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IP DUE DILIGENCE AND VALUATION IN MERGERS AND ACQUISITIONS

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1.1 Abstract

Intellectual Property has become a plum of assets in contemporary Mergers and Acquisitions deals, which requires strict legal and financial inspection. IP Due Diligence is a methodical review of the IP portfolio of the target company including patents, trademarks, copyrights, and trade secrets, to identify ownership flaws, licensing burdens, and infringement risks, and valuation lapses. This exercise will protect the acquiring firm against acquisition of unknown liabilities or contentious rights. After due diligence, IP Valuation establishes the economic value of such intangible assets by use of three established methodologies, the Market-Based Method, which compares similar transactions; the Cost-Based Method which approximates reproduction expenditure and the Income-Based Method which discounts future cash flows to the present value. Collectively, these frameworks will facilitate informed negotiation, proper pricing of deals, and post-deal integration planning. Since IP assets are intangible and have jurisdiction-related sensitivities, a disciplined and legally viable method of due diligence and valuation is essential in alleviating transactional risk.

Keywords: *Intellectual Property Due Diligence, Mergers and Acquisitions, IP Valuation, Intangible Assets, Licensing and Ownership Rights.*

1.2 Introduction

Intellectual Property are one of the assets which are important part of the M&A transactions between the companies in this modern era. As a result, these companies view their Intellectual Property as an important asset that needs to be thoroughly assessed before making any strategic decisions related to M&A to prevent audits, penalties/ fines, or even litigation in future. However, to prevent these types of risks there are certain laws

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which safeguards IP assets from any illegal use because these assets are intangible in nature. In a company there can be many underlying IP assets that underlie behind every physical product that is available in the market. Therefore, the real value of the IP and the product in these intangible assets.²³

In the process of Mergers or Acquisitions, the Intellectual Property Due Diligence plays an essential role, and it should be taken care with utmost care. IP Due Diligence is carried out to understand the nature of buyer, the nature of the Target company and IP assets of the target company. Due Diligence helps to clear whether this transaction would be an asset or stock purchase because this process helps an acquiring company to identify possible risks, such as ownership issues, ongoing disputes, limitations on license, lists of registered and unregistered IP and so on.⁴⁵

After gathering information about the target company, the acquiring company move forwards with the IP Valuation, where the acquiring company focuses on determining the value of the Intellectual Property of the target company. This plays an essential role in negotiating the value of target company.⁶

1.3 IP Due Diligence⁷

In the knowledge driven economy of today, Intellectual Property are frequently determining an important portion of worth of the company. The IP Due Diligence is a comprehensive process which is necessary for the Mergers and Acquisition transactions which includes the transfer of ownership as well as the management of these assets.

² Vaibhav Sharma and Bharat Rakesh Bhardwaj, 'Intellectual Property Management in Mergers and Acquisitions' (2024) 5 IP Bulletin 35 <<https://cnlu.ac.in/wp-content/uploads/2025/07/Intellectual-Property-Management-In-Mergers-And-Acquisitions-by-Vaibhav-Sharma-Bharat-Rakesh-Bhardwaj.pdf>> accessed 20 December 2025.

³ Nishith Desai Associates, *Mergers & Acquisitions in India* (June 2025) <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Mergers_Acquisitions_in_India.pdf> accessed 16 January 2025.

⁴ Garishma Dongre, 'Role of Intellectual Property in Mergers and Acquisitions' (2022) 30 *Supremo Amicus* <<https://supremoamicus.org/wp-content/uploads/2022/07/Garishma-Dongre-1.pdf>> accessed 20 December 2025.

⁵ Yetunde Okojie, 'The Importance of IP Due Diligence in Mergers and Acquisitions' (Mondaq, 2018) <<https://www.mondaq.com/nigeria/patent/740668/theimportance-of-ip-due-diligence-in-mergers-and-acquisitions>> accessed 16 January 2025.

⁶ Dongre (n 3).

⁷ Noah Farhadi and George Tovstiga, 'Intellectual Property Management in M&A Transactions' (2010) 3(1) *Journal of Strategy and Management* 32 <https://www.researchgate.net/publication/359195574_Intellectual_property_management_in_MA_transactions> accessed 18 January 2026.

In other words, the IP Due diligence is a detailed examination of the target company's IP Portfolio.⁸

Intellectual Property commonly plays an important role in these M&A deals, specifically when the target company's main value is found in its IP assets such as Trademarks, Patents, Trade Secrets, or Proprietary technology. Therefore, IP Due Diligence has become a significant component of these M&A transactions which guarantees that the acquired business is completely aware of the IP assets it is purchasing as well as any risks which are involved.⁹

The acquiring company generally conducts this process via publicly available information like news articles, the websites of target company as well as its competitors. From the standpoint of a business purchasing another business and ultimately obtaining intellectual property, due diligence with an emphasis on IP helps the acquiring business in determining the intrinsic value and more crucial state of the targets' IP in all regions covered by the M&A.¹⁰

The objective of IP Due Diligence is to find and analyze the assumptions in regard to the value and check whether if it is feasible, identify and measure any related risks. There are number of transactions which includes mergers and acquisitions, sale of an asset, joint ventures, loans, secured transactions, and valuations may be included in the report of due diligence. The important information on the strength of the Intellectual Property assets of the target company helps the prospective buyers to evaluate any associated risks in relation the sellers IP portfolio and this might help them to decide whether the transaction is feasible as well as profitable or not. Thus, the businesses might be exposed to unknown risks and liabilities if the acquiring company does not carry out the due diligence process properly.

1.3.1 Importance of IP Due Diligence

Due diligence of the intellectual property has emerged as an important aspect of M&A deals. It assists in making the transaction successful by minimizing the possible conflicts and minimizing disputes.

⁸ Pragya Vajpeyi, 'Intellectual Property Due Diligence in Mergers and Acquisitions: Key Legal Considerations' (The Amikus Qriae, 2024) <<https://theamikusqriae.com/research-paper-intellectual-property-due-diligence-in-mergers-and-acquisitions-key-legal-considerations/>> accessed 18 January 2026.

⁹ Vikrant Rana, Rupin Chopra and Shantam Sharma, 'Securing the Deal: The Power of IP Due Diligence in M&A Transactions' (Mondaq, 14 February 2025) <<https://www.mondaq.com/india/corporate-and-company-law/1584154/securing-the-deal-the-power-of-ip-due-diligence-in-ma-transactions>> accessed 18 January 2026.

¹⁰ Dongre (n 3).

- a. Facilitating the accurate valuation: The IP assets usually make a considerable part of the overall company value. Consequently, IP due diligence must be properly undertaken whereby these assets are properly valued and recorded to prevent undervaluation and overvaluation.
- b. Identifying possible risks: Some of the risks that IP due diligence assists in recognizing include litigation that is still in court, copyright violations or any other legal suits. These dangers have the potential to impact the future use of the IP. It also helps the acquiring company to evaluate the possible liabilities and make appropriate decisions.
- c. Integration Planning: The IP assets must be well understood to facilitate a seamless post-transaction integration. It assists the acquiring company to successfully integrate the IP with its existing portfolio.
- d. Checking of rights and ownership: IP due diligence assures that there exist no third-party claims or disputes of the IP assets. It verifies that the target company is indeed the true owner of the IP and is legally allowed to transfer or sell it thus safeguarding the acquiring company.¹¹

1.3.2 Essentials for IP Due Diligence

- a. The IP Portfolio details: The determination of ownership of intellectual property assets and the establishment of the right and responsibilities that the owner has with the assets is one of the main tasks in IP due diligence. In the process of IP review, it is crucial to determine the territorial jurisdictions where the IP is produced and safeguarded. IP due diligence must extend beyond looking at the IP portfolio of the company, i.e. trademarks, copyrights, patents, trade secrets, domain names, geographical indications, semiconductors and the like but also at the financial statements of the company. Time is a crucial factor in the framework of M&A transactions because both sides must be efficient in terms of asset identification and IP use.

The major issue in this process is to be able to differentiate between IP owned by the company and IP owned by people or third parties, including customers who are a part of the transaction, and to understand its future valuation. Moreover, the distinctions between registered and unregistered IP assets, as well as protection mechanisms, should be thoroughly examined. Such

¹¹ Sehgal, Kansal and Kumari (n 1).

complexities are further compounded when it comes to cross-border transfers and the localization of data.

- b. Registration and licensing of IP Assets: Issues of freedom of operation in relation to the rights of third-party might be of concern especially when the secured technology is embodied in the form of financial instruments of a share, bond or stock. In order to establish the liability and value attached to both registered and unregistered IP assets, one has to establish the liabilities that are attached to the assets. This will entail the review of records kept by the concerned IP offices. When dealing with corporate entities, it is also necessary to examine the documents maintained by the Registrar of Companies in regard to the target company. At the due diligence/negotiation stage, the transferee company may also request to register any encumbrance on registered IP or any other related assets.

Besides the legal area of protection of IP, there is also a financial factor to consider, especially in estimating the cost of protecting IP by registering and licensing. There are typically three types of licensing of IP: exclusive licensing, non-exclusive licensing, and sole licensing.

WIPO proposes three popular mechanisms in circumstances of cross-border mergers or foreign entities: technology licensing, international licensing, and copyright licensing. Also, the existing contractual liabilities have to be reviewed in detail, as well as any previous transfers to a third party that can inhibit ownership of the IP or restrict the utilization of patented technologies.

- c. Problems relating to Ownership: It can be shared by two or more individuals or entities as intellectual property assets. Where two or more companies come together, such IP assets are commonly combined to be used in research and development and could be shared. It is however important that joint owners know whether they have the right to transfer full ownership on their own or other co-owners need to give their approval.

When there is an M&A transaction, it is necessary that the seller must demonstrate clear and valid ownership of the IP rights that are being transferred. The transfer of such rights by way of a transaction will only be effective when the selling entity has rightful ownership. Consequently, before an M&A deal is finalized the seller should be able to make sure that all the

pertinent intellectual property assets are consolidated and controlled.

It is also possible that a seller can purport to own specific IP assets when they do not have any legitimate rights to ownership, e.g., when patents or technologies are not registered. Where there is no pre-existing duty to assign, the buyer might insist that the seller acquire full ownership and rights to the IP assets to the extent needed at the seller's cost, prior to the deal being struck.¹²

1.3.3 Check list to follow

It is essential to conduct due diligence, and it must be done in depth to ensure that all the possible issues in relation to IP assets have been resolved or not. Therefore, to ensure this there are following steps that are to be considered while acquiring the IP assets of a company while also evaluating the target company:

- a. **Determining IP Assets:** During the M&A transaction the acquiring company must ask for a list of all the IP assets of the target company even whether they are registered or unregistered. The said list should include all the Trademarks, Copyrights, Patents, and Patent type filings. The acquiring company can also ask for the specific information as well pertaining to any licenses or agreements in relation to the shared ownership or target's usage of any IP assets or it is jointly owned by a third party. Moreover, the acquires have to find out if the seller or that target company has or uses any IP that has not been included in the transaction in the event of a carve-out transaction. They also have to know that if the IP is transferred then how the target company will have the access of that IPs after the transaction is completed.
- b. **IP ownership:** To determine the ownership of the IP the acquiring company has to examine the search reports to verify the each of the following registered IP which is disclosed by the target company:
 - The accuracy of the information that is given must guarantee that the target company is the current registered owner of the claimed IP;
 - The details of expired dates of the issued Trademark. Copyrights, Patents, etc.;

¹² Aathira Pillai, 'IPR Due Diligence in M&A Transactions' (Jus Corpus, 27 February 2023) <<https://www.juscorpus.com/ipr-due-diligence-in-ma-transactions/>> accessed 20 January 2026.

- The details of the existing gaps in the chain of title. If any gaps are found, then the copies are to be requested of the relevant documents to resolve them.
- c. Acquisition & Development of Intellectual Property: The acquiring company has to ask for the proper documentation and information to determine how the target company created or obtained the IPs. It is also necessary to determine whether the IP that was created/ innovated by the employees of target company alone or was it in collaboration with the outside parties, or with the guidance of consultant or independent contractors, or with funds and resources, or staff from the government agencies etc. Thus, to ascertain the target company's ownership the acquiring company needs the information as well as documentation pertaining to that.
- d. IP based Agreements: The acquirer should scrutinize all of the IP-related agreements during the due diligence process. Such agreements assist in establishing whether any of the major intellectual property rights have been purchased, licensed or assigned to the third parties, which might likely have negative effect on the transaction. Moreover, where the target company has licenses to foreign IP, it becomes relevant to determine whether it is necessary to involve a local lawyer in the appropriate jurisdiction to confirm that there are any compliance requirements with regards to such licensed IP and that those requirements have been appropriately met.
- e. Protection and Enforcement of IP: The acquirer is expected to gain access to all the pertinent information and records on how the target company has been protecting and enforcing its intellectual property. Special focus should be placed on those types of IP that are critical to the company's core operations.
- f. Related Disputes: Any existing, threatened, or potential conflicts involving IP assets, such as litigation, cease-and-desist letters or registry actions, should be identified. In the event of any major conflicts being found, the buying firm ought to consult an IP litigation expert to help in the analysis. Also, licensing requirements, restrictive covenants, and other contractual conditions should be reviewed, which can have a negative impact on the buyer and its affiliates, such as portfolio companies owned by the private equity investors, once the transaction is complete.

- g. It and Software Systems: The operations of any company in any industry are necessitated by information technology and software systems. Although the target firm may not be the owner of registered IP, such as patents, it is likely to be dependent on software that is utilized in several processes including production, design, and front-office and back-office processes. As such, these systems should also be inspected in due diligence.
- h. Social media and Websites: During the process of assets acquisition, the terms and conditions of the respective social media platforms should be checked to identify whether there exist any limitations to transferring the related accounts. In case the social media accounts of the target company are not transferable, it is worth considering the possibility of transferring the content of the existing accounts to new accounts once the transaction has been finalised.¹³

1.3.4 Pitfalls to Check

- a. The IP assets are jointly owned: In the case of intellectual property, where the business holds the property jointly with a buyer, consultant, or contractor, it may cause problems to both parties, especially in the areas of control and enforcement. This joint ownership can also result in practical difficulties in exercising rights over the IP. Furthermore, in case the seller cannot establish complete ownership of the IP asset prior to the actual transaction being finalized, it can even lead to the deal being cancelled.
- b. Missing IP asset: In some cases, companies might knowingly or unknowingly omit important IP assets in a transaction. An example in point is the takeover of Rolls-Royce Motor Cars Ltd. by Volkswagen Group in the late 1990s. The Rolls-Royce Motor Cars Ltd. was owned by Vickers PLC; it produced luxury cars under the brand name Rolls-Royce and Bentley. Both BMW and Volkswagen were interested, however, Volkswagen eventually out-bid BMW and purchased the company at around 700-800 million dollars. Nonetheless, once the deal was brokered, it turned out that Volkswagen did not buy the rights to use the name and logo of Rolls-Royce. Although it had acquired the manufacturing facilities of the company, the employees and designs of the company, the trademark rights belonged to Rolls-Royce PLC which was another aerospace company. Rolls-Royce PLC had earlier assigned

¹³ Sehgal, Kansal and Kumari (n 1).

these rights to Rolls-Royce Motor Cars Ltd., and it had a clause that the rights would be reverted in case the company was sold to a foreign company. Then, the valuable trademarks were further complicated as Rolls-Royce PLC had licensed them to BMW rather than Volkswagen.

The case demonstrates that the issue of ownership and right of use of intellectual property is very critical and before a transaction is finalized, it is important that the ownership and the right of use are verified.

- c. Preexisting Contractual Responsibilities with regards to IP: Different contracts e.g. development agreements, consultancy contracts, and confidentiality agreements tend to have an IP ownership clause. Such deals also can have limitations or conditions that a buyer is not ready to accept following the acquisition or merger. Thus, one has to determine all the rights, duties, and obligations involved with such agreements in the first place to prevent any complications later on and make the business run with ease after closing.
- d. Expired, lapsed, abandoned or pending IP rights: Intellectual property, e.g. trademarks or patents, may in other instances have expired, lapsed, been abandoned or may be in the registration or prosecution process. Prosecution of patents may reduce the scope of claims, sometimes drastically, making protection limited. Consequently, the ultimate extent of patent protection might not be certain in the initial phases.

Buyers have to be cautious when appraising such IP assets. To prevent risks in the future, they usually require the seller to provide clear representations and warranties to them on the definition and ownership of IP, lack of infringement and lack of violation of third-party rights. Moreover, buyers usually seek conditions that there are no claims (pending, threatened or existing), to the validity, enforceability, use or ownership of the IP assets, which will arise after the transaction.¹⁴

1.3.5 Players in Due Diligence Process

The IP due diligence process is usually a process that entails a number of stakeholders each having a certain role and duty. The following are some of the

¹⁴ Ravi Raj, 'Role and Significance of IP Due-Diligence in M&A Transactions in India' (IIPRD, 31 August 2022) <<https://www.iiprd.com/role-and-significance-of-ip-due-diligence-in-ma-transactions-in-india/>> accessed 20 January 2026.

major participants:

- a. Acquirer: The acquirer is the company or a person that acquires the target company or its IP assets. The acquirer will mainly carry out the due diligence process and should be careful to identify, assess and incorporate all the IP assets into its current IP portfolio.
- b. Target Company: The acquiring firm is the target firm. It also has a role of availing all the information and documentation of its intellectual property assets to enable the due diligence process.
- c. IP Lawyers: The role of intellectual property lawyers is to investigate legal and regulatory issues of the target company IP assets. This involves checking ownership, determining the veracity of IP rights and the possible risk of infringement. They also recommend the acquirer on how to reduce legal and regulatory risks of these assets.
- d. IP specialists: The IP specialists are concerned with the technical assessment of IP assets of the target company. They determine the worth of such assets and any risk involved. Moreover, they can suggest some IP-related risks handling strategies and ways to maximize the value of the assets.
- e. Financial Advisors: The financial advisors will perform the calculations on the financial side of the IP assets of the target company such as their valuation and possible ROI. They can also give advice on pricing policies, negotiation policies and the financial implications of the IP assets in the M&A deal.
- f. Due Diligence Team: The whole due diligence process is coordinated by the due diligence team. They will need to identify and engage the relevant stakeholders, do the necessary assessments and evaluations and share the findings and recommendations with the acquirer. This team usually includes the representatives of both the acquiring and target companies, as well as of the IP lawyers and IP specialists, financial advisors, and other participants of the transaction.

Thus, A co-operation between all these players is necessary to enable a thorough and effective due diligence exercise. Through their collaboration, they are able to detect possible risks and control them, to properly evaluate the IP assets and to play a role in the successful realization of the M&A transaction.¹⁵

¹⁵ Sharma and Bhardwaj (n 1).

1.4 IP Valuation

An essential part of the M&A transaction is determining the value of IP. An Intellectual Property worth is basically derived from the owner's ability to prevent its competitors from using it. An IP asset should increase the value of the other assets it is linked with and provide a quantifiable quality of financial advantages to its owner or user to be considered valuable. The companies can decide on an appropriate cost of capital with knowledge with the help of IP valuation.¹⁶

Now the companies may attempt to negotiate the value of the IPs when it comes to the Merger and Acquisition Transactions. However, the IPs do not have fixed market value so some of the factors include the industry study, entry barrier in the industry, market share of the owner, economic condition of the businesses, profits, possibilities of expansion of business, possession of new technologies, concentration and level of competition in the market. Therefore, the IP valuation is quite tricky as it has no blanket formula as well as its intangible assets, but these assets add value to the acquiring company. It is very difficult to determine the values of these assets hence the IP valuation comes into play here.¹⁷

Even though IP does not have a fixed market value however it is still considered as an important asset in today's world. To help companies to value intellectual property when engaging in M&A transactions, Schedule III of the Companies Act, 2013 gives a list of intangible assets. These include:

- Goodwill
- Trademarks
- Computer software
- Mining rights
- Mastheads and publication titles.
- Copyrights, patents and other IP rights.
- Recipes, formulae, models, designs, prototypes.
- Licenses and franchises
- Others

¹⁶ Chaitanya Nikhil Vaidya, 'Role of IP in Mergers and Acquisitions' (2023) 5(1) Indian Journal of Law and Legal Research 1 <<https://www.ijlra.com/post/role-of-ip-in-mergers-and-acquisitions>> accessed 21 January 2026.

¹⁷ Dongre (n 3).

The intangible nature of these assets is that even though they are not tangible in nature, they are linked to tangible output or product and cannot exist on their own. Considering a patent granted to an invention of pharmaceutical product, this is eventually commercialized by selling a drug, and a book under copyright is in a tangible form. Due to this the valuation methods of both tangible and intangible assets are widely the same as they are determined by the value of their economic use and use. Moreover, the ICAI Valuation Standard 302 (2018) provides certain principles and guidelines regarding valuing intangible assets, which are not fully covered in other standards. These are specific guidelines that give detailed guidance on how to evaluate assets like brand value, goodwill and licenses. These assets are identified as distinguishable and non-monetary objects lacking physical substance. The standard states the important considerations for the valuation of these intangible assets, including figuring out the objective of valuation, evaluating the legal rights in regard to assets and taking into account its best and most efficient use. Additionally, it draws attention to the connection between goodwill and other intangible assets, highlighting their unique characteristics.¹⁸

1.4.1 Valuation Methods

There are three methods for the valuation of Intellectual Property for these transactions which are as follows:¹⁹²⁰

a. Market Based Method

The market-based approach is mostly applied in valuation of intellectual property. In this method, an IP asset is valued based on its comparison with the corresponding assets in the market; therefore, the same is termed as the transactional method.²¹ The approach is especially appropriate with IP assets that are actively traded, e.g. trademarks and patents.

It entails gathering information of the recent transactions containing similar IP assets. This information is then used to estimate the fair market

¹⁸ Aathira Pillai, 'IPR Due Diligence in M&A Transactions' (Jus Corpus, 27 February 2023) <<https://www.juscorpus.com/ipr-due-diligence-in-ma-transactions/>> accessed 20 January 2026.

¹⁹ Kushagra Verma, 'Mergers & Acquisitions: Role of Intellectual Property' (2022) 3(1) International Journal of Advanced Legal Research <<https://ijalr.in/wp-content/uploads/2022/09/MERGERS--ACQUISITIONS-ROLE-OF-INTELLECTUAL-PROPERTY.pdf>> accessed 20 December 2025.

²⁰ Sharma and Bhardwaj (n 1).

²¹ Chaitanya Nikhil Vaidya, 'Role of IP in Mergers and Acquisitions' (2023) 5(1) Indian Journal of Law and Legal Research 1 <<https://www.ijllr.com/post/role-of-ip-in-mergers-and-acquisitions>> accessed 21 January 2026.

value by analysing the prices paid for similar assets. Fair market value is the price at which a willing buyer would buy a good at a willing price in an open market.

In order to use this approach successfully, it is necessary to find similar IP assets that have common characteristics, i.e. technology, market demand, and other factors. Such comparisons are normally derived using information found in public databases, industry reports and so forth.

After searching similar assets, the following action is to analyze the specifics of such transactions, such as royalty rates, licensing fees, and other financial conditions. Such an analysis aids in determining the value of the IP property in question in an M&A deal.

The primary benefit of the method is that it is based on real market deals and it is therefore quite reliable. It is also relatively easily implemented since relevant data is usually available. Nonetheless, it has some shortcomings. It might not be appropriate with unique or highly specialized IP assets that do not have similar market data. Also, the analysis may be subjective, based on the quality of available data and assumptions. Thus, it tends to be combined with other valuation techniques to be more precise.

b. Cost Based Method

The other method of valuing intellectual property is the cost-based method. It is founded on approximating the overall expenditure incurred in the development, registration and maintenance of an IP property. This is the best approach to use with newly developed or recently registered IP assets that have not been generating revenues yet.

This method entails determining the direct and indirect expenses of the IP asset. Direct costs consist of research and development costs, patent or trademark filing costs, legal expenses and marketing costs. Indirect costs are such overheads as salaries, rent, utilities and equipment depreciation.

The approach also takes into account the expense that an organization would have to face in the event it had to re-create the same IP property. The reasoning is that purchasing an existing IP property spares the purchaser developing these expenses.²²

²² Vaidya (n 20).

Once the total cost is computed, the next thing is to determine the economic life of the IP asset, which is the time that it is likely to be useful in generating value or revenue. This is based on the factors which include technology, competition in the market and the life cycle of the product or service concerned.

The overall cost is then divided by the estimated economic life to come up with the annual cost, which can be further utilized as an element in the valuation methods like discounted cash flow.

Its main benefit is that it is a simple process and that it can be useful in the valuation of new IP assets. Nevertheless, it has limitations in that it does not consider market demand, or the revenue-generating potential of the IP. Thus, it is typically used along with other techniques to give a more precise valuation.

c. Income Based Method

One of the most widely used methods of valuing intellectual property is the income-based method. It values an IP asset in terms of future earnings or cash payments that it will produce. This is best applicable to IP assets that already have proven to bring in revenue, including well-known trademarks, patents, and copyrights.

Under this method future cash flows that will accrue to the asset of IP during its economic life are estimated. Discounting these cash flows to their present value is then done based on the discount rate that is used, which takes into account both the time value of money and the risks that the cash flows are exposed to. The discount rate is also the opportunity cost of investing in an alternative asset that has the same degree of risk.

The future cash flows are estimated depending on various factors, which are market need of the concerned product or service, competitiveness, anticipated product life cycle, and expenses involved in sustaining and safeguarding the IP.

After the projected cash flows are established, they are discounted to get their present value. This calculation will lead to the net present value (NPV) of the IP asset, the total value of the asset using the anticipated future returns.

There are considerable strengths of this approach. It considers the future earning potential of the IP asset, which is not reflected in the cost-based approach, and it is general enough to be used to address a broad spectrum of IP assets. Nevertheless, it also has its shortcomings, because it is highly dependent on the correctness of future predictions of cash flows, which can be hard to come by. The ultimate valuation is also reliant on the assumptions that are made in the analysis. Hence, as with other techniques it is frequently combined with other techniques to give a more dependable valuation.²³

1.5 **Conclusion**

Intellectual Property Due Diligence and Valuation are two mutually supporting components of a legally and commercially viable M&A deal. The due diligence process allows the acquiring company to thoroughly evaluate the IP portfolio of the target company, authenticate ownership and registration, find out any existing or threatened disputes, and analyze contractual commitments that may limit subsequent use. Failure to carry out this process as seen in the case of Rolls-Royce and Volkswagen may lead to expensive oversights with long-term legal implications. The Market-Based, Cost-Based or Income-Based approaches conducted IP Valuation offers a measurable foundation to deal negotiations and true economic contribution of intangible assets. The valuation process is regulated in India by provisions like Schedule III of the Companies Act, 2013 and ICAI Valuation Standard 302, requiring legal accuracy and financial skills. Conclusively, an in-depth and well-orchestrated method of IP due diligence and valuation is essential in attaining integrity of transaction, reduction of liability and maximization of future commercial value.

1.6 **References**

A. Journal Articles

1. Vaibhav Sharma and Bharat Rakesh Bhardwaj, 'Intellectual Property Management in Mergers and Acquisitions' (2024) 5 IP Bulletin 35 <https://cnlu.ac.in/wp->

²³ Sharma and Bhardwaj (n 1).

[content/uploads/2025/07/Intellectual-Property-Management-In-Mergers-And-Acquisitions-by-Vaibhav-Sharma-Bharat-Rakesh-Bhardwaj.pdf](#).

2. Noah Farhadi and George Tovstiga, 'Intellectual Property Management in M&A Transactions' (2010) 3(1) Journal of Strategy and Management 32 https://www.researchgate.net/publication/359195574_Intellectual_property_management_in_MA_transactions.
3. Garishma Dongre, 'Role of Intellectual Property in Mergers and Acquisitions' (2022) 30 Supremo Amicus <https://supremoamicus.org/wp-content/uploads/2022/07/Garishma-Dongre-1.pdf>.
4. Chaitanya Nikhil Vaidya, 'Role of IP in Mergers and Acquisitions' (2023) 5(1) Indian Journal of Law and Legal Research 1 <https://www.ijllr.com/post/role-of-ip-in-mergers-and-acquisitions>.
5. Kushagra Verma, 'Mergers & Acquisitions: Role of Intellectual Property' (2022) 3(1) International Journal of Advanced Legal Research <https://ijalr.in/wp-content/uploads/2022/09/MERGERS--ACQUISITIONS-ROLE-OF-INTELLECTUAL-PROPERTY.pdf>.

B. Research Papers and Reports

1. Nishith Desai Associates, *Mergers & Acquisitions in India* (June 2025) http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Mergers_Acquisitions_in_India.pdf accessed 16 January 2025.

C. Web Articles and Online Legal Resources

1. Yetunde Okojie, 'The Importance of IP Due Diligence in Mergers and Acquisitions' (Mondaq, 2018) <https://www.mondaq.com/nigeria/patent/740668/theimportance-of-ip-due-diligence-in-mergers-andacquisitions>.
2. Vikrant Rana, Rupin Chopra and Shantam Sharma, 'Securing the Deal: The Power of IP Due Diligence in M&A Transactions' (Mondaq, 14 February 2025) <https://www.mondaq.com/india/corporate-and-company-law/1584154/securing-the-deal-the-power-of-ip-due-diligence-in-ma-transactions>.
3. Pragya Vajpeyi, 'Intellectual Property Due Diligence in Mergers and Acquisitions: Key Legal Considerations' (The Amikus Qriae, 2024) <https://theamikusqriae.com/research-paper-intellectual-property-due-diligence-in-mergers-and-acquisitions-key-legal-considerations/>.

4. Aathira Pillai, 'IPR Due Diligence in M&A Transactions' (Jus Corpus, 27 February 2023) <https://www.juscorpus.com/ipr-due-diligence-in-ma-transactions/>.
5. Ravi Raj, 'Role and Significance of IP Due-Diligence in M&A Transactions in India' (IIPRD, 31 August 2022) <https://www.iiprd.com/role-and-significance-of-ip-due-diligence-in-ma-transactions-in-india/>.

