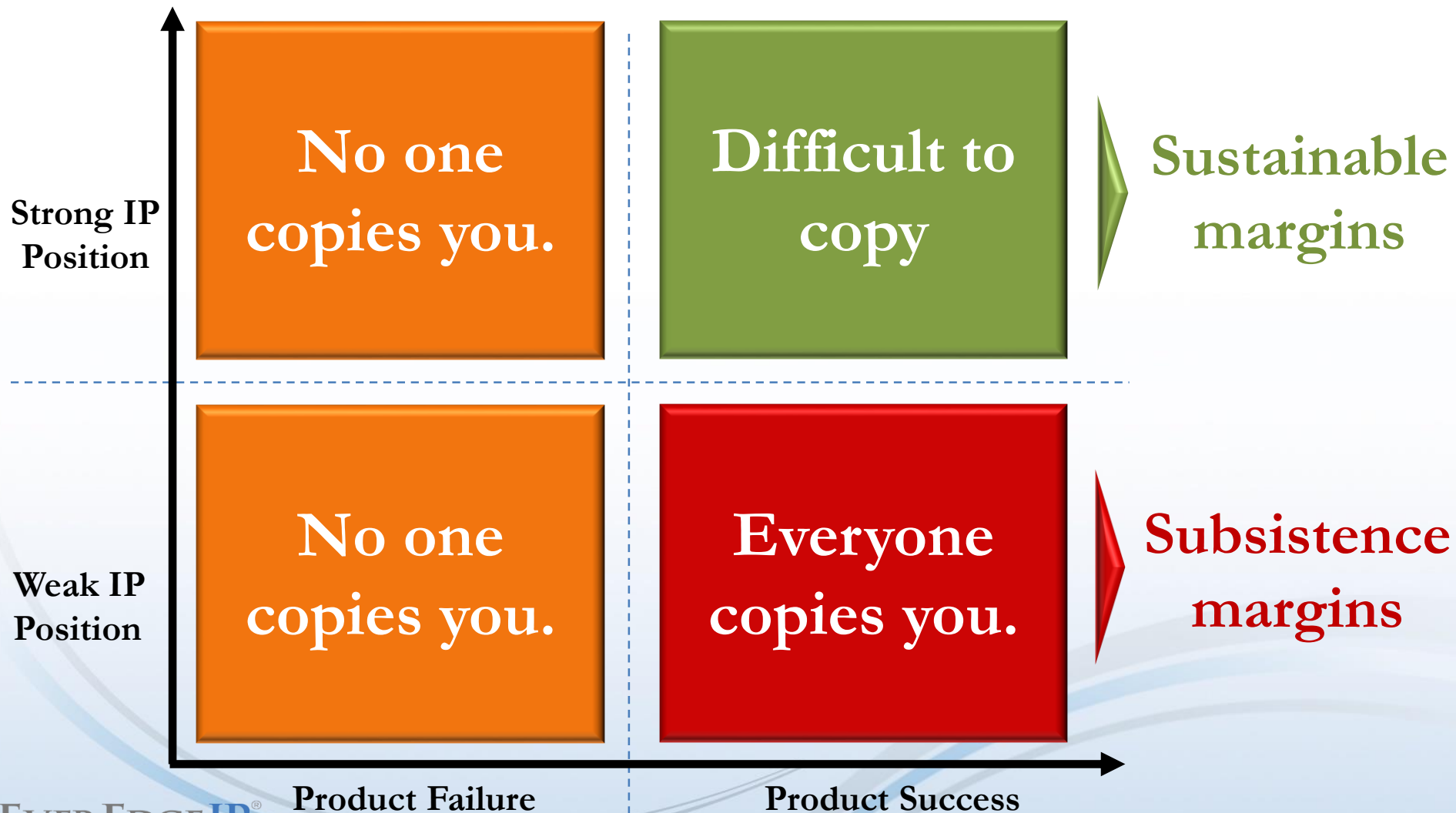
IP in terms of *volume & value*

Intellectual
Property =

- Confidential Information
(Know How / Trade Secrets / Processes)
- Copyright *(Content, Data, Code)*
- Unregistered trademarks } *(Brand)*
- Registered trademarks
- Patents
- Approval Rights
- Design Rights
- Domain names
- Plant Variety Rights
- Integrated Circuit Layouts











1) If you can't stop or slow
down the competition you
will be copied.

Strong vs Weak IP Position



Getting it wrong

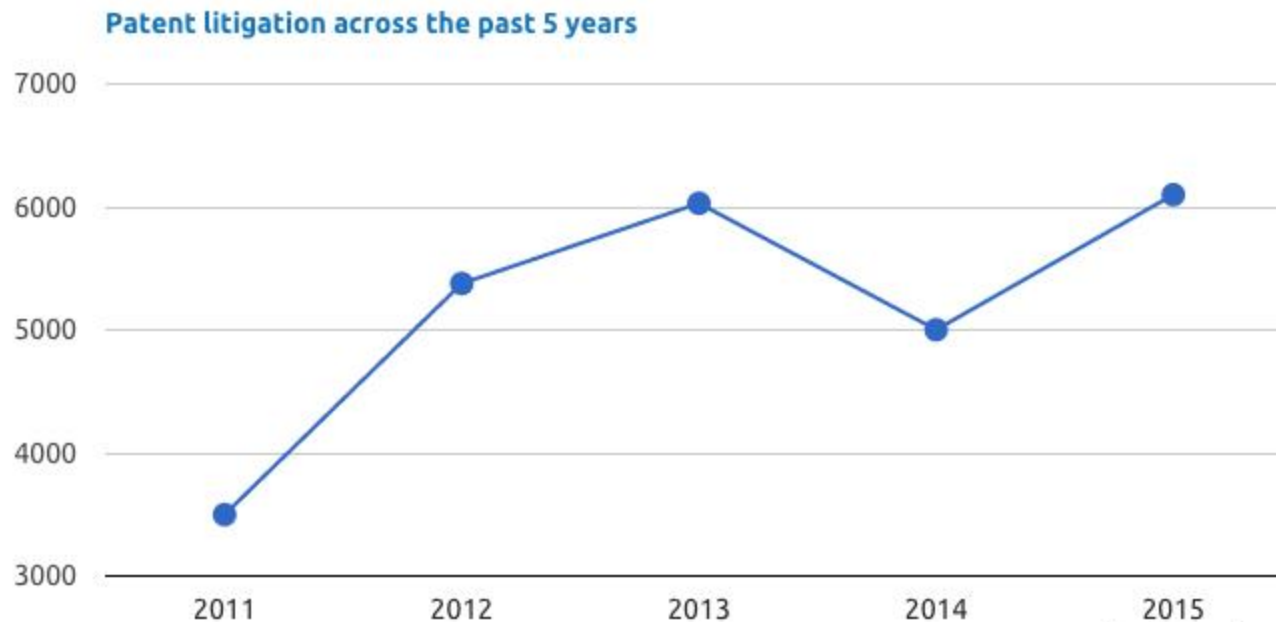
- Most NZ companies spend more on coffee than on IP strategy.
Cost of poor IP strategy is high.

Wrong patent filing		"I spent \$930,000 on a patent that didn't protect us and we were copied" – CEO, 00,000,000 agri-tech company	
Incorrect disclosure		"We gave away our IP and created our biggest competitor" – CEO, 000,000,000 TIN100 software co	
Infringement		"We sold for 1/3 our real value, costing our shareholders 10's of millions because of poor IP strategy advice" – CEO, 00,000,000 electronics company	
Wrong R&D decision		"We committed 15 engineers for three years to a technology that someone else had patented six years earlier" – CEO, 00,000,000 hardware company	
Wrong TM strategy		"We rebranded base on legal advice we had trademark protection. We didn't. We had to rebrand at cost of 100's of thousands" – CEO, 00,000,000 pharma company	

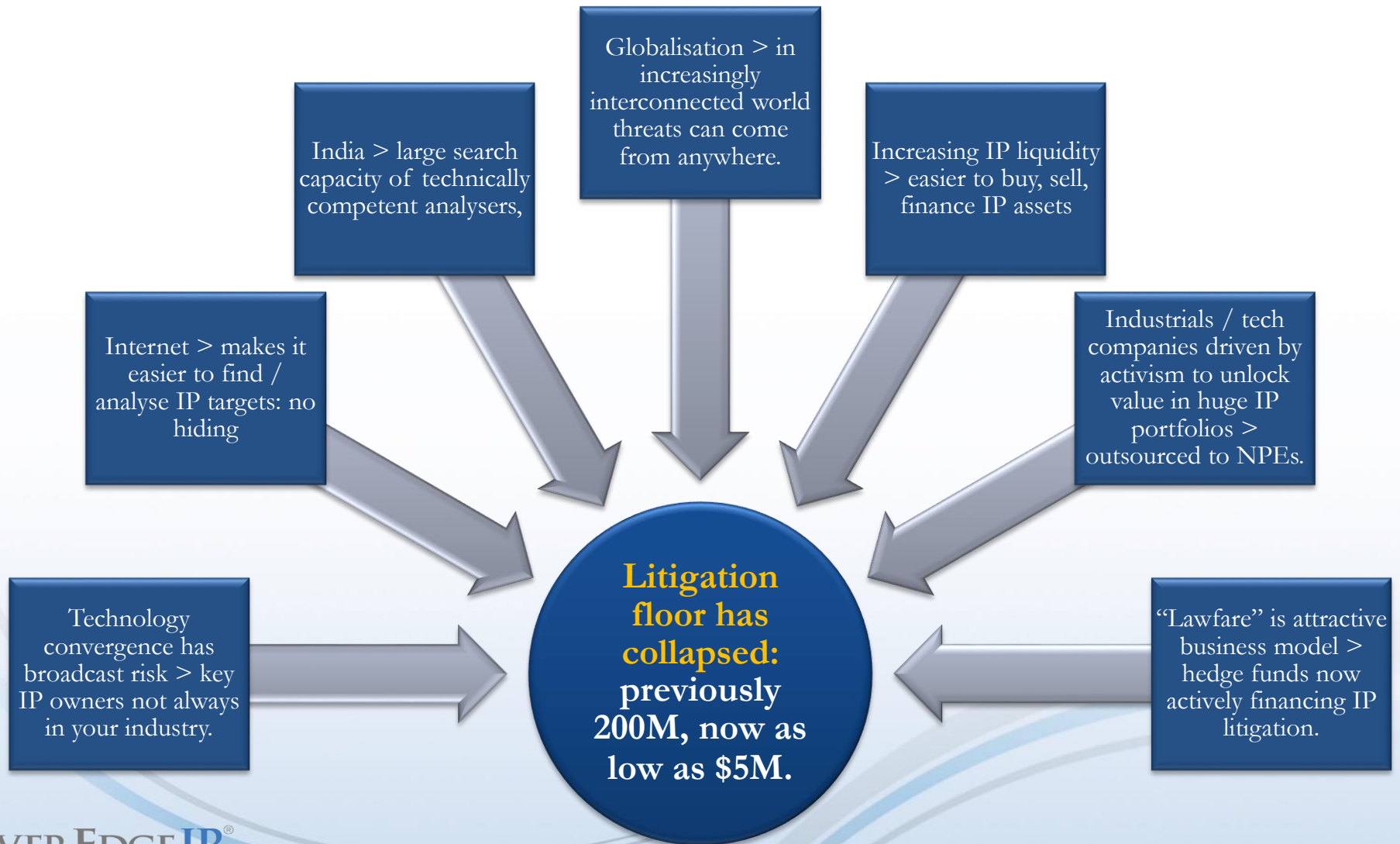
2) Even if **you** don't care
about IP you can
guarantee **someone** in the
US **cares very deeply.**

Environment has fundamentally changed

- Substantial growth in IP litigation in US and EU
- Infringement / Freedom to Operate (FTO) risk now a substantial risk any co exposed to US or EU.



What has driven this change?



Lawfare: Success Attracts Litigation

- SME's are the most common target. Favoured target size \$20mil to \$50mil. Frequently target events.
- Consequences are extremely serious and costly.
- Cannot stick head in sand. Solving problem after it happens extremely expensive
- Need to take proactive steps in advance to reduce exposure, mitigate risk, have an arsenal to fight back with.

More successful / high profile a company becomes more likely to be sued. In US a matter of time.

New Zealand is not immune

- Well known NZ company sued three times in four weeks following acquisition by US company.
- NZ tech company spent NZ\$15M defending infringement suit before settling and paying license fees.
- NZ company effectively forcibly acquired following patent litigation by offshore competitor.
- NZ company forced into settlement after being sued 6 weeks out from major capital transaction.

**Directors can be directly liable for failing to manage
FTO risk.**

Getting it right



Client:

PE Firm

Industry:

Pharmaceuticals

Markets:

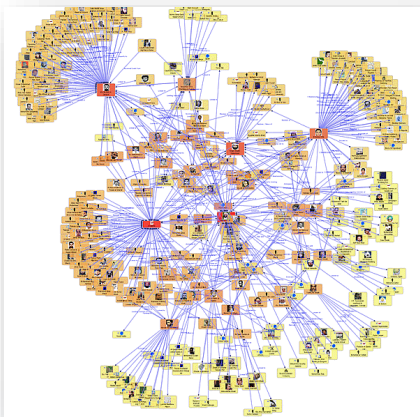
USA

- Unique patents around reformulation of pain drugs
- Formulated investor proposition for creation of de novo Pharmaceutical company
- Presented to PE investors in 2010
- Maintained ongoing strategic role at board level

RESULT:

- \$200M invested
- Drugs launched in 2014 in USA
- Trade sale offer to acquire company for IRR exceeding 50% within 12 months (US\$1 billion)

Getting it right



Client:

Software start up

Industry:

Software

Purchaser:

Fortune 200
Corporation

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

RESULT

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

Where to from here?

- IP is more than patents.
- Assess the IP you have, how strong it is and the role it plays in your business.
- Have a clear understanding of the competitive landscape and the risk it presents.
- Get independent advice, simply filing patents is not an IP strategy.

A business centric IP strategy is a key driver of your success in the US market.

Thank You

- *LAM300 IP Strategist – named one of the top intellectual property strategists in the World (2006 - 15)*
- *Winner – IP Strategist of the Year – United Kingdom - 2015.*
- *Winner - Outstanding IP Leader - IP Focus Awards, Shanghai, China, 2012.*

United States of America

2173 Salk Avenue
Suite 250
Carlsbad
CA 92008
United States
T/ +1 619 391 4257
F/ +1 760 683 324
E/
d.magee@everedgeip.com

United Kingdom

11-14 Grafton Street
Mayfair
London
W1S 4EW
United Kingdom
T/ +44 203 519 3023
T/ +44 7825 082 112
E/
c.donegan@everedgeip.com

New Zealand

North Entrance, Ground
Floor
4 Fred Thomas Drive
Takapuna 0622
Auckland
New Zealand
T/ +64 9 489 2331
F/ +64 9 489 2313
E/ info@everedgeip.com

Australia

201 Elizabeth St
Sydney NSW 2000
Australia
T/ +61 2 8267 7300
F/ +61 2 9264 5154
E/ y.millan@everedgeip.com