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SURVEY ON GLOBAL PRACTICES IN IP VALUATION PAPER ON WHAT IS NEEDED IN TERMS OF VALUATION TO BENEFIT THE IP FINANCE ECOSYSTEM

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1. The Annex to this document contains the Survey on Global Practices in IP Valuation paper on “What is needed in terms of valuation to benefit the IP Finance Ecosystem”.

2. This paper has been undertaken in the context of the first Expert Consultative Group on Valuation of Intangible Assets of WIPO. Ms. Dulce Miranda, Partner at Deloitte Legal in Madrid, Spain, prepared a paper on the role of valuation factors in making intangible asset finance operational/enabling the use of IP for financing.

3. The opinions expressed in this paper do not belong to WIPO, but solely to the author.

4. *Please take note of the information contained in the Annex to the present document.*

[Annex follows]

WHAT IS NEEDED IN TERMS OF VALUATION TO BENEFIT THE IP FINANCE ECOSYSTEM

i. Executive Summary

Intangible assets play a fundamental role in today's economy and represent a significant portion of the value of companies. Estimates peg the global value of intangibles as having increased tenfold over the last 25 years to reach around USD 74 trillion[1]. The asset mix for companies reflects this fundamental shift. Brands, designs, and technology, rather than physical assets, determine a business' ability to grow. Among companies in the S&P 500, intangibles make up more than 90% of their value[2]. Nevertheless, intangibles still encounter certain difficulties regarding their use in financing.

The purpose of this report is to analyse whether valuation of intangibles is one of the obstacles to their effective use as tradable assets. To this end, we will go through the challenges and difficulties surrounding the valuation of intangible assets, the strengths, weaknesses and best practices, by conducting a comparative study of the situation in different countries. With this purpose, a questionnaire was shared with expert valuers from different countries, the result of which is summarized in this report.

From this we intend to extract the main challenges and difficulties faced by professionals as well as the suggestions for overcoming them, trying to define potential recommendations on the next steps that be followed to facilitate the path to intangible assets being widely used in raising finance.

ii. Background

The global economy is driven by small and medium-sized enterprises, which contribute more than a half of global employment and make up 90% of businesses worldwide[3]. However, many of them have difficulty in raising funds, which often becomes a problem for their survival and therefore indirectly for the economy as a whole.

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[1] Reference: Brand Finance (2021), Global Intangible Finance Tracker — an annual review of the world's intangible value
[2] Reference: Ocean Tomo (2021), Intangible Asset Market Value Study
[3] Source: World Bank SME Finance: Development news, research, data | World Bank

Usually, SMEs do not have significant tangible assets, but do have portfolios of intellectual property rights and other intangibles which could be a game changer for these companies when it comes to obtaining financing. But it isn't an easy road.

One of the problems associated with financing based on intellectual property rights relates to the circumstances surrounding the correct valuation of these rights.

The adoption of measures to overcome these difficulties requires, first of all, identifying where the problems lie, in order to be able to propose solutions.

iii. High-level overview on use of intangible asset finance

In an environment in which the economy is increasingly based on intangible assets and less on tangible assets, it is still difficult to use those intangible assets as a tool for obtaining capital, which is of essential importance to SMEs in particular, which generally find it harder to raise funds.

Although they are not very numerous, there are some clear examples of success. For example, in 2020, Spiber Inc., a Japanese company developing next-generation biomaterials, which built a patent portfolio of more than a hundred patents, secured 40 billion yen in financing by using a value securitization structure leveraging, among other assets, on its extensive IP portfolio. The securitization of intellectual property rights represents a possible financing alternative for companies, allowing them to obtain income generated by their intellectual property. However, securitization is not very common when it comes to IP-backed financing structures. The use of IP rights and other intangibles as collateral as well as sale-and-leaseback are IP-backed financing structures which have gained more widespread application[4].

Before continuing with our analysis, we must begin by specifying what is meant by intangible assets.

Under IFRS (IAS 38), an intangible asset is defined as '*an identifiable non-monetary asset without physical substance"* that "*include computer software, licenses, trademarks, patents, films, copyrights and import quotas*.[5]*".*

[4] For example American Airlines https://www.ft.com/content/bd98bfc6-4ee6-45b8-95f4-f0b9a1706e2d, (Another $200 million was secured with non-IP related collateral) https://www.airfinancejournal.com/articles/3579919/amr-grabs-largest-us-private-placement-in-airline-sector

[5] https://www.ifrs.org/issued-standards/list-of-standards/ias-38-intangible-assets/#about

Another definition is found in the guidelines published by the OECD and the G20 in the Base Erosion and Profit Shifting Project (BEPS). This project, developed in the field of international tax, had the purpose of defining certain "*measures to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment".* Under paragraph 6.6 of Action 8-10 final deliverable[6] of the BEPS project, the OECD defines "intangible" as "*something which is not a physical asset or a financial asset, which is capable of being owned or controlled for use in commercial activities, and whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances"*.

Furthermore, the OECD refers to two categories of intangibles:

- Marketing intangibles, stating that a marketing intangible is "*an intangible (within the meaning of paragraph 6.6) that relates to marketing activities, aids in the commercial exploitation of a product or service, and/or has an important promotional value for the product concerned. Depending on the context, marketing intangibles may include, for example, trademarks, trade names, customer lists, customer relationships, and proprietary market and customer data that is used or aids in marketing and selling goods or services to customers*."

- Trade intangibles, that are defined as those intangibles that do not follow under the definition of marketing intangibles[7]. This category would therefore include intangibles such as patents, know-how and trade secrets, unpatented technology, software, other copyrights, databases, rights under contracts and government licenses, etc.

The concept of intangible asset is therefore broader than that of intellectual property. Intellectual property rights are not the only category of intangibles, although it is true that they occupy a prominent place within them. Intellectual property refers to non-physical assets that grant rights and privileges and have value for their owner, as they are legally protected intellectual, technical or creative creations, which grant exclusive rights and, as such, imply an economic value as their use in a business implies, directly or indirectly, the generation of a monetizable competitive advantage.

[6] https://www.oecd.org/tax/beps/beps-actions/actions8-10/
[7] https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en#page28

The concept of intangibles is therefore a very broad concept. That being the case and the context of the analysis that is the subject of this report, the first question that arises is whether all these assets are valued with the same frequency. These are the results obtained based on the replies received from the respondents:

	Patents	Trademarks	Know-How Trade Secrets	Datasets	Software	Copyright (other than software)	Others
UK	20%	70%	15%	5%	30%	15%	5%
Belgium							
France	35%	5%	45%	5%	10%		
Italy	25%	40%	20%	5%	8%	1%	1%
Ireland		yes	yes		yes		yes
Spain	10%	15%	5%		10%		60% (customer related assets)
Australia	30%	20%	3%	1%	40%	5%	1%
US	10%	60%	10%	10%		10%	
South Africa	10%	10%	10%	10%	10%	10%	40%

The situation is uneven in different countries, although the answers obtained reflect that trademarks are the intangibles that are most frequently submitted to valuation, followed by patents and software, while copyright and other intangibles are subject to valuation with a lower frequency.

iv. Context and factors where IP valuation is used

The purposes for which the valuations of these assets are carried out are also very varied. Below we list some of the most common reasons to carry out the valuation of intangible assets:

- Valuation for the purposes of determining compensation for damages in cases of infringement of rights. In this regard, in some countries scales are established to carry out this quantification. Thus, for example, in many European countries, the law establishes three possible alternatives for IP infringement: the benefit obtained by the infringer as a result of the infringement; losses by the right holder; or the price of the license that the infringer would have had to pay in order to exploit the right. Typically, in the latter case a valuation of that hypothetical license will be required (especially if there are not comparable licenses for such asset);
- Valuation for the purposes of use by a company's internal management for defining its corporate strategy, for economic analyses or to measure the ROI (return of investment) in respect to those activities developed around such intangibles, among other reasons;
- Valuation for tax purposes, for example, in the context of transfer pricing, where the

transaction between related companies must be valued on an arms-length basis;

- Valuation for the purposes of the assignment or license/cross-license of an IP asset;
- Valuation for accounting purposes, especially in cases where the intangible is the result of internal development, not of an acquisition from a third party; or
- Valuation in the context of corporate transactions. The requirement for companies to attempt to identify what intangible assets they are acquiring as part of a corporate transaction may provide information to be considered when fixing the price in the deal.

At this point and continuing with our analysis, we have asked the expert valuers that have provided information to perform in this study, what are, according to their personal experience, the most common reasons for which valuations of intangibles are carried out in the countries that have participated in this study, with the following result:

	Licensing	Acquisition/sale IP assets	M&A Purchase Price Allocation	Debt Financing	Equity financing	Management Decision making	Tax/Transfer Princing	Litigation	Others
UK									
Belgium									
France									
Italy									
Ireland									
Spain									
Australia									
US									
South Africa									
Korea									

	Commonly
	Occasionally
	Rarely
	Never
	No answer

As per the feedback obtained, most valuations are carried out for a purpose related to taxation or in the context of a transaction (acquisition/sale of IP assets, purchase price allocations), while for debt or equity financing valuations are not so common.

This raises a reflection that the valuations occur mainly in those situations, in which it is mandatory, as is the case of the application of international taxation regulations. However, and as we anticipated at the beginning of this report, IP valuations in a financing context are still relatively rare.

Having said that, we must now turn to the difficulties inherent in the valuation of intangibles as, compared with other types of assets, such as movable property or securities, the valuation of intangibles is more complex due to several factors.

First of all, it is important to remember that each asset is unique and different from any other and this is a significant factor in the difficulties surrounding valuation. Together with this uniqueness, however, there are other factors that have an impact on valuation, such as the limited term of protection of most assets (for example, in general terms, a patent that is about to expire has a lower value from one recently granted), the investment required for their exploitation, and the legal or contractual limitations on their use. External factors, such as the limited information available on market valuations, lenders' lack of knowledge of IP or the associated valuation costs also have a relevant impact.

In addition, IP valuation involves other challenges, some of which can be summarized as follows:

- Illiquidity

Financiers need to feel confident that they will be able to recover the investment made. Therefore, how to convert an intangible into cash in the event of default is probably one of their main concerns.

In general terms, illiquid assets have fewer buyers, the holding periods are longer, and transaction costs are higher than for "liquid" assets. Considering these factors, investors usually attribute a lower price for illiquid assets than for liquid ones.

- Lack of understanding of IP

Lenders and investors have very limited knowledge around IP and limited experience of accepting IP as security for financing. This limited experience and understanding of the specific characteristics of these assets, leads to a certain amount of uncertainty and the perception of IP rights as risky assets.

- Costs associated with IP valuation

The greater complexity involved in IP valuations, and particularly the greater valuation costs compared with other more traditional assets, also imply additional difficulties.

In this sense, and as we will see later in more detail, IP valuation often requires the participation of experts from various fields. To effectively assess the technical feasibility, value and market potential of these assets, a technical and commercial examination may be necessary. In addition, it may also be necessary to use IP legal experts to assess, for example, the quality of a patent or to review the terms of intellectual property licensing agreements. The valuation of these assets therefore requires very specific training and knowledge, which can result in an increase in the associated costs. One question, therefore, is whether it is

necessary to make any changes to this point, such as requiring specific training for valuers. We will go through this issue later.

v. Quantitative approaches to intangibles valuation

Valuation of any asset – intangible or not – inevitably implies a certain component of "opinion" on the part of the valuer; an opinion that obviously must be based on the use of generally accepted valuation methods and on an exhaustive and rigorous analysis of the circumstances relating to the asset, but in which there will also be certain "assumptions" made by the valuer. This can lead to certain insecurity or lack of confidence with respect to the results obtained.

Moreover, the existence of different valuation approaches – all of which are generally accepted and the choice of which will depend on the circumstances for which the valuation is carried out and on the specific features of the asset –, also implies certain constraints that could have an impact in the asset's use for obtaining financing.

In particular, with regards to the methods used by valuers, mainly a combination of three approaches is used: the cost, the market and the income-based approaches. Each approach involves different methods developed for specific situations and each has certain limitations. Very briefly, these approaches consist of the following:

- Cost-based approaches: The two main methods used are historical cost, which measures the cost incurred in creating the IP; and replacement cost, which quantifies the estimated cost of creating an equivalent asset.

  The cost-based approach has certain limitations in the valuation of intangible assets. In this sense, the value generated by an intangible may not correlate with the costs incurred for its development (for example, a pharmaceutical patent can be the result of very large investments and end in a product with low market share, or a brand may have involved low development costs and on the contrary have obtained an extraordinary reputation and penetration in the market). On the other hand, the valuation based on the estimation of what would be the cost of recreating the asset implies considering the savings that for the company implies being the owner of that asset (and therefore not having to acquire or license it). However, this method often requires applying subjective criteria in the determination of that cost savings.

- Market-based approaches: In this case, the valuation is based on a comparison with comparable arm's length transactions for identical or similar assets. This approach is probably the most attractive to the extent that it offers certain objectivity. However, this method also presents some difficulties: on the one hand, the "uniqueness" of many of the intangible assets, which makes it difficult to identify a comparable asset, together with the fact that, often, the information available to carry out the comparison is very limited due to the confidentiality that usually involves most of these kind of transactions. Furthermore, the value of an intangible can be very dependent on how it is used and by whom.

- Income-based approaches: These methods consider the value that is being obtained by a company as a result of its ownership of the IP. This approach quantifies the expected future benefits associated with the ownership of the asset. This method therefore also implies making certain "predictions" regarding the future use of the intangible, specifically in relation to those assets that are not yet producing revenues.

The use of these methods is highly context specific and will depend on varied circumstances such as the type of intangible to be valued, the purpose, the accessible information, etc.
In recent years, interest in issues related to the valuation methods of intangible assets and their standardization has grown, as demonstrated by the activity and discussions amongst standard setters and standardization organizations, as we will see later.
Also, in relation to the valuation methods, we have asked the participants in our survey, in order to know which are their preferred methods and which are used less frequently. The results obtained are summarized in the following table:

	Cost Approach	Market Approach	Revenues Approach- Royalty relief	Revenues Approach Scenario analysis	Real Options	Combination of two Approaches	Combination of more than two Approaches
UK	10%	95%	50%	90%	< 1	100%	10%
Belgium	15/25	rarely	30-40			Sometimes	Rarely
France	50%	always for patents	85%	almost every time	1%	Always	For high scrutiny cases
Italy	10%		60%	15%	15%		
Ireland	Often		Often				
Spain	20%		20%			80%	
Australia	Often for early stage assets	Sometimes depending on the level of comparability of the asset with available information	Often for tech		Not often	Often where information allows	
US	Ocasionally	Often	Often	Uncertain	Rarely	Yes	When applicable
South Africa	30%	50%	75%	< 5	< 5	80%	15%

It is observed that, although there is some disparity, market- and income-based approaches are used most frequently, in the latter the-relief-from-royalty approach (i.e. royalties saved)

and scenario analysis (analysis of different potential events and their impact) are ranked as the most popular methods by respondents, while the cost approach is used to a lesser extent.

The responses obtained also demonstrate that it is also in practice a combination of two approaches is used (more than two approaches are used in fewer instances), which allows overcoming some of the difficulties inherent in each of the approaches to which we have referred and thus makes it possible to obtain a more solid valuation of the asset.

v. Qualitative approaches

Along with the above, there are other factors that impact the value of intangible assets. Thus, for example, the territorial scope of protection of the asset, the remaining period of legal protection, its actual or potential market, etc. These circumstances should also be taken into account in order to modulate, where necessary, the economic value.

The information related to the "quality" of an intangible asset can be obtained from different sources, such as the databases of the corresponding IP records, the information provided by the owner of the asset, etc.

The table below summarizes the responses received from survey participants on the methods used to determine the quality value of intangibles.

	Databases	Indicators-based	Interviews of managers/experts	Functional Analysis	Others
UK	IP Schedules-TMView,DesignView,, PatentLens. Royalty rate data - Markables, ktMINE Risk rate-Capital IQ		Yes	Performed inhouse	
Belgium	Royaltystat, Royaltysource, PPAnalyser		Yes	Performed in house	
France	bccResearch, Freedonia, S&P, KROll, etc. Casemine, LexisNexos,tpcases, Westlaw, SEC-Edgar,DealStats, Markables	IP Offices databases IntrcomGroup	Yes (always)	Most generally	Site visits
Italy	IP databases (EUIPO. TMView, etc.)	Legal protection, Market positioning, competitive advantages, technology relevance, etc.	Yes	Functionality, Uniqueness, role of the IP within the business/industry	
Spain	ktmine, Royaltystat; Royalty Sourced IP databases	Number of users, units sold, financial metrics		For transfer pricing	
Australia	Pitchbook, Patseer, Ambercite,Crunchbase		Yes		Internally developed tool
US	Rely on Counsel	Rely on Counsel	Yes	Yes	
South Africa	IP validity assesment and potential market assesment (US, EU and PCT databases)	Not often	Yes	Yes	Previous litigation Competitors
Korea			Yes	Yes	

Respondents carry out this qualitative analysis based on the information provided by the company or by experts in the field, as well as through information available in different

databases. Having said that, it is noteworthy that not all valuers carry out a review of the legal situation and registration protection of these assets, when the truth is that these factors can have a very relevant impact on the value of assets.

vi. Valuation standards

Valuation standards also play a very important role, insofar as they contribute to promoting transparency, consistency, and therefore also trust, in valuation processes. Standards are related to the professionalization of IP valuations and some of them are compulsory (or quasi mandatory), imposed by different regulations.

There are a variety of standards from different organizations that differ in their content and recommendations. Although these standards are not contradictory to each other, it is true that the application of one or the other can result in certain differences.

Here are some of these standards:

- International Valuation Standards ('IVS'), in particular IVS 210[8], issued by the International Valuation Standards Council, an independent, not-for-profit organization that produces and implements universally accepted standards for the valuation of assets. It is composed of five general standards, that set forth general requirements for valuations of all kind of assets and for any purpose, and specific asset standards, with specific requirements, which must be applied together with the general standards.

- RICS Valuation standards ("Red Book") issued by the Royal Institute of Chartered Surveyors in the UK and in particular the RICS Standard on valuation of intellectual property rights. These standards are mandatory for RICS members undertaking valuation services[9].

- Uniform Standards of Professional Appraisal Practice ('USPAP'), US standards issued by the US Appraisal Foundation. These are quality control standards applicable for real state, personal property and business. In 1989 the US Congress recognized USPAP as the generally accepted appraisal standards and has required USPAP compliance for appraisers in federal-related transactions in the United States[10].

[8] IVS210IntangibleAssets.pdf (ivsc.org)

[9] https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/valuation-standards/red-book

[10]https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af

- International Financial Reporting Standards ('IFRS'), issued by the International Accounting Standards Board (Board). IAS 38 sets out the criteria for recognizing and measuring intangible assets[11] and requires an entity to recognize an asset -acquired or self-created- only when certain requirements are met: (i) when it is probable that the future economic benefits attributable to the asset will flow to the entity, and (ii) if the cost of the asset can be measured reliably.

- US Generally Accepted Accounting Principles ('GAAP') adopted by the US Securities and Exchange Commission (SEC). This standard includes valuation guidance with respect to businesses and other assets, including intangible assets and are mandatory for financial reporting under these standards.

- OECD Transfer pricing guidelines, which provide guidance for the application of the arms-length principle in cross-border transactions between related entities

- ISO 10668: issued by International Organization for Standards, it specifies a framework for brand valuation, including objectives, bases of valuation, approaches to valuation, methods of valuation and sourcing of quality data and assumptions. It also specifies methods for reporting the results of such valuation[12]. Unlike other standards, this one details essential requirements of any trademark valuation: financial, market and legal aspects.

- DIN77100 - DIN (German Institute for Standardization) his Standard stablishes the framework for valuation of patents and similar industrial technical property rights like utility models.

Below we reproduce the answers that the respondents have offered in relation to the standards used for the valuation of intangibles, taking into account the different purposes of such valuations.

[11] https://www.ifrs.org/issued-standards/list-of-standards/ias-38-intangible-assets/
[12] https://www.iso.org/standard/46032.html

	Licensing	Acquisition/sale IP assets	M&A Purchase Price Allocation	Debt Financing	Equity financing	Management Decision making	Tax/Transfer Pricing	Litigation	Others
UK	IVS and RICS Red Book	Accounting standard/IVS	Accounting standard/IVS	IVS and RICS Red Book	IVS and RICS Red Book	IVS and RICS Red Book	UK legilslation and OECD	IVS and RICS Red Book	Insolvency& restructuring: IVS and RICS Red Book
Belgium	IVS	IVS	IFRS and US GAAP	IVS	IVS	IVS	IVS and OCDE	IVS	
France	IVS	IVS, IFRS	IVS, IFRS	IVS, IFRS		IVS	OECD, IVS, IFRS, Local GAAPs, Tax standards	IVS, Fin reporting	IVS, DIN
Italy			IFRS and GAAP						
Ireland		OECD transfer Pricing Guidelines IFRS/FRS102	IFRS/FRS102				OECD transfer Pricing Guidelines IFRS/FRS102		
Australia		APES 225, IVS, RICS	APES 225, RICS, AASB/IFRS	APES 225, IVS, RICS	APES 225, IVS, RICS	APES 225, IVS, RICS	APES 225, IVS, RICS, Australian Taxation Office Guidelines	APES 225, IVS, RICS	
US	US Case Law	USPAP, ISO10668	USPAP, ISO10668	USPAP, ISO10668	USPAP, ISO10668	USPAP, ISO10668	USPAP, ISO10668	US Case Law	
South Africa	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668	SAICA, WIPO 2010 Guide, EU 2001/29 and 2004/48 Directives, OECD, IVS, IFRS, DIN 77100, ISO 10668

As can be seen from the responses received, the standards used are very varied, even when they refer to the same valuation purpose.

vii. Perspectives on the valuation of IP for the purpose of financing

a) Consistencies and gaps

Another factor to consider in the valuation of intangibles is the set of common elements and differences in the international market. Regulations often introduce discrepancies in data collection and even in the application of valuation methodologies and standards.

For example, there are several differences between US GAAP and IFRS. One of these differences is that while US GAAP provides specific rules for accountants in order to prepare financial statements, IFRS provides general principles than need to be interpreted in order to be applied to each specific situation.

Another difference between US GAAP and IFRS is how treat research and development costs. Under US GAAP, research and development costs can be capitalized in certain cases, while under IFRS, research and development costs must be expensed and incurred.

Furthermore, the fair value estimated under US GAAP is not always exactly consistent with IFRS or with valuations for tax purposes. In the field of transfer pricing, the need to

substantiate the source of any data used in a valuation prevails, although the quality of the data may be lower, as the case may be, than a private source. For expert report purposes, what prevails is the quality of the data, which usually implies the use of sources that cannot be disclosed due to confidentiality reasons. This leads to clear divergences.
Having said that, we asked about barriers and challenges to the respondents to our survey, with the following results:

- UK

In the UK, IP valuations can increasingly be considered following the valuation of tangible assets being offered as security. Should the value of the tangible assets not meet the collateral requirement for the lender, the IP would then be considered as additional collateral to make up the difference. However, apparently this situation is beginning to change in the UK as more often IP is becoming the core asset being considered as part of a loan, in which case an IP valuation would be sought at the earliest opportunity alongside or even before the tangible assets of the business.

The respondents have outlined that a barrier, particularly when it comes to IP valuation for lending, is clients' lack of knowledge on the subject, together with a certain lack of knowledge in the market of how to conduct IP valuations for debt financing.

Furthermore, according to the information received, the number of specialized valuers is limited, which leads to differences in the quality of the valuations and ultimately in the confidence of lenders.

Finally, in the respondents' opinion, a common challenge is the lack of information on which to base the valuer's analysis. Companies rarely document their IP assets, and there is also a certain lack of detailed forecast financial information or historical development cost breakdowns that hampers valuation.

- Ireland

In this country, expert valuers consider that the main challenges are:

- The lack of understanding of the complexity that valuation implies.
- The limited information available.
- The time required to conduct IP valuations.

- Belgium

According to the information received, the main issue is that IP valuations are still seen mainly as valuations for statutory purposes (tax and financial reporting) and that, while in those contexts they are regularly performed, in business contexts, in most cases clients care more about business value than about carving out IP value.

On the other hand, the main challenges that valuers face when performing a valuation of intangible assets, according to the information received, are the limited client appetite to invest significant resources in assessing the IP (e.g., through patent landscape search, market assessment of brands etc.) as the valuation work is seen mainly as a financial analysis, together with the limited information pertaining specifically to the intangibles valued.

- France

The interviewees declare that the main barriers to use IP valuation are that many managers consider IP as a cost, not as a strategic lever; the limited awareness of companies of the interest of IP valuation except for those cases in which compliance with standards or regulations impose such valuation, and finally the absence of trust in IP valuation and in the competencies of valuers. Cost is also a referred as a barrier, especially for SMEs and start-ups.

Regarding the challenges identified by our respondents are:

- The limited understanding of methods by companies, that are not aware of the principles of intangible valuation;
- The accessibility of managers, who think that financial data are enough.

- Spain:

Although it is still not very common, the number of IP financing transactions is increasing, as intangible assets constitute an increasing part of a company's asset base and, in some cases, such as in start-ups or deep technology companies, they are the only assets.
Likewise, the Spanish Tax Administration, like other Administrations, has begun to consider the value contributed to MNEs by the development of intangibles. This consideration has served as an additional tool for short-term tax collection that, although it generates some legal uncertainty due to the consequences in some cases of double taxation, enables taxes to be safeguarded.
The main challenge, according to information provided to us, is the lack of market information on IP licensing or sale transactions.

The experts consider that the main barriers to use intangibles valuation are that the value of intangibles is very specific to the use given by its owner, and that the economics that can be extracted by one company may not be achieved by others, what is also an important barrier to use IP as a collateral.

- Italy

The main barriers identified by the Italian experts are:

- The lack of awareness and understanding of the importance of IP valuation.
- The challenges in obtaining accurate and up-to-date data.
- Legal and regulatory complexities related to IP.
- Variability in the quality of IP documentation and records.

Together with these barriers, they report certain difficulties in establishing a clear link between IP assets and financial performance as a challenge faced to perform valuations.

- US

According to the information received, the main barrier to use IP valuation is its cost, and therefore, the principal challenge is to keep costs low while performing enough research, due diligence and analysis to provide a useful, sound thorough, well-reasoned and well-supported work.

- Australia

In this country experts report that the main barriers they face to use IP valuation are that clients don't understand the potential value of their intangibles' portfolio and, in some cases and markets, the lack of expertise in IP valuation.

Here also the valuers consider that the limited available data represents a challenge when valuing intangible assets.

- South Africa

In this case, the main barriers identified are the poor insight and understanding by non-IP professional advisors of the strengths and weaknesses of IP valuations; the lack of expertise and/or accreditation of IP valuers; the lack of recognition or acceptance of values by accounting and financial standards (IFRS and IAS); and the lack of appreciation of the time required (and therefore the associated costs) to perform a proper valuation.

In line with the above, they refer that the main challenge that they face is to be able to provide an accurate cost estimation and, at the same time, obtain a proper technical, financial and marketing information from instructors.

- Korea

In this country respondents declare that the main barriers they face to use intangibles valuation are the lack of awareness; the valuation costs (though valuation costs are subsidized for qualifying SMEs) and that usually valuations take longer than users expect.
And in respect to the challenges faced, our respondents refer to the availability of reference data, such as -for example- royalty rates in different contexts.

viii. Required valuation capabilities and their availability

a) Skillset required for IP valuation

As we have already mentioned, good valuers need to have very diverse skills. They require an interdisciplinary profile that encompasses legal, economic, accounting and financial knowledge.

The differences in terms of background or training required to perform IP valuations have been also pointed out by the respondents to the survey. Thus, to the question related to the training that the respondents have for intangible valuation, they have stated mainly and among others:

- In-house training sessions.
- On the job learning.
- Specialized courses
- MBA with coursework in finance and valuation
- Mentoring by experts
- Qualified RSA patent attorney.

In order to have more detailed information on the type of professionals who carry out these valuations in the countries participating in the survey, we asked the experts about this point, with the following results:

UK	Belgium	France	Italy	Ireland	Spain	Australia	US	South Africa	Korea
Big Four /financial advisory and tax teams Traditional valuation firms hiring IP specialists Small IP boutiques	Big Four Midsize accountants Boutiques Larger specialized valuers Some local lawyers	Big Four Bank Accountants IP Law Firms	Business valuation professionals Certified Public Accountants IP Lawyers Big Four Industry	Big Four Accountants Boutiques	Big Four Valuation boutiques Transfer pricing boutiques	Big Four Boutiques valuation firms	IP Valuers Business valuers Certified Public Accountants	Mostly IP Lawyers Some non-legal business consultants	Entities certified by the Korean Intellectual Property Office Patent attorneys Accountants Professional Engineers PhDs

Among all these responses, Korea is worth highlighting as it makes reference to the existence of a certification issued by the Korean Intellectual Property Office.

b) Availability of this skillset in different regions

Another issue for which we have asked the participants in the survey is the availability of IP expert valuers in their respective countries.

The respondents have answered that the quality and availability of IP valuers in the UK have improved considerably, and that companies are now able to approach a variety of firms for IP valuations, though very few firms are able to provide IP valuations across the entire suite of use cases. However, they remark that, while the industry has grown considerably, the senior talent pool has not, what has led to a very niche talent pool being spread across a number of firms.

According to the answers received, in the UK very few IP valuers are certified experts (as IP valuation is a fairly new industry) and there is also a lack of relevant qualifications that valuers can obtain in the market.

In the US the respondents have make special reference to the differences in quality, stating that while there are many high-quality IP valuation experts, there are also many inexperienced analysts who may produce lower quality work. Apparently, the situation is quite similar in countries like Belgium, where the use of external certifications is very limited, South Africa, Australia, Italy or Spain, where the IP valuations are mainly conducted by general valuation experts and there are only some professionals who specialize in IP valuation.

The situation is different in Korea, where, as we have mentioned above, there is a system to certify IP valuation entities. According to the information received, in 2023 there are about

twenty-two designated IP valuation entities, including both public and private entities, such as law firms, banks or credit rating agencies.

The conclusion is that, in most countries there is no dedicated professional community specialized in the valuation of intangibles, with specific training on the particularities of these assets, but that this analysis is carried out mainly by "generalist" valuers.

ix. Suggestions for the future

From what can be concluded from the survey and additional analysis, the main challenges can be summarized in the following points:

- Quality of IP valuations, what very much links with the availability of specific training courses on IP valuation and with the reduced number of specialists. This can lead to uncertainty with regards to the quality of valuations.
- The limited data accessible regarding transactions over intangibles.
- Costs associated with valuations.
- Limited information or awareness of entities in relation to intangibles and their valuation.

In order to overcome such challenges, the following measures could be adopted:

- <u>Capacity-building and training</u>:

  Apparently, there is a need to improve the rigor and quality of some valuations.
  In addition, as we have seen, the profile of the professionals who carry out valuations is very different, which could generate some doubts about their findings. To this fact we must add the prevalence of different valuation methods and standards that are not applied uniformly across regions. Although the capabilities required to carry out the valuation of intangibles are in many aspects the same as those required to value other types of assets, there is an acknowledged need to adopt measures to improve specific training in IP for valuers in order to increase confidence and transparency around IP valuation.
  In this regard, it would even be necessary to consider the need to establish continuous training criteria as a tool to ensure that the knowledge of professionals is kept permanently up to date.

  In addition, the creation of IP-specific valuation associations and of certification bodies are suggested as formulas to improve confidence in the capabilities of valuers.
  Lastly, thought should also be given to the appropriateness of a “code of conduct” in order to avoid situations involving questionable ethics that also adversely affect the credibility surrounding the valuation of intangibles.

- Increasing transparency:

  Another difficulty highlighted is the availability of data and information -and not just data, but *quality* data- for the conduct of valuations. Greater accessibility to market data would have a positive impact on the credibility of valuations to the extent that the "assumptions" implicit in any valuation could be compared with actual market data. Information should be as complete as possible -while observing confidentiality obligations-, including information about the kind of transaction, the conditions of the deal etc. and not only the mere figure associated to such transaction.

- Promotion of best practices:

  In addition, it seems that greater homogenization is needed in relation to the methods and standards applied, considering that the publication of guidelines and best practices would also help to improve quality and enhance confidence.

  We cannot overlook the fact that valuation is not an exact science and that the results lie in any case within a range of values. However, the definition of best practices would help to increase confidence in its results. In this regard, consideration should also be given to the opportunity of defining a sort of “toolkit” in terms of a list of elements and issues that must be taken into account when performing a valuation of intangible assets.

Policy actions on these issues could have a positive impact on overcoming the identified barriers in order to increase and improve confidence and trust in, and awareness of, IP valuation, and therefore to facilitate the path to intangible assets being used in raising finance.

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[End of Annex and of document]