



Intellectual Property Valuation in Practice

General principles of proper patent valuation: the forthcoming European standard

Prof. Dr. Alexander J. Wurzer

Hungarian Patent Office Budapest, 27th – 28th November 2008





- **Standardization: Relevance, Tasks and Processes**
- **PAS 1070 – General Principles of Proper Patent Valuation**
- **IFD Patent Valuation Standard**
- **Value and Valuation**
- **Valuation in Practice**
- **Valuation Methods**



- **Standardization: Relevance, Tasks and Processes**



Benefits of Standardization

High business- and economic value

➔ **benefits of ca. 16 Billion EUR on a yearly basis in Germany**

Standardization: Relevance, Tasks, Processes

PAS 1070 – General Principles of Proper Patent Valuation

IFD Patent Valuation Standard

Value and Valuation

Valuation in Practice

Valuation Methods

Companies

- Consistent manufacturing base, wide acceptance, competitive advantages

Customers

- Compatibility, wide assortment, benefits from competition among suppliers.

Governments

- International Standards as a base for health, security and environmental benefits
- Unburden governments from technical detail regulations

Developing Countries

- International Standards as a source for technology and know-how.

Consumers

- Assurance of quality, security and reliability



Benefits of Standardization

Standardization: Relevance, Tasks, Processes

International trade

- Common technical language
 - ➔ Prevention of technical trade barriers

PAS 1070 – General Principles of Proper Patent Valuation

Global market access

- The appliance of international standardization and the participation in the standardization process ease market access to products and services

IFD Patent Valuation Standard

Innovation Management

- Can enhance the development of new technology fields
- Instrument for the implementation of innovations in products and services
- Positive effects on the entire innovation process

Value and Valuation

Valuation in Practice

Economic efficiency

- Cost savings

Valuation Methods



What is a Standard?



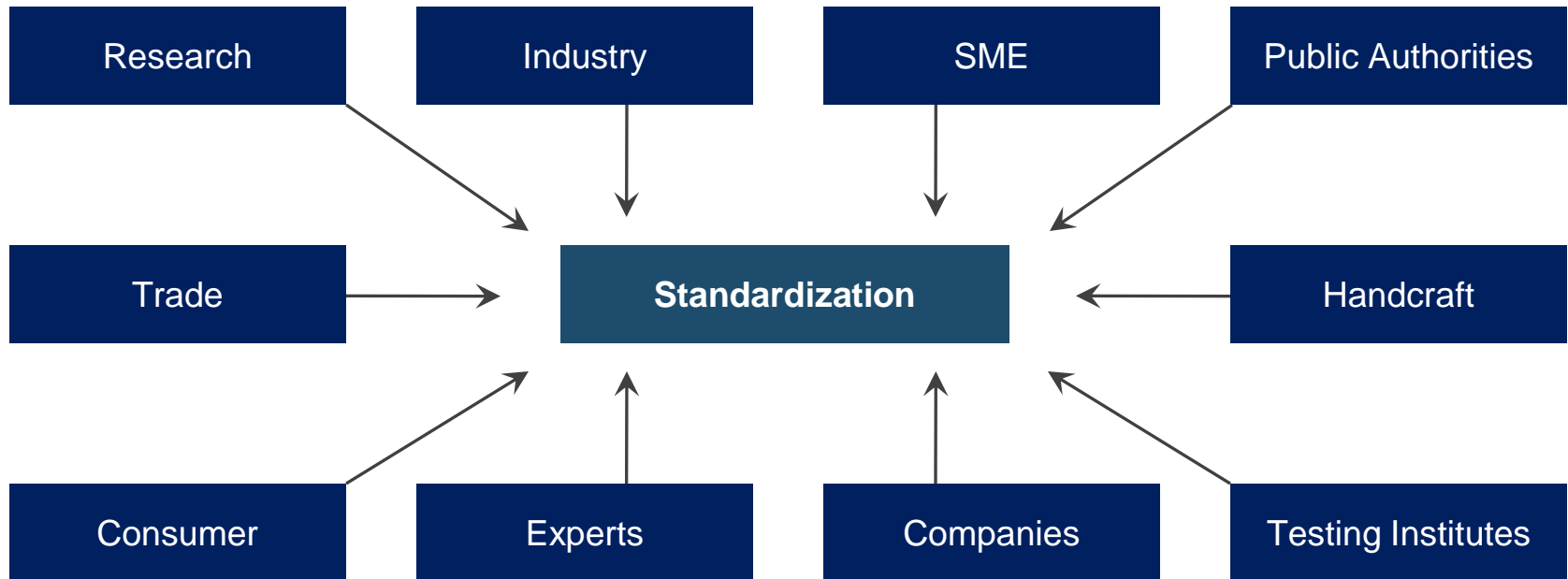
DIN EN 45020

“Document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context”



A democratic legitimating of standardization requires engagement of all interested parties

- Standardization: Relevance, Tasks, Processes
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Source: DIN Deutsches Institut für Normung e. V.



Standardization: Relevance, Tasks, Processes










PAS 1070 – General Principles of Proper Patent Valuation

IFD Patent Valuation Standard

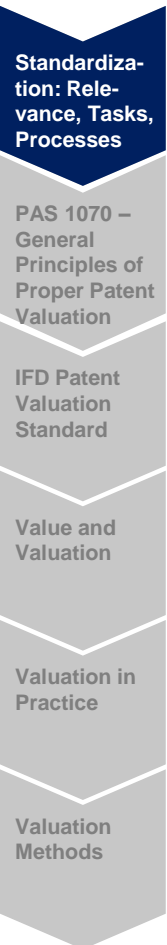
Value and Valuation

Valuation in Practice

Valuation Methods

	National Level e.g. Germany	Regional Level e.g. Europe	International
General			
Electro technology			
Telecommunication			

Source: DIN Deutsches Institut für Normung e. V.



- *Privately organized service provider for standardization in Germany*



Legal status of a non-profit association

- *DIN-standards are included in laws and regulations to concretize technical facts*



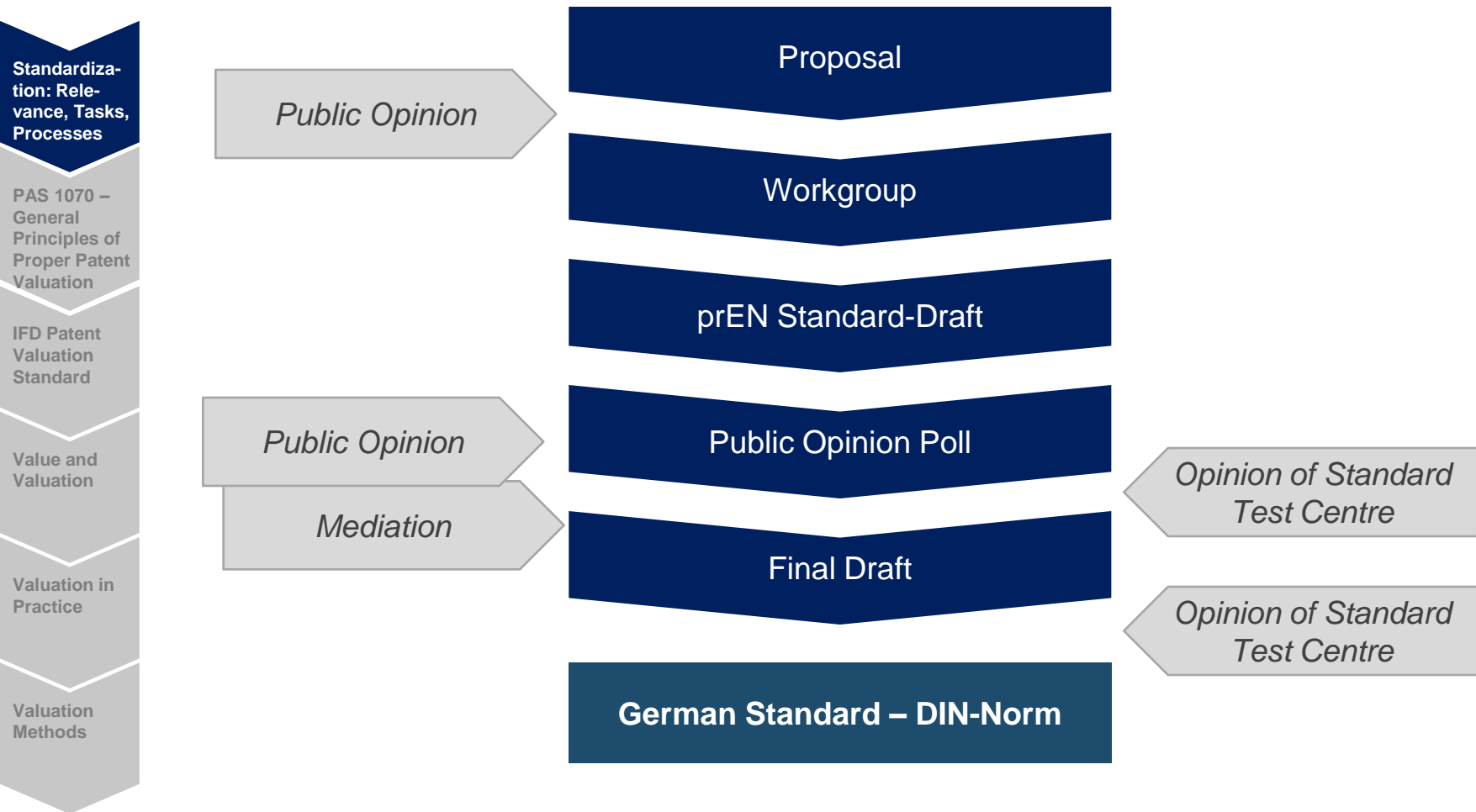
Impact on product liability

- *The functional standardization work in DIN is divided into more than 70 standards committees*



- ***Ensuring the participation of all stakeholders regardless of their economic position and language***
- ***Promoting the free movement of goods through active involvement in International and European standardization***
- ***Holding the secretariats of international committees***
- ***Adopting European and international standards at national level***
- ***Maintaining the uniformity and consistency of the standards collection***
- ***Actively contributing to consensus building***
- ***Taking legal regulations into consideration***
- ***Providing an electronic infrastructure for standards development***
- ***Avoiding duplication of work***

Development of a DIN-Standard





- *Network of international institutes in 157 countries with respectively one member*
- *Non-political institution with a special intermediary function between private, public, social and political sectors*
- *Develops a common language and reference framework for ISO providers and users*



Simplifies the communication, trade and transfer of technologies.



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Proposal stage

- From proposal to approval of a new standards project

Preparatory stage

- From approval of the standards project to adoption for registration as a committee draft

Committee stage

- From committee draft to adoption for enquiry

Enquiry stage

- From adoption for enquiry to approval of final draft

Approval stage

- From approval of final draft to adoption as an International Standard

Publication stage

- From adoption as an International standard to publication as an ISO standard



DIN/ISO-Working team Patent valuation

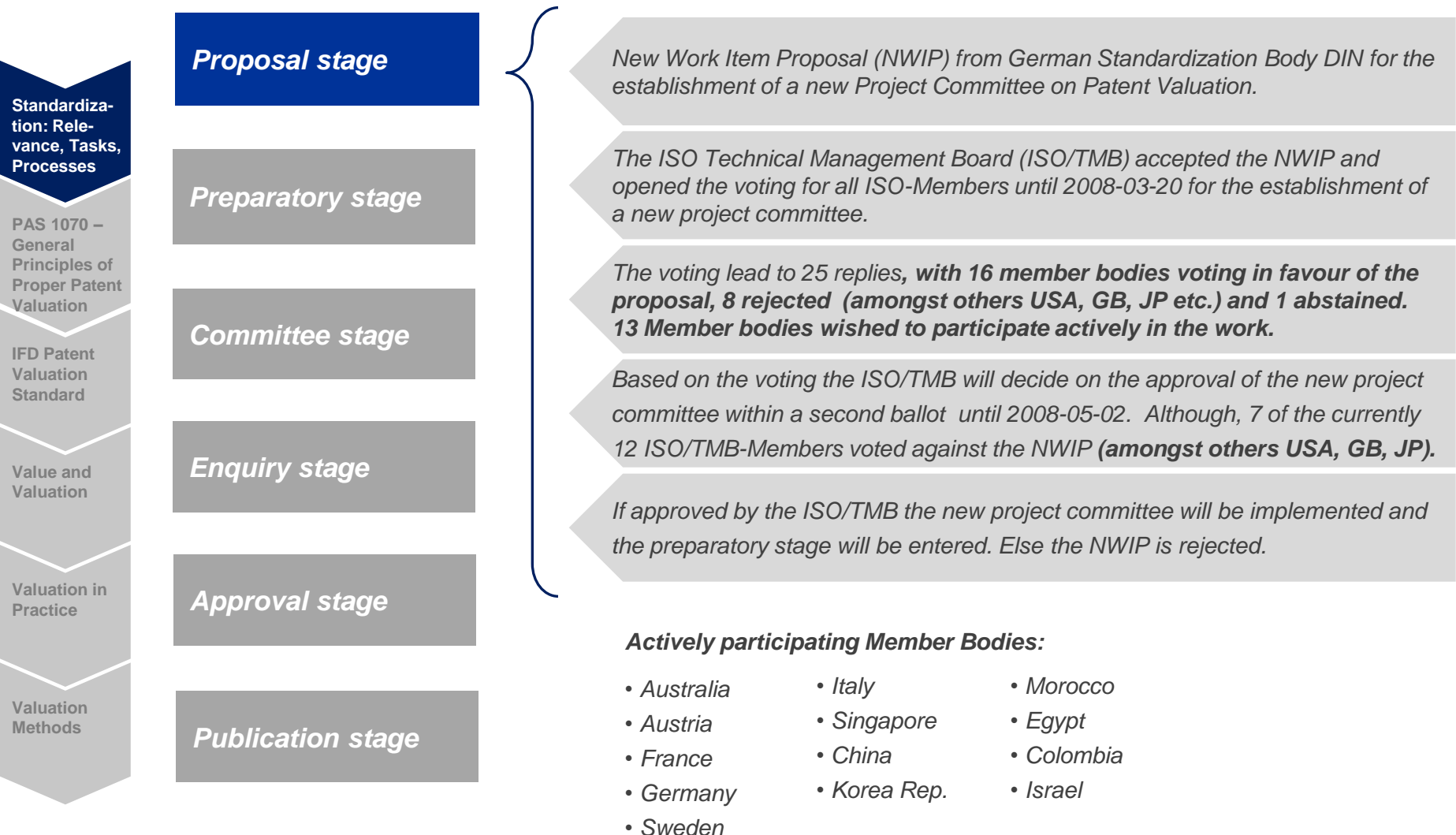
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ISO-Standard for Patent Valuation





Patent Valuation Standards

Standardization: Relevance, Tasks, Processes

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IFD Patent Valuation Standard

Value and Valuation

Valuation in Practice

Valuation Methods

- **No uniform standards for the valuation of patents until recently**
 - **Therefore, no creation of a uniform body of empirical knowledge**
- ➔ **Little confidence of lenders in patent valuation methods**

Current Developments:

Grundsätze ordnungsgemäßer Patentbewertung	
General principles of proper patent valuation Principes d'évaluation en due forme de brevets	
Vorwort	
<p>Diese öffentlich verfügbare Spezifikation (Publicly Available Specification, PAS) stellt die wesentlichen Grundsätze dar, die bei der quantitativen Bewertung von Patenten anzuwenden und zu berücksichtigen sind. Grundlage für diese Grundsätze sind Erkenntnisse und Rahmenbedingungen aus aktueller einschlägiger wissenschaftlicher Theorie, erfahrungswissenschaftlicher Forschung und unternehmerischer Praxis.</p> <p>Die PAS gliedert sich wie folgt: Nach einleitenden Angaben zum Anwendungsbereich und zu ergänzenden Regelungswerken folgen die Grundsätze eines ordnungsgemäßen Bewertungsprozesses. Zur sachgerechten Wertfindung von Patenten werden nachfolgend die Wertkonstitution sowie die wesentlichen Einflussfaktoren und im Anschluss relevante Bewertungsanlässe aufgezeigt.</p> <p>Die PAS entstand im Rahmen der BMWi-Initiative INS Innovation mit Normen und Standards. Die Inhalte der PAS sind vom Steinbeis-Transfer-Institut für Intellectual Property Management der Steinbeis Hochschule Berlin GmbH in Zusammenarbeit mit dem Arbeitskreis „Standardisierung der Bewertung technischer gewerblicher Schutzrechte“ im DIN Deutsches Institut für Normung e. V. am 03. November 2006 erarbeitet worden.</p> <p>Die Veröffentlichung der PAS wurde vom Referat Entwicklungsbegleitende Normung im DIN betreut. Für den Inhalt dieses Dokumentes sind allein die Verfasser verantwortlich.</p>	

IFD* Initiative: **Valuation standards for patents**

Goal: Creation of a uniform patent valuation standard for credit institutions



***INITIATIVE FINANZSTANDORT DEUTSCHLAND**
(Action group for the German financial sector)



- **PAS 1070 – General Principles of Proper Patent Valuation**



Public Available Specification - PAS

What is a PAS?

- *A public available specification*

➔ *Describes products, systems or services by defining criteria's and establishing requirements*

- *Is an additional DIN service since 1996*

➔ *Closes the gap between consensus based standardization and industry standards*

Content

The author is responsible for the content of a PAS within a certain framework

➔ *The content cannot conflict with standards or statutory provisions*

➔ *A publication is not possible if it conflicts with agreements on security, work, health, environmental and fire protection*





Public Available Specification - PAS

Benefits

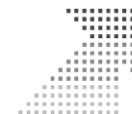
- **Short development process**



Fast available instrument

- **Foundation for contracts and certification**
- **Suitable for marketing**





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Grundsätze ordnungsgemäßer Patentbewertung

PAS
1070

General principles of proper patent valuation
Principes d'évaluation en due forme de brevets

Vorwort

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Die PAS gliedert sich wie folgt: Nach einleitenden Angaben zum Anwendungsbereich und zu ergänzenden Regelungswerken folgen die Grundsätze eines ordnungsgemäßen Bewertungsprozesses. Zur sachgerechten Wertfindung von Patenten werden nachfolgend die Wertkonstitution sowie die wesentlichen Einflussfaktoren und im Anschluss relevante Bewertungsanlässe aufgezeigt.

Die PAS entstand im Rahmen der BMWi-Initiative INS Innovation mit Normen und Standards. Die Inhalte der PAS sind vom Steinbeis-Transfer-Institut für Intellectual Property Management der Steinbeis Hochschule Berlin GmbH in Zusammenarbeit mit dem Arbeitskreis „Standardisierung der Bewertung technischer gewerblicher Schutzrechte“ im DIN Deutsches Institut für Normung e. V. am 03. November 2006 erarbeitet worden.

Die Veröffentlichung der PAS wurde vom Referat Entwicklungsbegleitende Normung im DIN betreut. Für den Inhalt dieses Dokumentes sind allein die Verfasser verantwortlich.



This Publicly Available Specification (PAS)

PAS 1070 General principles of Proper Patent Valuation

includes the general principles for the monetary patent valuation that should be followed and deployed.

This PAS is based on the present knowledge and related implications from economic scientific theory as well as empirical research and business best practice.

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Standardization: Relevance, Tasks, Processes

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IFD Patent Valuation Standard

Value and Valuation

Valuation in Practice

Valuation Methods



General Principle of Valuation Purpose Relation

- The valuation purpose defines the information demand
- As purpose related value information the subjective and the objectified patent value can be distinguished

Decisiveness of the Exploitation Scenario

- Decisive for the value attribution to patents is the assignment of future economic benefits
- Definition of the income projection and exploitation period
- Projection of income streams
- Accrual of assignable value creation to a patent

General Principle of the Valuation Date

- Valuation and value information for a patent are oriented at the valuation date
- Information, analysis and prognosis deployed for the valuation of a patent as well as the value information itself rely on the available information at the valuation date



General Principle of Comprehensibility

- For reasons of experts diligence and to ensure comprehensibility of interpretations, assumptions and prognosis
- Following the principle of authoritativeness of the valuation purpose the information recipient of the valuation has to be laid open

Risk Consideration

- Prospective income streams can only be projected under uncertainty
- Basic risk areas of patent valuation are IP right related risks (enforceability, validity) and the uncertain projection of economic benefits
- Risk consideration within valuation is performed by deduction of risk on projected future benefits or by a risk premium on the discount rate



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Value-relevant economic characteristics of Patents

- Non-rivalry in consumption
- Scalability in use
- Sunk Costs
- Inverse value development

Value-influencing factors of Patents

- Inherent value potential based on the characteristics as a legal intellectual property right as well as substantial and procedural rules and factors of patent law
- Requirement of complementary assets for the economic exploitation: Know-how, underlying technologies, Capital etc.

Generation of Income

- Direct or indirect income streams, based on the future economic benefits through patents for the recipient of the income stream



Patent Value and relevant Value Construcs

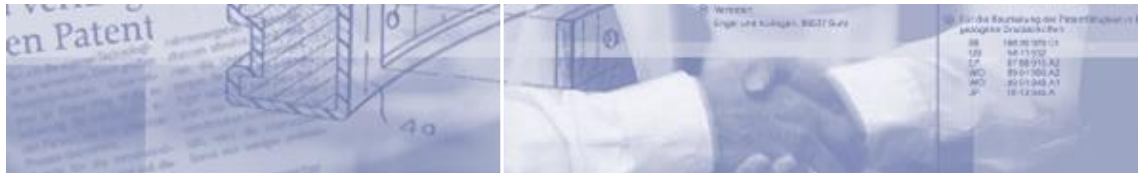
- The economic value of a patent is oriented at monetary objectives and future net income
- Patent valuation from an internal company perspective
 - Renewal Value
- Patent valuation from an external market participants perspective
 - Asset Value

Definition of the Valuation Object

- Principle of single asset and hence patent valuation
- The valuation of patent portfolios has to consider any synergetic interdependent effect of the patents
- Indicator-based patent valuation has to disclose how synergetic interdependent effects of a portfolio are accounted for according to the general principle of comprehensibility

Future orientation of Patent Valuation

- Patent valuation is generally based on projected future economic benefits under uncertainty
- The appropriate reduction of uncertainty is funded by retrospective, prospective and valuation date oriented analysis and plausibility considerations



■ IFD Patent Valuation Standard



Draft of IFD Standard

Initiative Finanzstandort Deutschland (IFD)

- ***Initiated by the German financial industry for the purpose of:***
 - ***developing specific products and policies which benefit both private and corporate customers***
 - ***contributing to strengthening the economy as a whole.***

Initiative – Patent Valuation

- ***Initiative by German commercial banks in order to develop guidelines for the valuation of patents as collaterals.***

Standardization: Relevance, Tasks, Processes

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Draft of IFD Standard

Goal

- ***“The IFD aims to reduce obstacles to borrowing for investing in knowledge-based business ideas. This applies in particular to German mid-caps. Therefore, uniform and widely accepted policies for financing intangible assets need to be developed.”***
- ***The standard serves as a framework for commercial banks according to which the suitability of patents owned by mid-cap firms as collaterals can be evaluated.***

Impact

- ***Commercial banks increasingly accept patents as collaterals.***
- ***Mid-cap firms can use patents as collaterals.***
- ***Commercial banks will use these transparent standards when carrying out patent valuations in future.***

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Definitions, perspectives and qualifications of the assessors

- Valuation and value information for a patent are oriented at the valuation date
- Update of the patent value with lowest possible effort.

Analysis of the legal, technological and economic environment

- Determination of relevant valuation and risk factors.
- Weighting of all factors according to their impact.
- Relevance of the patents for revenue generation.

Valuation process

- The preferred approach to patent valuation is income / NPV oriented.
- If an active market exists, market-oriented approaches can be used.
- Cost-oriented approaches may only be used to validate the results of the valuation.



Requirements of IP Valuation Methods



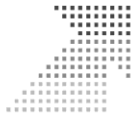
- **Validity**
 - ➔ Economically correct value definition
 - ➔ No systematic failures of valuation methods
- **Objectivity**
 - ➔ Independence from individual valuator
 - ➔ Comprehensibility and reproducibility of the valuation
- **Future orientation**
 - ➔ Integration of all future benefits



Requirements of IP Valuation Methods



- **Risk consideration**
 - ➔ Calculation of the Value under consideration of the specific IP risks
- **Feasibility**
 - ➔ Based solely on measurable parameters
- **Accrual**
 - ➔ Differentiation between product and IP value
- **Reasonable costs**
 - ➔ Industry or Stock returns inappropriate as valuation benchmark
 - ➔ Choice of adequate comparisons



■ Value and Valuation



Intellectual Property

Characteristics

- Lack of physical substance
- Identifiability (e.g. vs. outstanding debts)
- Value depends on Corporate Strategy
 - ➔ Objectification?
 - ➔ Delimitation?
 - ➔ Performance effect?

Standardization: Relevance, Tasks, Processes

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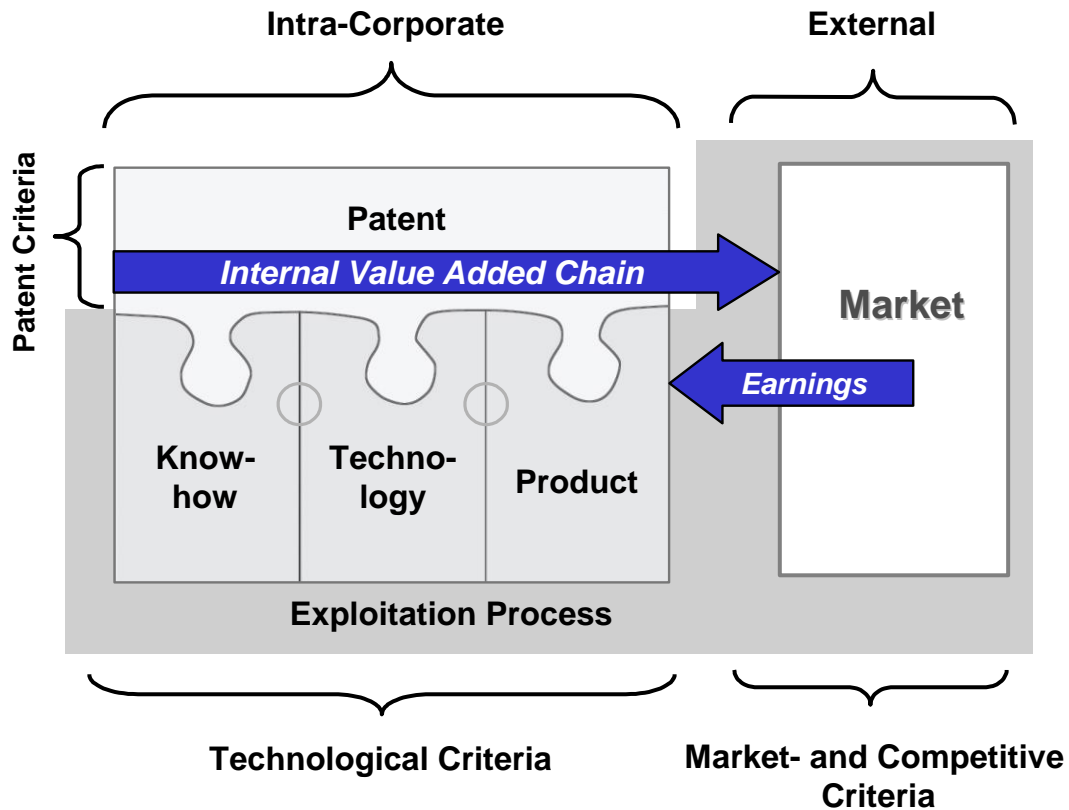
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Valuation in Practice

Valuation Methods



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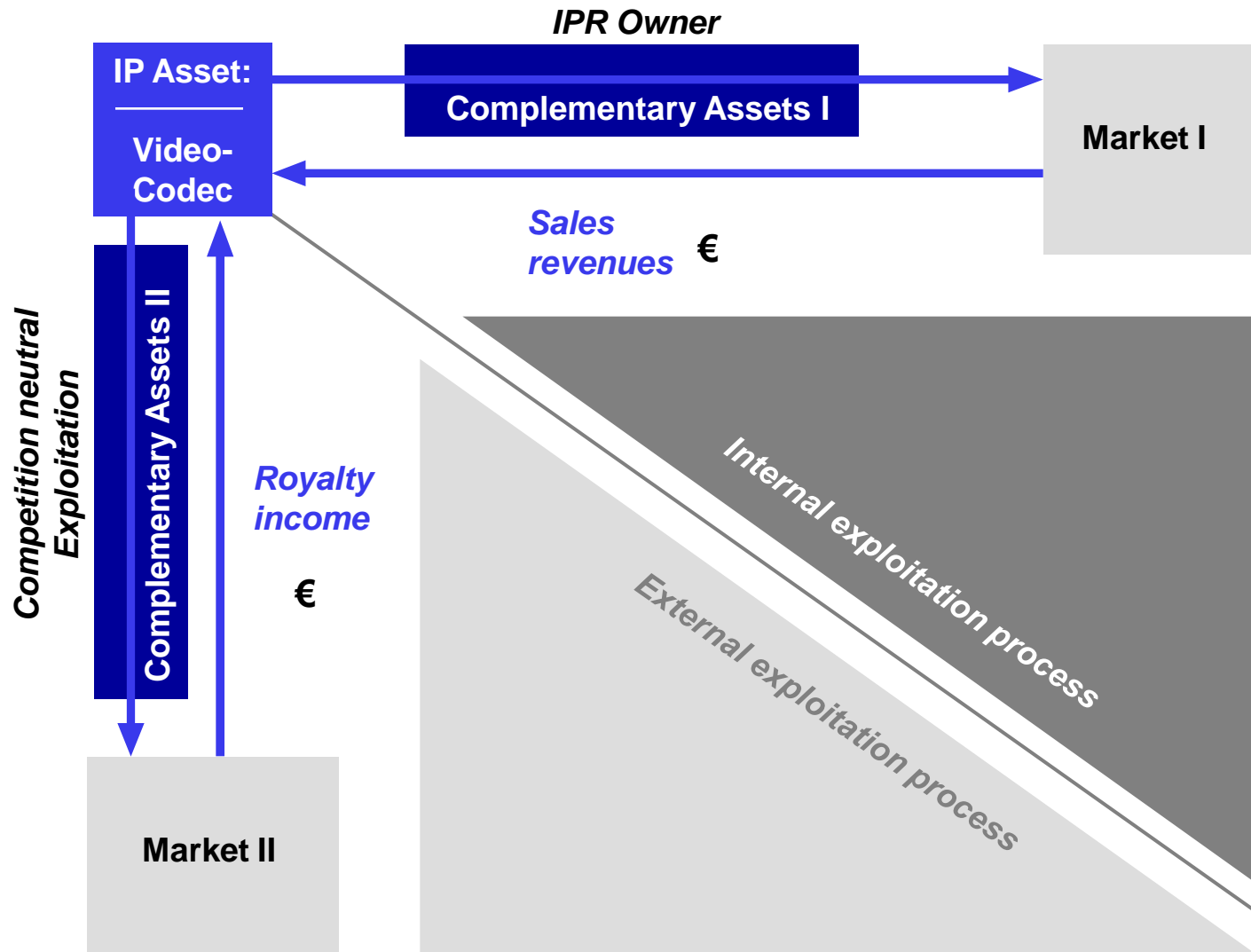


$$\begin{array}{c}
 \text{Patent} \\
 \times \\
 \text{Exploitation Process}
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 = \text{Value}$$

Types of IP Exploitation

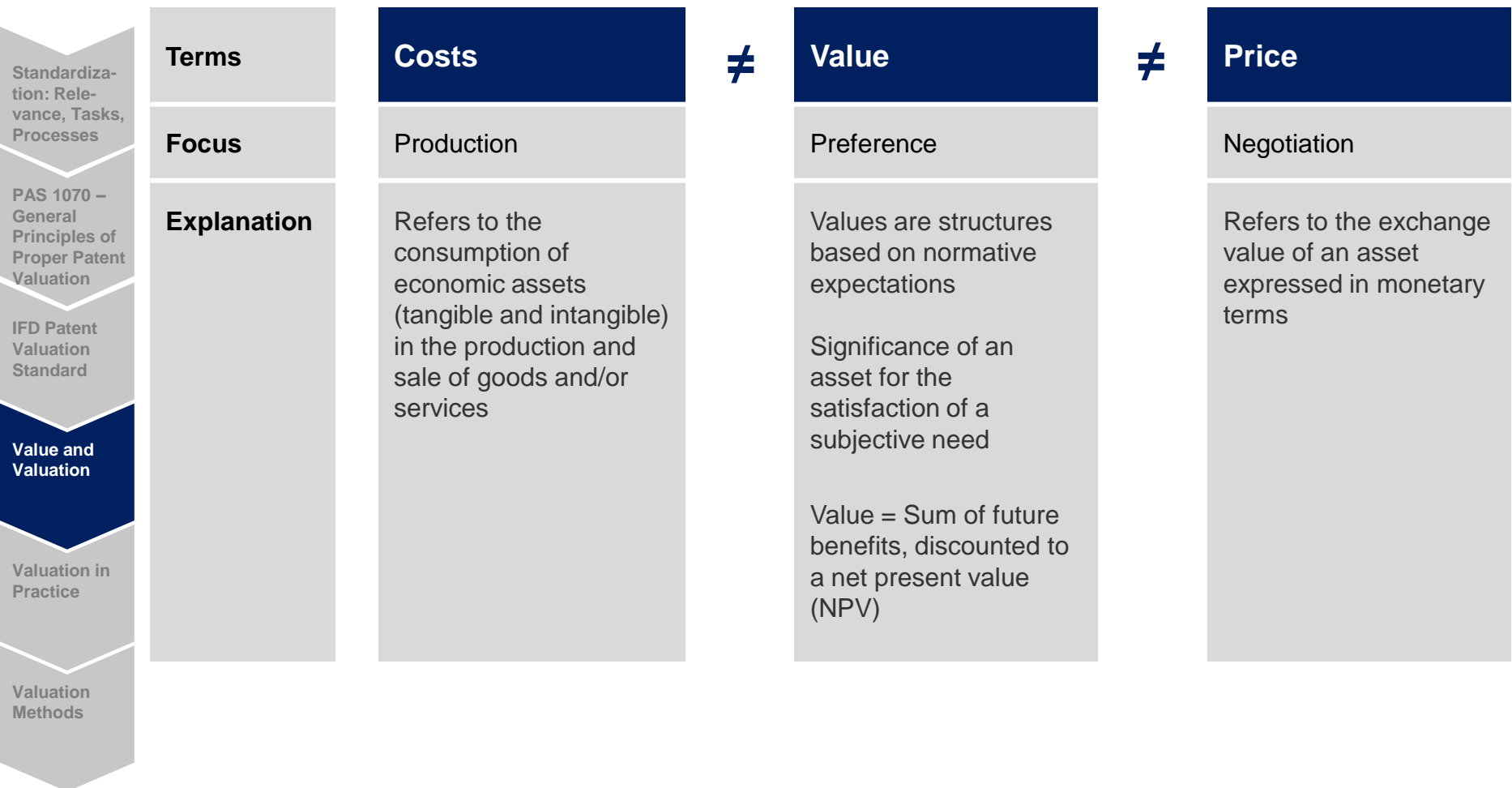


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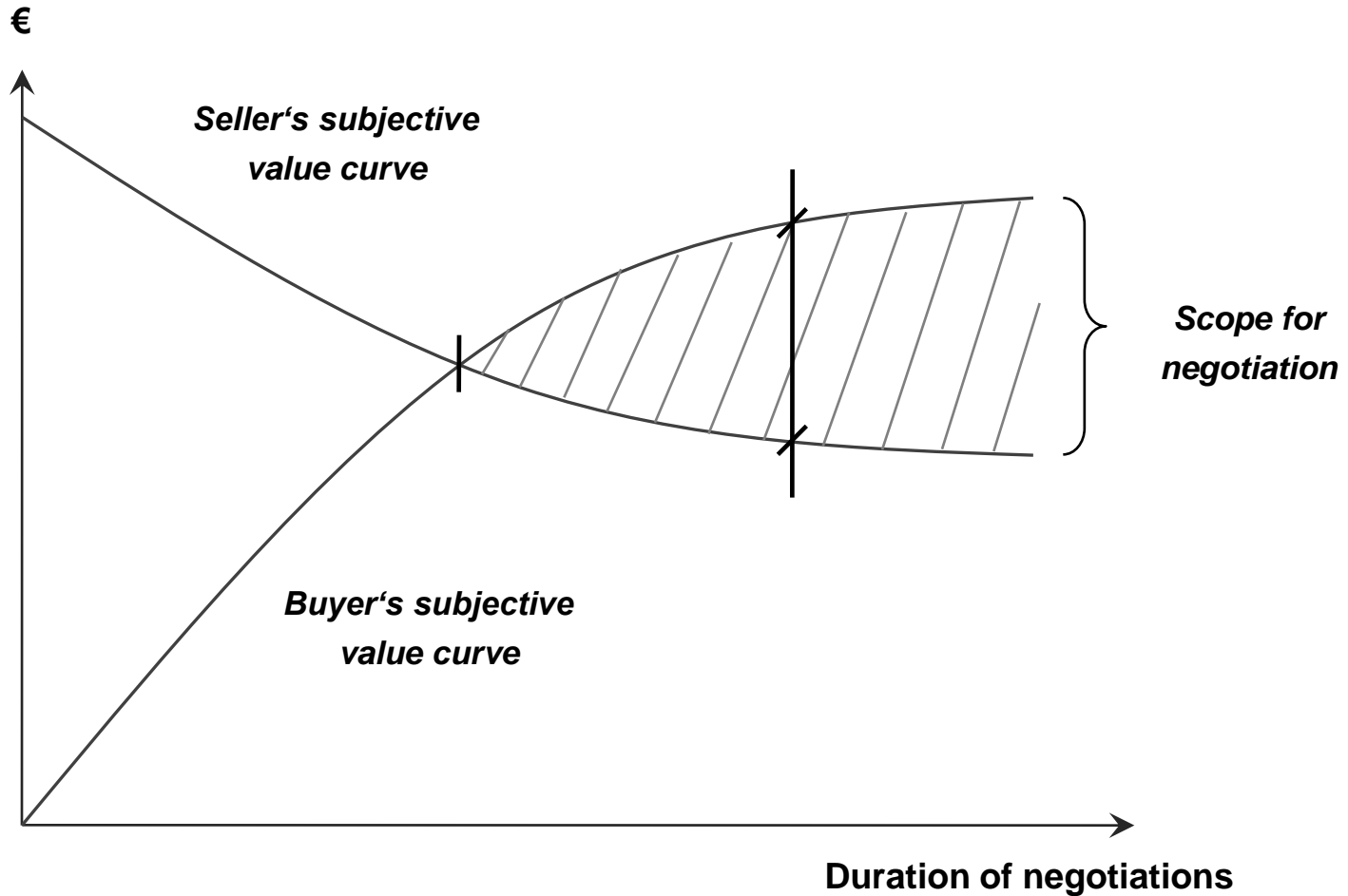


Analysis of the Patent Value





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Standards of Value

Objective Value

- Value as an attribute of a good
 - No interpersonal differences of value
- ➔ ***empirically falsified***

Subjective Value

- Value based on the relationship between valuing subject and the good
 - Dependent on the valuation environment and available options
- ➔ ***individual value based on the benefit for the fulfillment of demands***

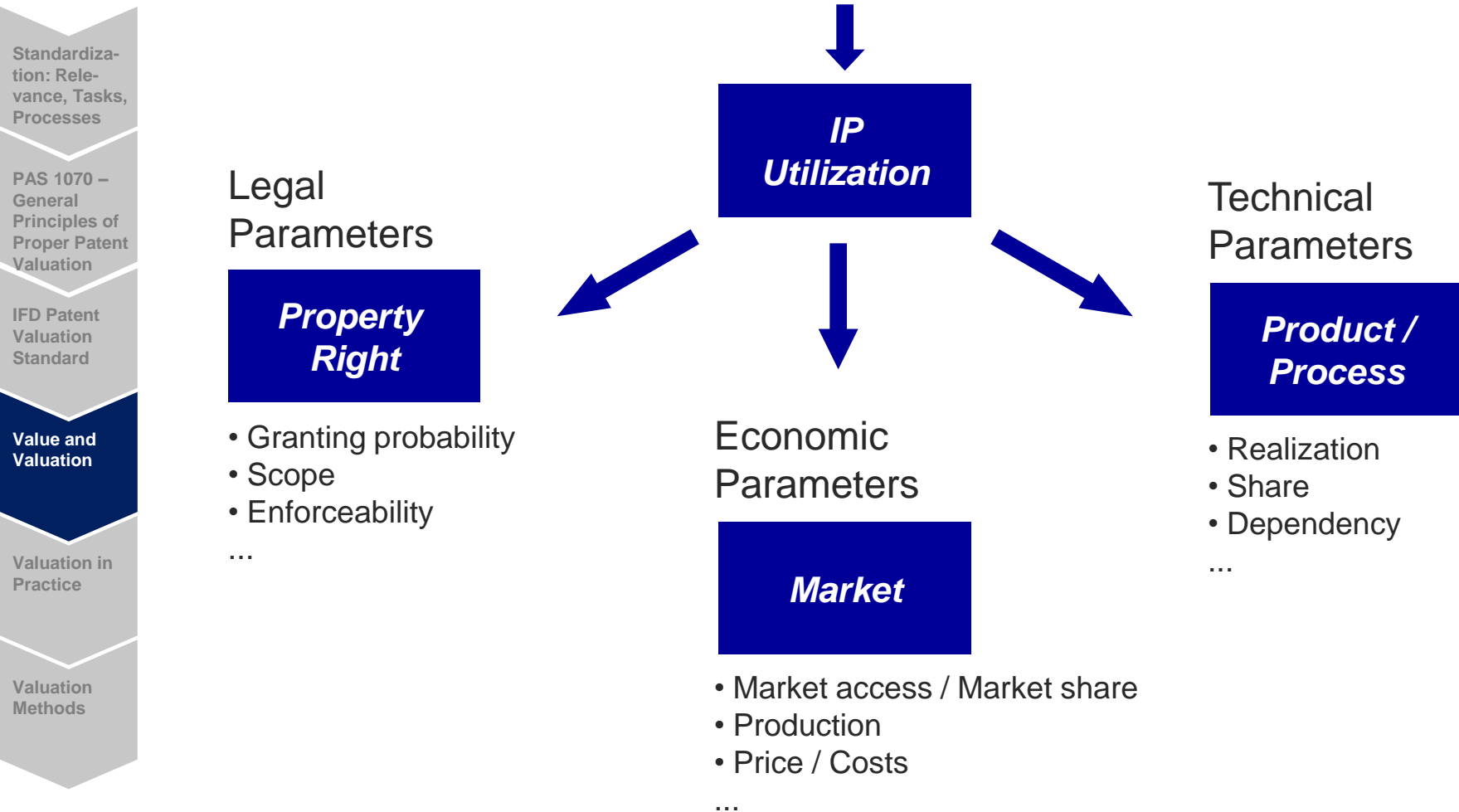
Objectified Value

- Subjective Value not traceable and quantifiable for third parties
 - Valuation based on objectives under consideration of available options of the valuator
- ➔ ***subject-related but comprehensible value***

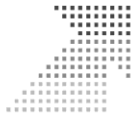




Influencing Factors on the Asset Value



cf: Razgaitis, 2003, pp. 26.



■ Valuation in Practice



Valuation Motives

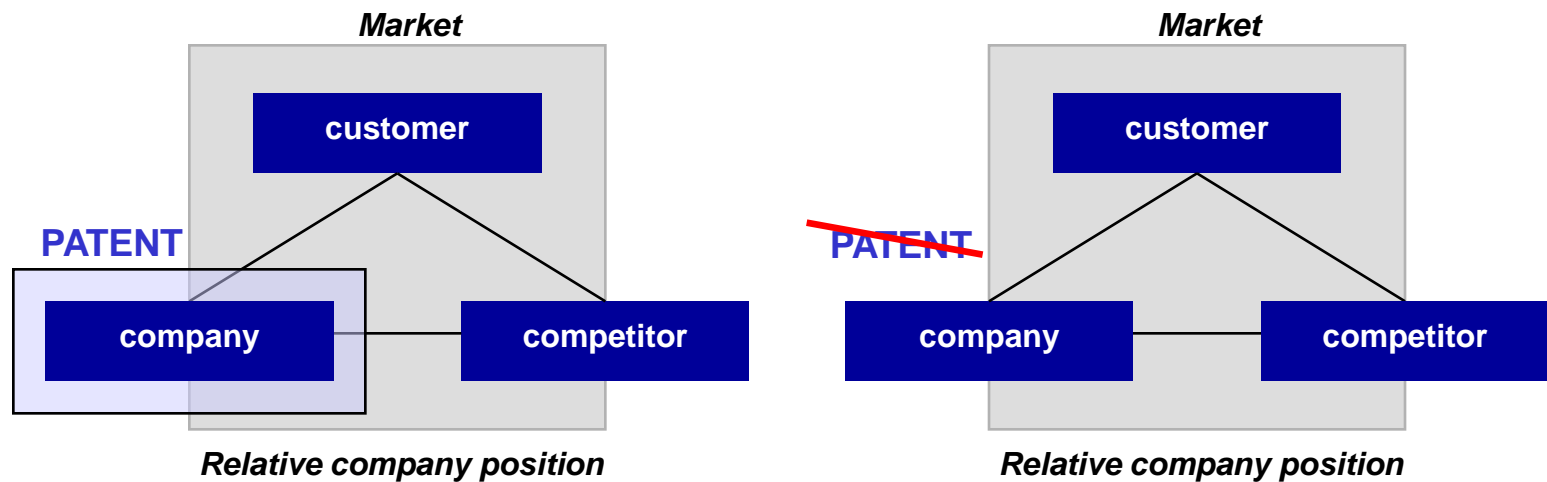
Standardization: Relevance, Tasks, Processes	Business related and company law motives <i>individual business valuation scenario</i>	<ul style="list-style-type: none"> • Company Transaction • Due Diligence • Acquisition • IPO 	<ul style="list-style-type: none"> • Joint Venture • Valuation of an Enterprise • Employee inventor compensation
PAS 1070 – General Principles of Proper Patent Valuation	Management oriented Motives <i>internal business perspective</i>	<ul style="list-style-type: none"> • Portfolio management • Risk Analysis 	<ul style="list-style-type: none"> • Economic efficiency analysis/ value oriented management • R&D, technology and innovation management
IFD Patent Valuation Standard	Transfer oriented Motives <i>external transfer scenario</i>	<ul style="list-style-type: none"> • License-in / -out • Technology transfer • Asset transaction 	<ul style="list-style-type: none"> • Transfer pricing • Technology access • Employee inventor compensation related to technology transfer
Value and Valuation	Financing and Accounting Motives <i>external addressee</i>	<ul style="list-style-type: none"> • Accounting • Dept- or self-financing • Funding / IP-Holding 	
Valuation in Practice	Conflict based Motives <i>dominated and objectified valuation</i>	<ul style="list-style-type: none"> • Liquidation / Bankruptcy • Transfer Pricing (Tax Authorities) • Compensation 	
Valuation Methods			



Patent value of Harhoff, Reitzig

„renewal value“

Difference of profits compared to the situation that the patent is not renewed.

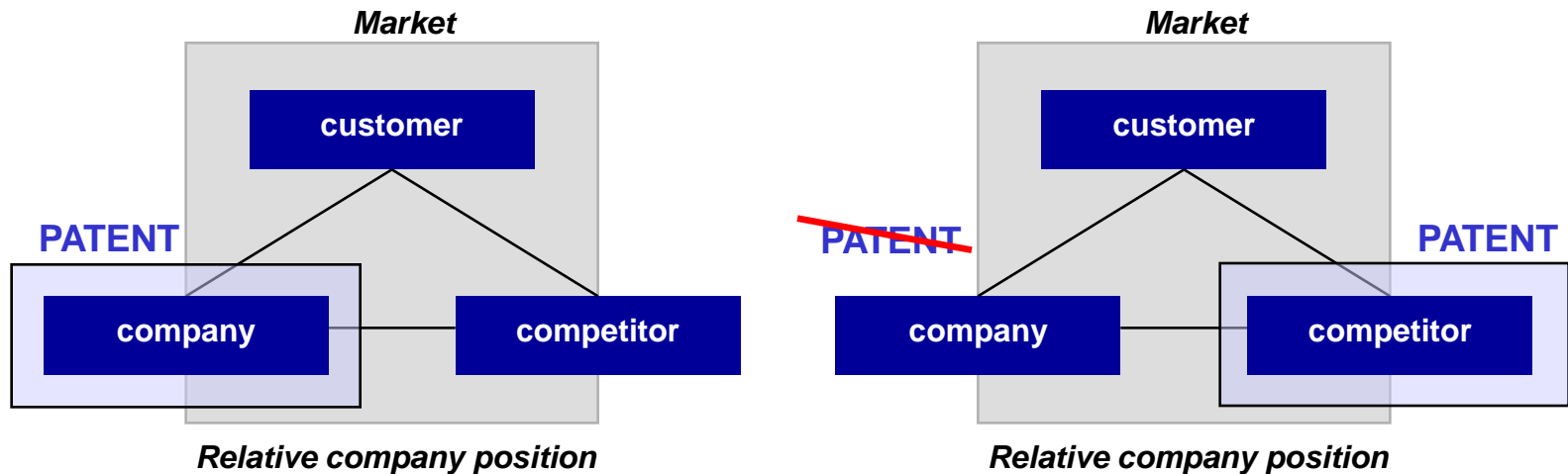




Patent value of Harhoff, Reitzig

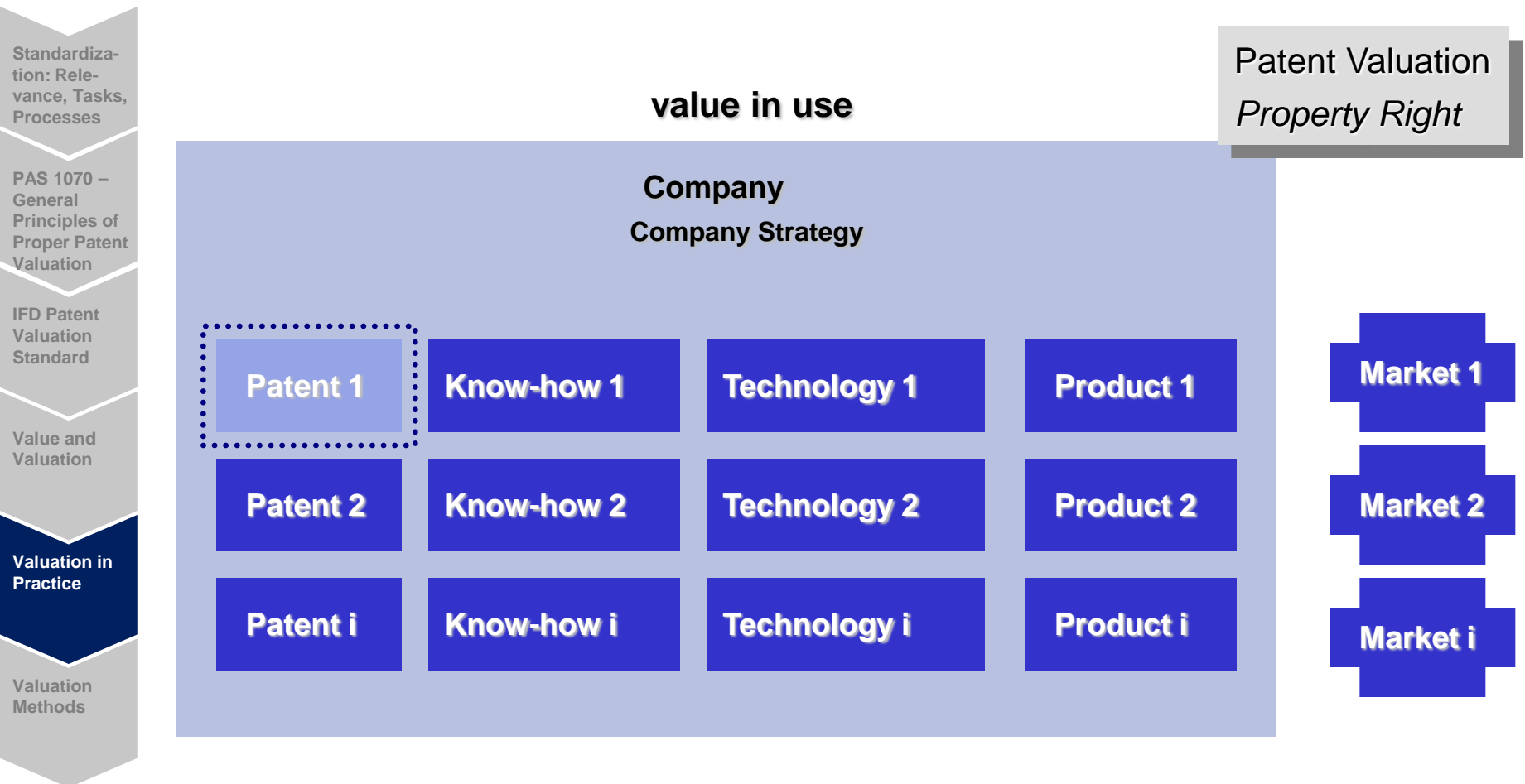
„asset value“

The *asset value* is the difference of profits, when patent is owned by the company and the situation of ownership of the patent by the most important competitor.



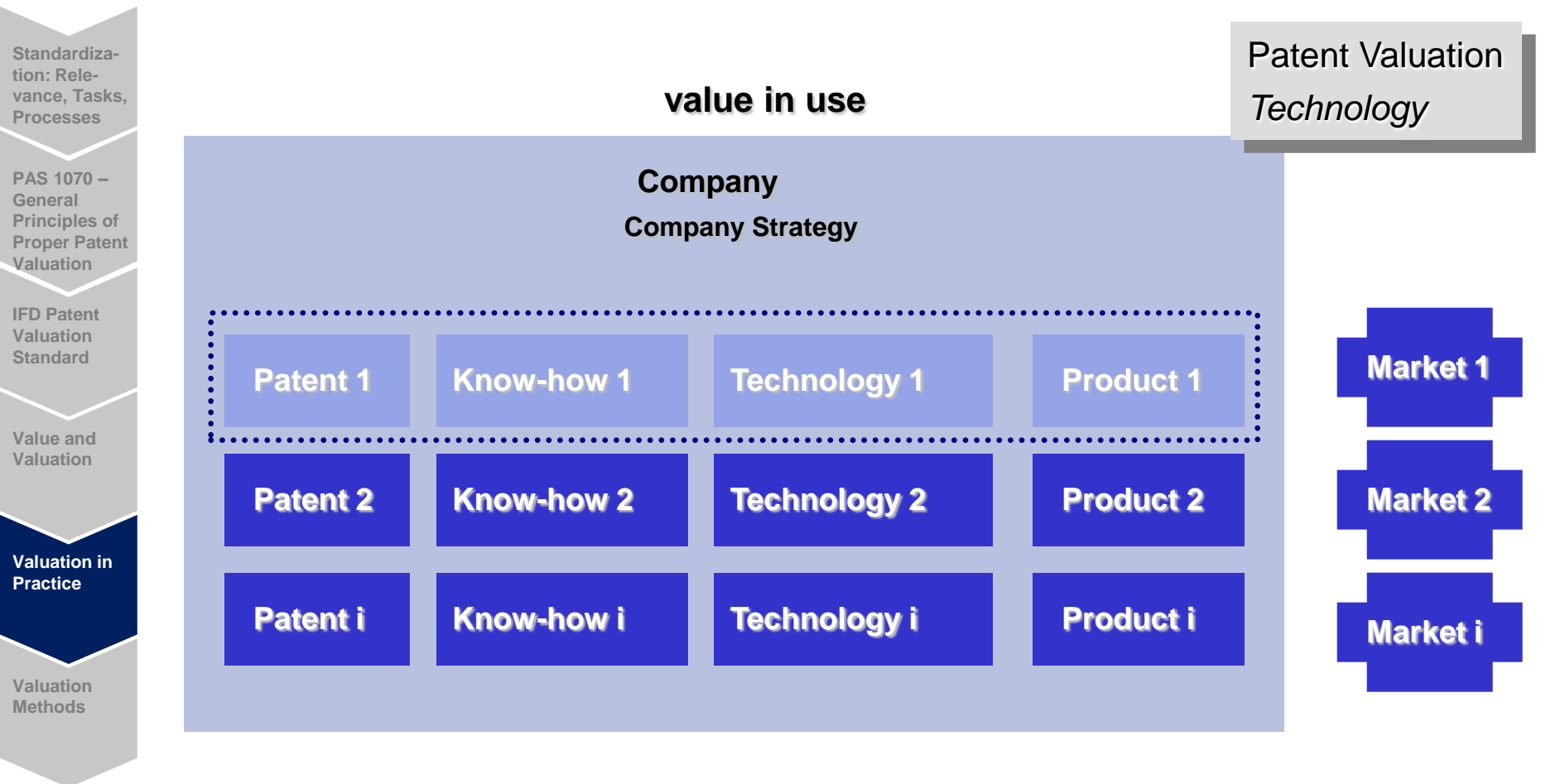


Valuation Frame of Reference / Reference Values



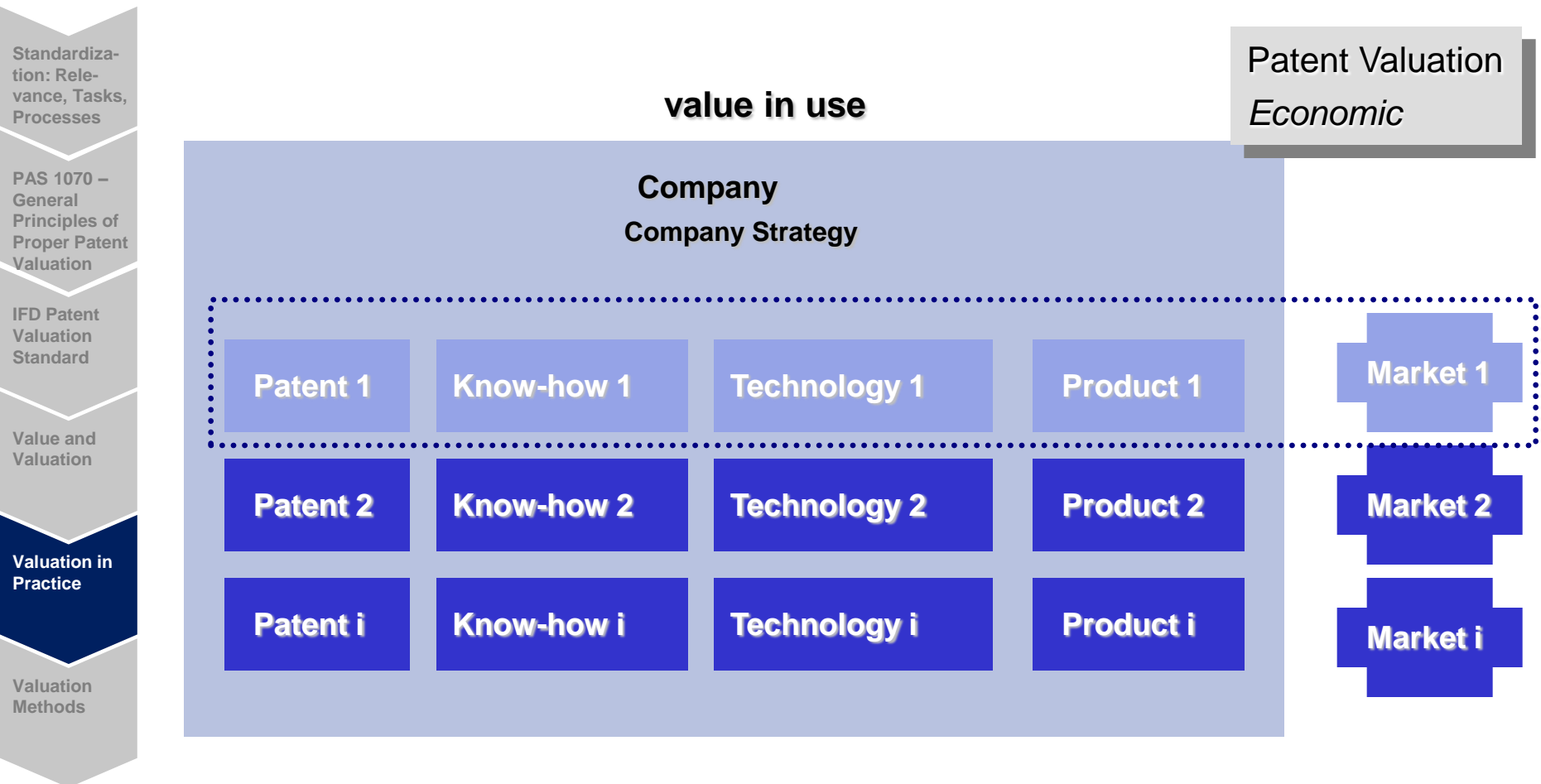


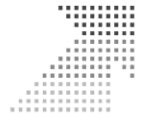
Valuation Frame of Reference / Reference Values





Valuation Frame of Reference / Reference Values





Valuation: Concepts for IP

Valuation Frame of Reference / Reference Values

Standardization: Relevance, Tasks, Processes

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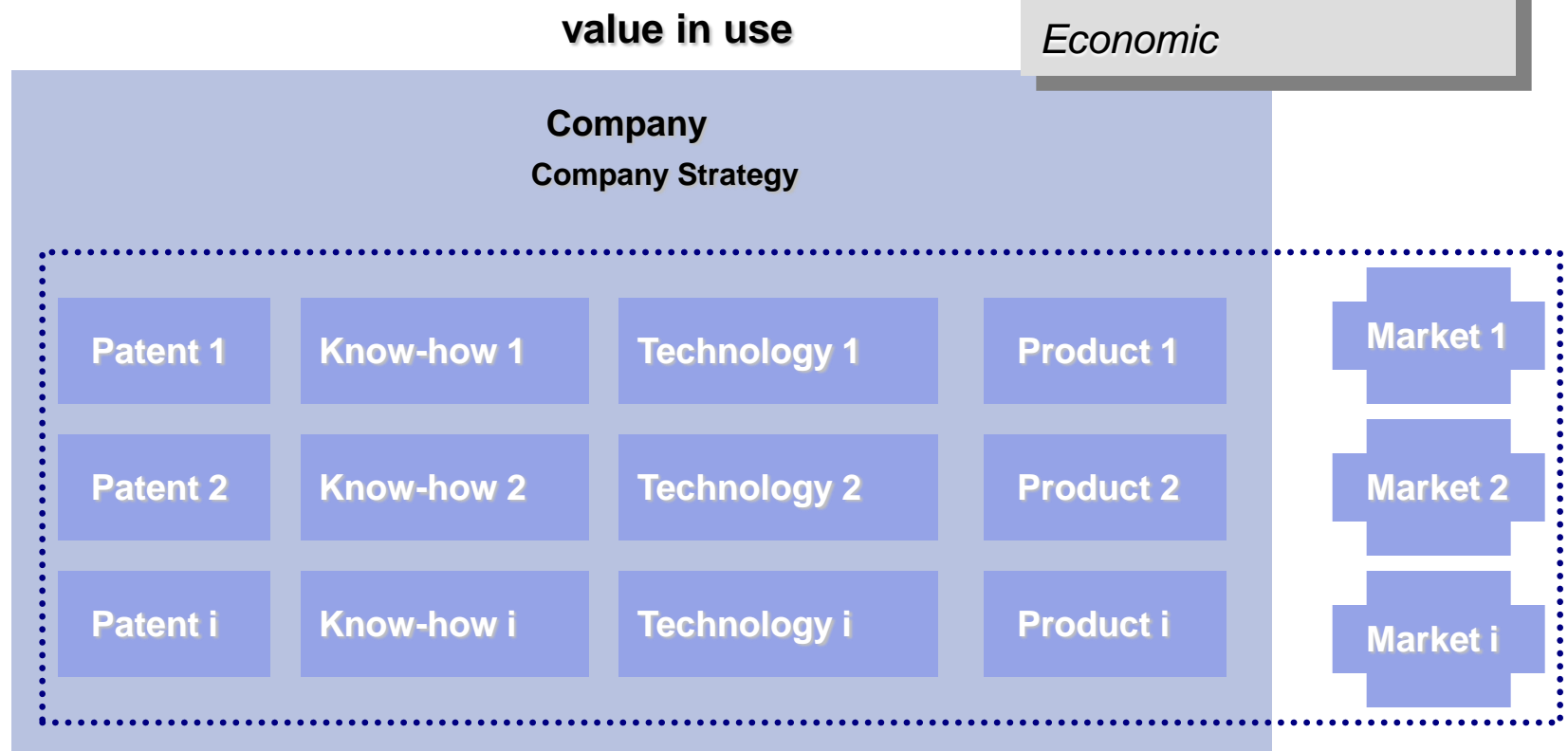
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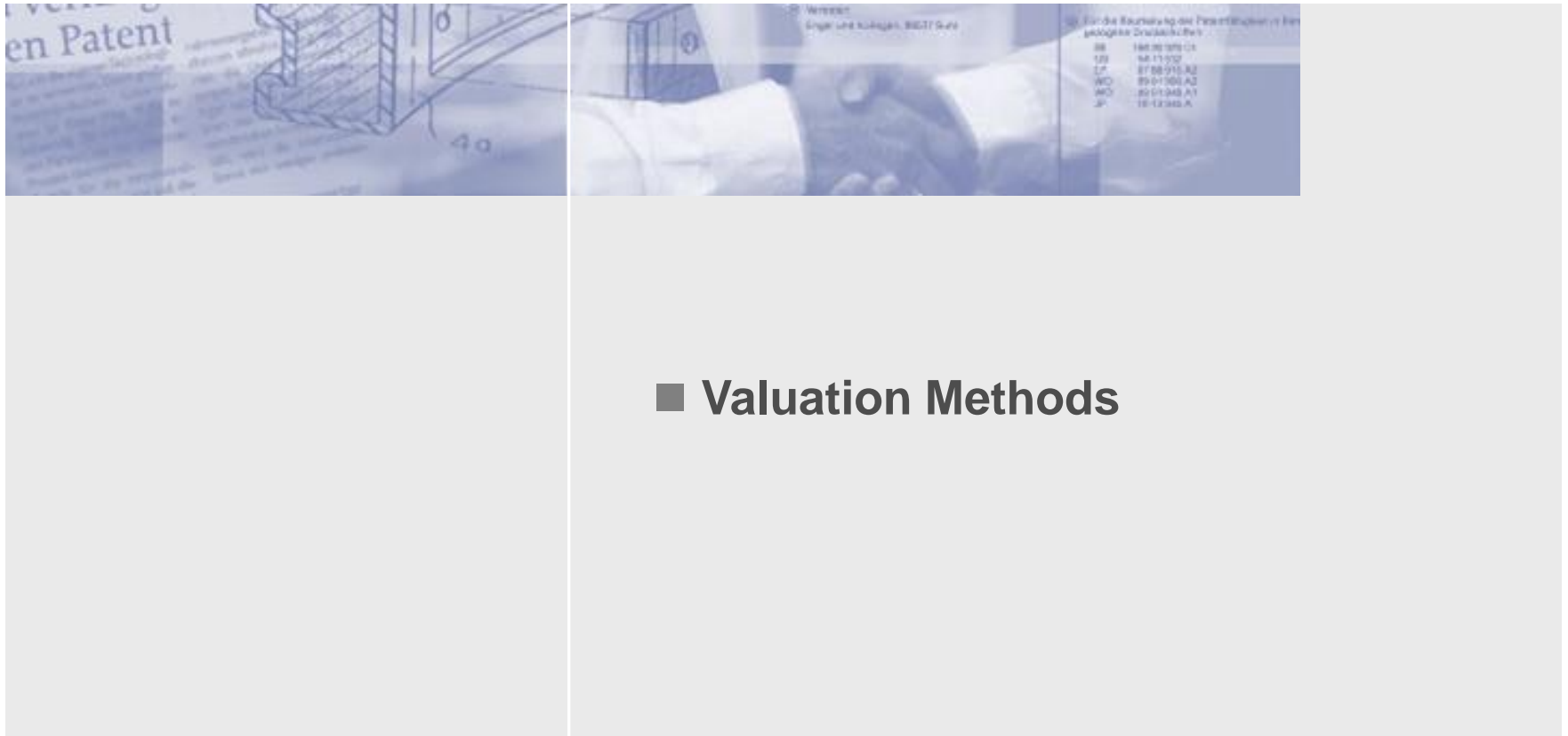
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Patent Portfolio Valuation
Economic

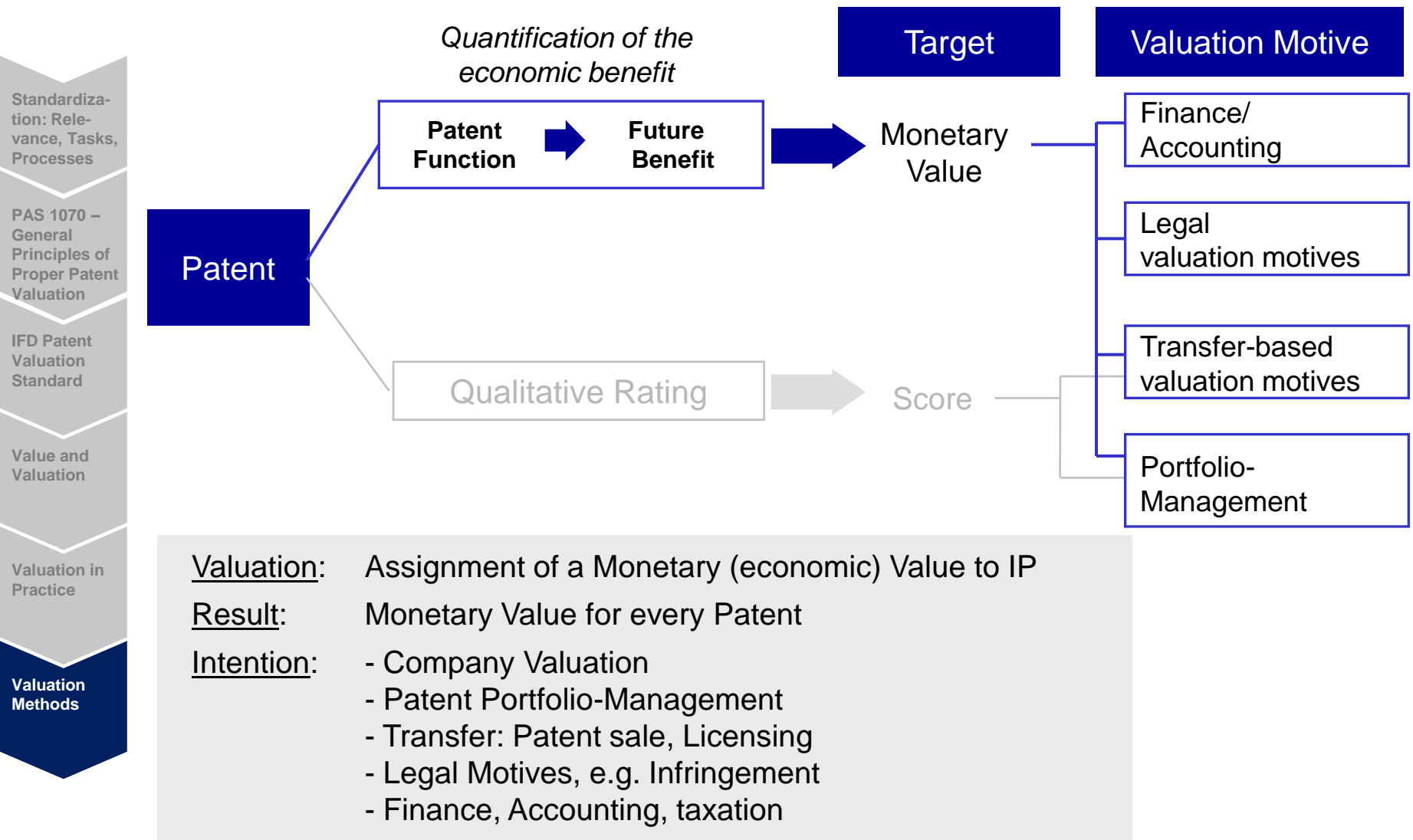




■ Valuation Methods

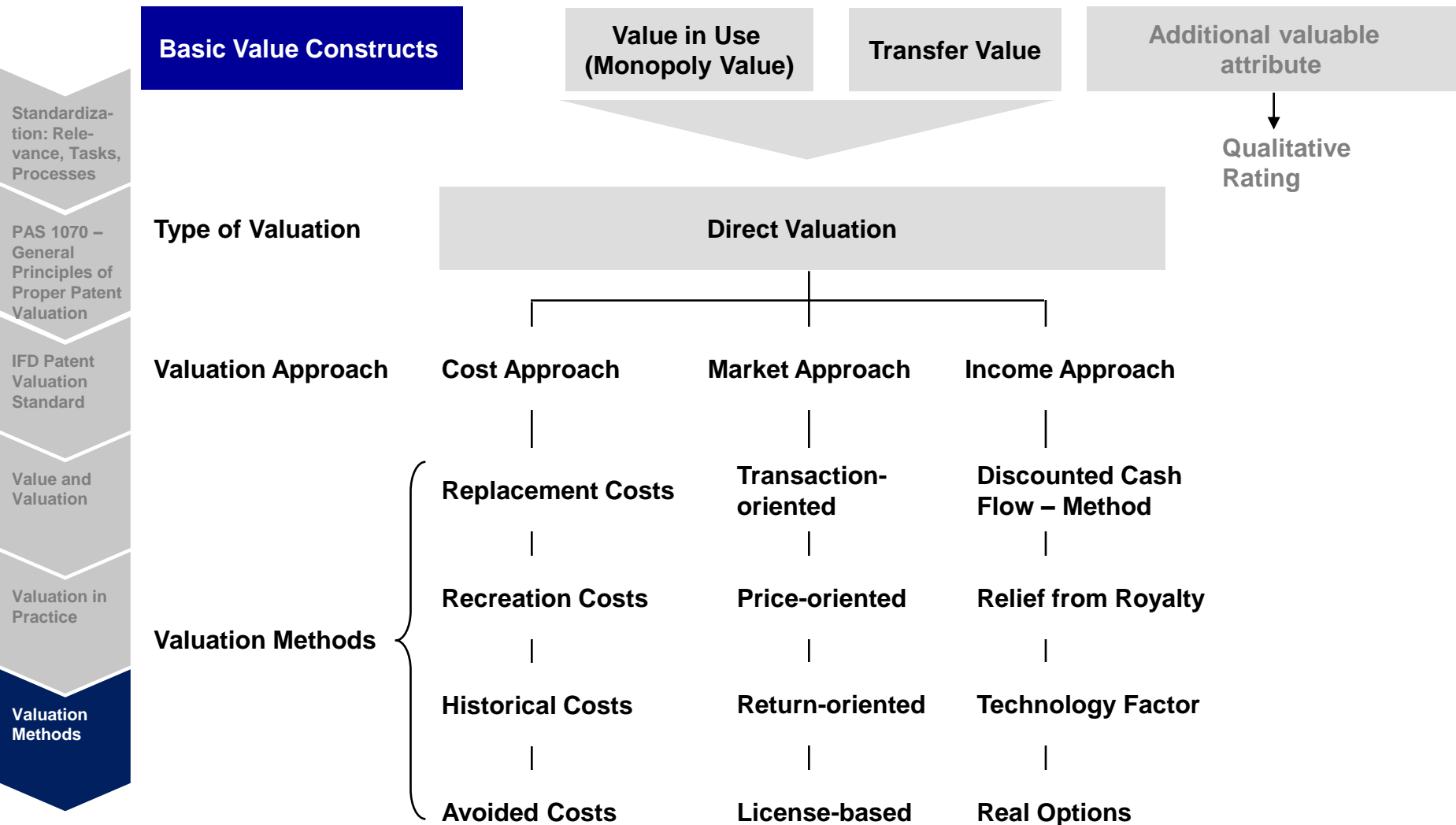


Patent Valuation – Overview





Valuation Approaches and Methods



Standardization: Relevance, Tasks, Processes

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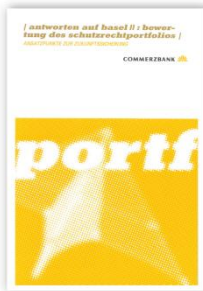
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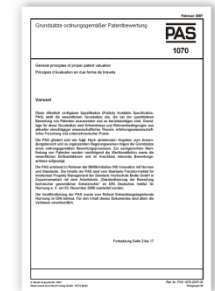
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Vita Prof. Dr. Alexander J. Wurzer



Prof. Dr. Alexander J. Wurzer is the director of the Institute for Intellectual Property Management at the Steinbeis University in Berlin. His research focus is based on the international technology transfer and licensing, economics and management of technology and innovation, as well as questions related to value creation of IP.

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Following his studies of physics, microbiology and molecular biology at the Ludwig-Maximilians-University in Munich, and parallel to his Ph.D. in physics, he has worked in the IP management since the mid-nineties, also for the Fraunhofer Gesellschaft.

Alexander Wurzer is author of about 120 publications in national and international journals. Since 1999 the following books „Wettbewerbsvorteile durch Patentinformationen“ (1st and 2nd Edition.), „Handbuch der Patentrecherche“, „Patentmanagement“, „Bewertung technischer Schutzrechte“ and „Praxishandbuch Internationaler Know-how-Schutz“ of him have been published.

He presides the DIN committee on standardization of patent valuation. He is spokesman of the Munich Innovation Committee of the Munich Chamber of Commerce as well as Senator in the Bavarian Senate of Economic Affairs in the German Association for medium sized enterprises. Alexander Wurzer is member in the committee on industrial property law of the University Düsseldorf and member in the committee for patent rating of the German Licensing Executives Society (LES). He is a member of the German Association for the Protection of Industrial Property and Copyright Law (GRUR), the Association of Experts for Intellectual Property Rights (VPP), the Association European Policy for Intellectual Property (EPIP), the Schmalenbach-Organisation for business administration e.V., and of the Scientific Association for Inspection and Controlling at the University in Augsburg and the Association of German Engineers (VDI).



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