

# Valuation In Practice

How valuations are used in legal practice

June 2008



INTANGIBLE  
BUSINESS

# Valuation In Practice

## Key findings

### Most encouraging findings

- **IP** is the business asset that is **valued most frequently**, as seen by **68%** of lawyers.
- Over **50%** of lawyers found **each component service** expert valuers provide either **useful** or **very useful**.
- **87%** of lawyers found the **valuation** service provided by valuers either **useful** or **very useful**.
- **98%** of lawyers find **valuations significant** or **very significant** to disputes.
- **65%** of lawyers think IP will become even more significant to disputes.
- **The valuation** itself is the component service that requires the **least improvement**.

### Findings requiring most improvement

- **Goodwill** is the **most frequently valued** form of IP yet the **least understood** and least valued by a specialist.
- **87%** of disputes result in the **recovery** of **less than 75%** of a claim.
- **13%** of lawyers see a typical **recovery** of **less than 25%** of a claim.
- **54%** is the average typical claim recovery as seen by lawyers.
- **Disputes** use valuations **61% less** than non-contentious matters.
- **Market research** was named the **worst component service** provided by valuers.

# Valuation In Practice

## Contents

- 1. Executive summary**
- 2. Introduction**
- 3. Methodology**
- 4. Valuations in context**
- 5. Use of valuations (contentious)**
- 6. Use of valuations (non-contentious)**
- 7. Valuation services**
- 8. Conclusion**

# Valuation In Practice

## 1. Executive summary

Over 50 legal experts responded to the survey, from over 40 leading firms specialising in corporate, litigation and IP.

### Valuations in context

- IP is the business asset that these lawyers see valuations for most often, by 68% of them, just beating share valuations which are seen by 67% of lawyers most frequently. Land and buildings valuations are seen 46% of the time and plant & machinery 40%.
- Goodwill is the type of IP that is valued the most, according to 62% of lawyers, followed by brands, 56%, trademarks, 54%, and patents and copyrights with 46% and 44% respectively.
- Specialist valuation firms are seen the most to value assets, 49% of the time. Accountants are seen the second most, 38%, followed by corporates, 7%, and surveyors, 6% who only value land and buildings.

### Use of valuations (contentious)

- Mergers & acquisitions require valuations more than any other reason in contentious issues, by 47% of lawyers. Insolvencies are the second most popular reason by 45%.
- 98% of lawyers find valuations either significant or very significant to their disputes and both the significance and use of experts is set to increase (according to 65% of lawyers) with no one thinking it will decrease.
- Only 13% of lawyers see a typical claim recovery of between 75% and 100%, with the majority, 52% seeing a typical recovery of between 50% and 75% of the claim amount.

### Use of valuations (non-contentious)

- Valuations are used two and a half times more frequently in non-contentious matters than in disputes.
- Mergers & acquisitions are again the area that requires the most frequent use of valuations, according to 83% of lawyers.
- 97% of lawyers found the valuations significant or very significant in supporting project objectives and 75% thought the significance of IP to these issues would increase.
- Although each deal and project is different, IP is found to represent an average of 34% of the deal value, accounting for as much as 70% and as low as 10%. This perception is the opposite to reality where it is more like 30% of deal value actually represented by tangible assets, not intangible.

### Valuation services

- All components of valuation services were found to be useful or very useful according to over 50% of all lawyers. The actual valuation component was found to be the most useful service and market research the least useful, according to 87% and 57% of lawyers respectively.
- Generally, 52% of lawyers received an adequate service from expert valuers with 37% only sometimes. 11% of respondents said they did not receive an adequate service.
- There is room for improvement in every service area that expert valuers provide.

# Valuation In Practice

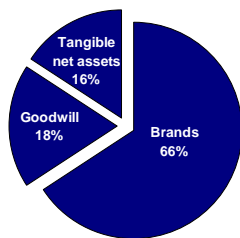
## 2. Introduction

Valuations frequently underpin transactions and disputes. Whether for an acquisition, a stock market flotation or a licensing dispute, tangible and intangible asset valuations are required and carried out by experts. However, little is known about the valuation market. This exclusive research from Intangible Business sheds light on how lawyers use valuations, what they value, how important they are and how valuation providers could improve. This is the first such research into how valuations are used by legal experts.

Intellectual property (IP) often accounts for a dominant portion of business value. This research focuses on IP value within businesses, which is often an area of untapped opportunity for lawyers to improve their level of service to clients and where most contention can reside. For example, when Cadbury reported its £38m acquisition of Green & Blacks, 84% of the deal value was intangible and when PepsiCo acquired Wotsits in 2002, 82% of the purchase price was allocated to intangible assets.

Additionally, research Intangible Business conducted into how the FTSE 100 reported acquisitions in the first year under IFRS 3, which requires the break-down of all asset types, found that only 30% of the total acquisition value was represented by tangible assets. A similar study of US acquisitions between 2002 and 2007 revealed tangible assets to represent only 24% of all acquisition value. IP's considerable value is undisputed.

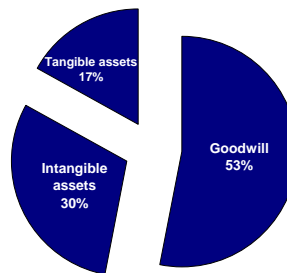
**Cadbury Schweppes's acquisition of Green & Blacks**



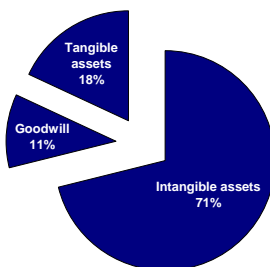
*Cadbury Schweppes*



**Acquisition allocation of FTSE 100, 2006**



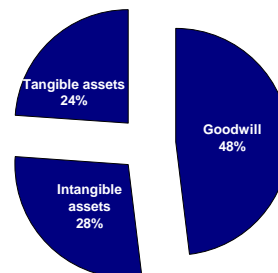
**PepsiCo's acquisition of Wotsits**



**PEPSICO**

**Wotsits**

**Acquisition allocation of S&P 100 2002 – 2006**




# Valuation In Practice

## 3. Methodology

Over 50 leading commercial UK lawyers completed questionnaires during May 2008 from over 40 of the biggest UK law firms. Respondents were selected for their significant experience in commercial litigation, corporate and IP matters. Firms were selected for their size and influence in the UK and global legal market. Respondents typically conformed to three job specialisms - corporate, commercial litigation and IP lawyers.

Intangible Business is frequently heavily involved in carrying out and analysing market research and is the world's leading independent IP valuation firm, providing valuation related services to the marketing, legal, banking and financial markets.


**VALUATION IN PRACTICE**  
 Analysing how valuations are used in the legal profession.

\* Thank you for taking the time to answer these questions. In appreciation of this we would like to send the first 100 respondents an advance publication of the research report on a scale of 50p each.  
 \* This questionnaire focuses on business, IP and share valuations. Please respond to the following questions in relation to your most recent experience or your view of current practice generally.  
 \* If you have more than one answer question please tick the ranges in any other available space.  
 \* The responses you provide will be kept in strict confidence and no personal data will be shared with third parties.

**Valuations in context**

1. **How many law firms do your legal practice receive concerning valuation?**

Legal & litigation	Corporate	IP/Share
1-5		
6-10		
11-15		
16-20		
21-25		
26-30		
31-35		
36-40		
41-45		
46-50		
51-55		
56-60		
61-65		
66-70		
71-75		
76-80		
81-85		
86-90		
91-95		
96-100		
Other please specify:		

2. **What type of organisation carried out such valuations? (Please tick)**

Legal & litigation	Business	Academy	Government
1-5			
6-10			
11-15			
16-20			
21-25			
26-30			
31-35			
36-40			
41-45			
46-50			
51-55			
56-60			
61-65			
66-70			
71-75			
76-80			
81-85			
86-90			
91-95			
96-100			
Other please specify:			

Please have any questions please call Thomas Pridmore on 01753 246710.

**Business, IP and share valuations**  
For this section please answer the questions most relevant to you.

**Corporate contentious**

3. **What type of organisational structure would business, IP or share valuations? (Tick all that apply)**

Government & public sector	
Charities & non-profits	
Private & securities	
Commercial	
Public	
Academy & research	
Regulatory	
Other	
Other please specify:	

4. **In general, how significant do you think these valuations are to the industry? (Tick one)**

Very significant	
Significant	
Not significant	
Not relevant	
Any comments:	

5. **How do you think the significance of IP issues, as disputes will change in the future? (Tick one)**

Increase	
Stay the same	
Decrease	
Any comments:	

6. **How will the rate of support if treated valuation change in the future? (Tick one)**

Increase	
Stay the same	
Decrease	
Any comments:	

7. **In general, if a party is liable, what recovery percentage will be available to you (please tick one)?**

0% - 10%	
11% - 20%	
21% - 30%	
31% - 40%	
41% - 50%	
51% - 60%	
61% - 70%	
71% - 80%	
81% - 90%	
91% - 100%	
Any comments: which percentage range	

Please have any questions please call Thomas Pridmore on 01753 246710.

**Corporate non-contentious**

8. **What type of organisational structure business, IP and share valuations? (Tick all that apply)**

Government & public sector	
Charities & non-profits	
Private & securities	
Commercial	
Public	
Academy & research	
Regulatory	
Other	
Other please specify:	

9. **In general, how significant do you think these valuations are to the industry? (Tick one)**

Very significant	
Significant	
Not significant	
Not relevant	
Any comments:	

**Use of valuation experts**

10. **In your experience of working with business, IP or share valuers, how would you rate the usefulness of their services? (Please tick the relevant boxes)**

	Very useful	Useful	Not useful	Not useful at all
Results/knowledge				
Project/consulting team				
Communication				
Qualification				
Market research				
Information & analysis				
IP/Share issues				
Other relevant:				
Other please specify:				

11. **How do you think the legal profession receives adequate support from business, IP or share valuation experts? (Please tick the relevant boxes)**

Yes	
No	
Partly	
Any comments:	

12. **How much interest the following services from business, IP and share valuation experts be required? (Please tick the relevant boxes)**

	None	A little	A lot
Results/knowledge			
Project/consulting team			
Communication			
Qualification			
Market research			
Information & analysis			
IP/Share issues			
Other relevant:			
Other please specify:			

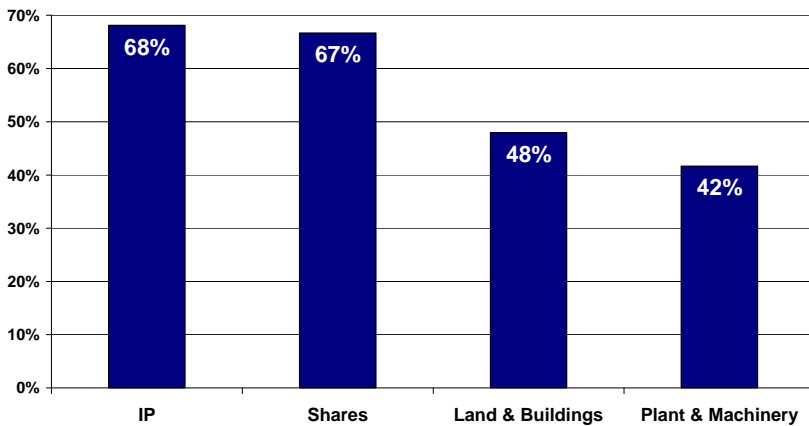
Please provide us with any additional comments you wish to make.

Thank you for your time.  
 Intangible Business Limited, registered as a company in England & Wales, no. 4120280  
Please have any questions please call Thomas Pridmore on 01753 246710.

# Valuation In Practice

## 4. Valuations in context

Which business assets are valued most frequently?



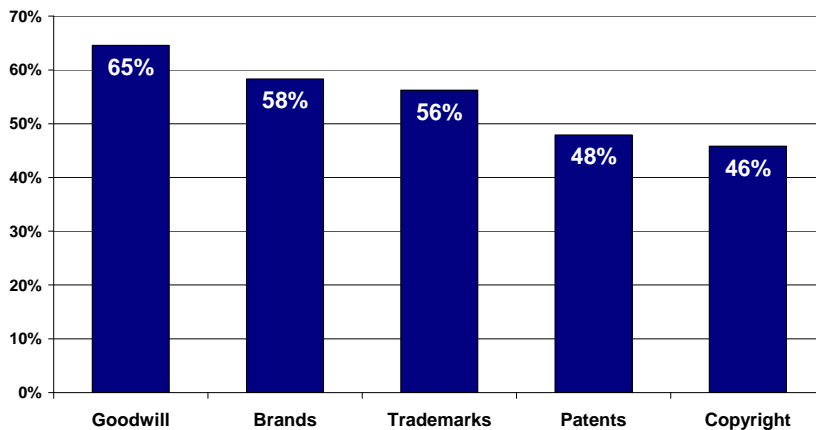
IP is the business asset for which valuations are most frequently considered by lawyers, according to 68% of them. The valuation of shares are the second most seen asset class, by 67% of lawyers. The valuation of both IP and shares are almost as regularly seen as the valuation of businesses which are seen by 70% of lawyers most frequently. Valuations of land & buildings and plant & machinery are most common according to 46% and 40% of lawyers respectively.

IP's dominance in the valuation market is perhaps surprising as traditionally their value has been considered the most nebulous or open to dispute and criticism. That IP is most frequently valued is a sign of its growing importance and the acceptance of valuation methodologies. But which types of IP are valued most frequently and who is valuing them?

# Valuation In Practice

## Types of IP valued

What IP is valued most frequently?



Goodwill is the most frequently valued form of IP, (65% of lawyers). Goodwill is the resolving number between a purchase price or value given to the entire business, and the value of other identified assets and liabilities. It has typically been seen as unquantifiable and an analysis of its components dismissed. Goodwill is supposed to be comprised of what has not been valued elsewhere, the company's workforce, cost and sales synergies – all of which can be valued to give insight.

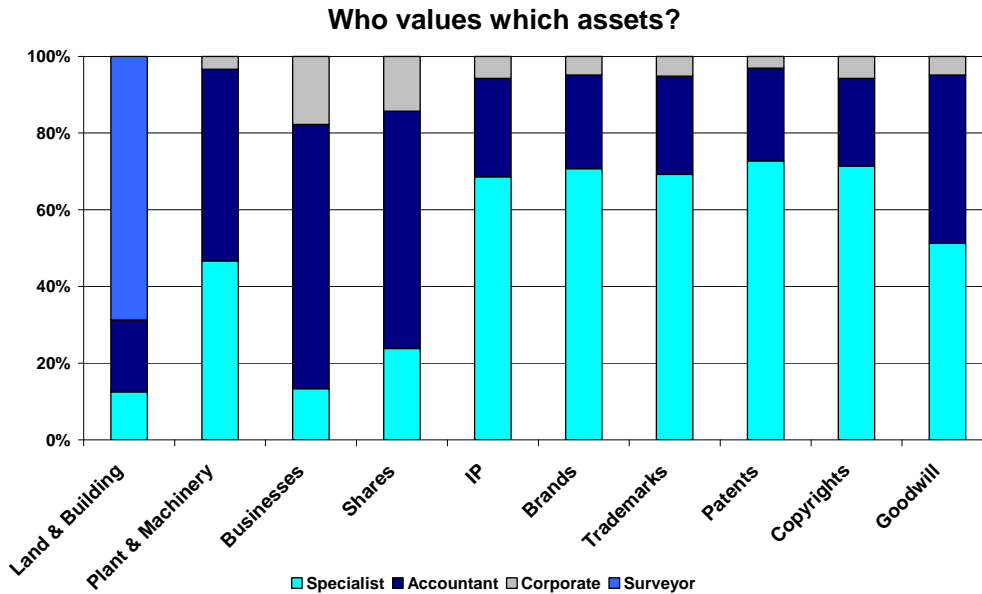
Worryingly, the components of goodwill are unlikely to be valued in most instances, with just the overall number calculated. If the value of goodwill is broken-down and identified, greater use may be extracted from the valuations. However, the goodwill 'bucket' is a generally a metaphorical broom-cupboard which gives management room for manoeuvre, such as concealing an overpayment, and is therefore difficult to obtain transparency on.

Over half of lawyers most frequently see valuations of brands and trademarks, 56% and 54% respectively. Brands generally drive business value so understanding their value is frequently required.

Patents valuations are used most frequently by 46% of lawyers – as frequently as land and buildings – and copyright valuations are seen by 44% of lawyers most frequently.

# Valuation In Practice

## Who are the valuers?



Specialist valuation firms are most frequently seen by lawyers for valuing IP, (69% of the time). Specialist valuation firms dominate the valuation of different types of IP, accounting for 73% of patents valued, 71% of brands and copyrights, and 69% of trademarks. While specialists are still used over half the time to value goodwill, accountants are used more frequently than they are for IP.

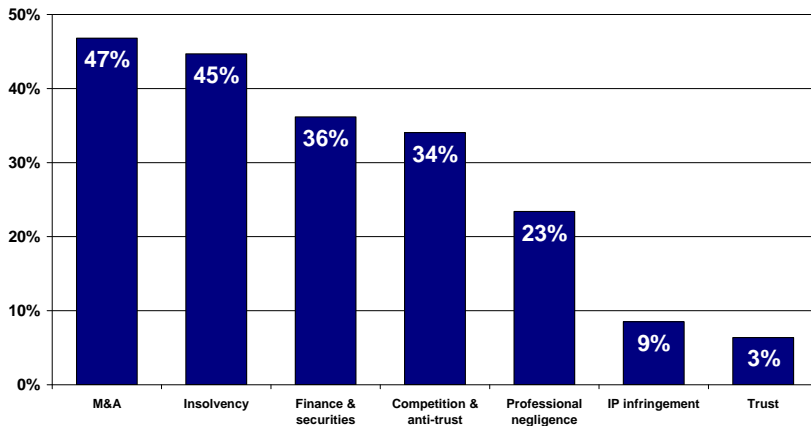
With the exception of IP and land & buildings, where specialists and surveyors are used, accountants are seen most frequently. Accountants are used 69% of the time for valuing businesses, 62% for shares and 50% of the time for plant & machinery. These are fields in which specialist valuers exist, yet lawyers mostly see accountants for the valuations.

Surveyors are seen exclusively for valuing property. When other assets require valuation, such as photography, publishing or art, appropriate specialist experts are employed. Investment banks are also involved in valuing businesses and shares.

# Valuation In Practice

## 5. Use of valuations (contentious)

What type of disputes sometimes need valuations?



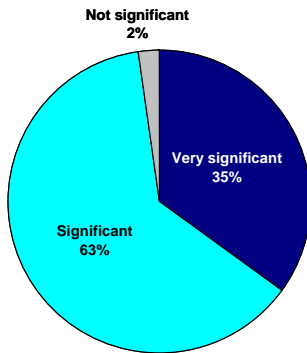
Nearly half of all lawyers see valuations for disputes involving mergers and acquisitions. Insolvencies are the second contentious area in which valuations are seen, by 45% of lawyers. 36% of lawyers saw valuations for disputes involving finance and securities and 34% when working on competition and anti-trust cases.

IP infringement, including disputes involving counterfeit and passing off, had valuations for 9% of lawyers and valuations for disputes involving trust and regulatory issues are rarely seen.

# Valuation In Practice

## Significance of the valuations

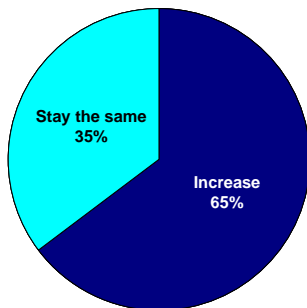
How significant are valuations to the dispute?



98% of lawyers find valuations either significant or very significant to their disputes, although it does rather depend on the specific circumstances. Only 2% found the valuations to be not significant to the dispute. As valuations are only used 23% of the time, it appears that they are only used when of critical importance.

“The market awareness of IP, its value and relevance is increasing”  
*IP lawyer*

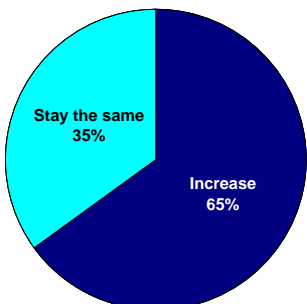
How will the significance of IP issues to disputes change?



Everyone believes the significance of IP to future disputes would increase or stay the same, with the majority, 65%, thinking IP's significance would increase. This is fuelled by governments' and businesses' growing awareness and understanding of the importance of IP, as well as the standardisation of valuation approaches.

“Relevant to quantum of damages in certain IP disputes”  
*IP lawyer*

How will the use of IP expert witnesses change?



The use of IP valuation experts is set to increase with the increasing importance of IP and use of valuations.

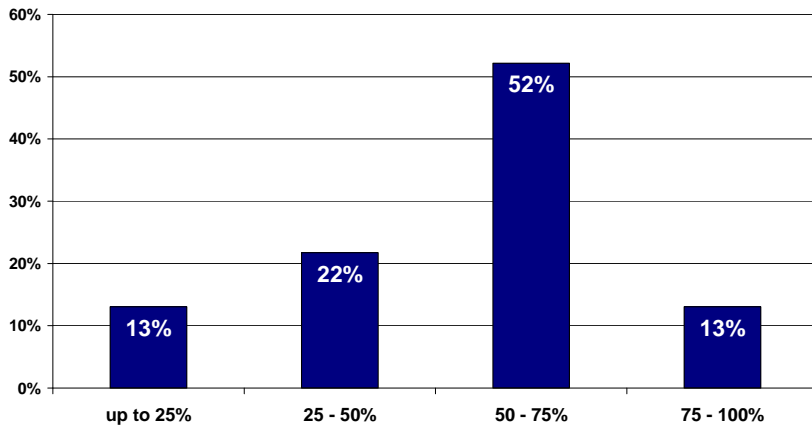
“Has become more significant in last 5-10 years. Won't decrease.”  
*Corporate lawyer*

# Valuation In Practice

## General claim recovery

### What is a typical claim recovery?

"It does really depend on the quality of the claim"  
Commercial litigator



**Average = 54%**

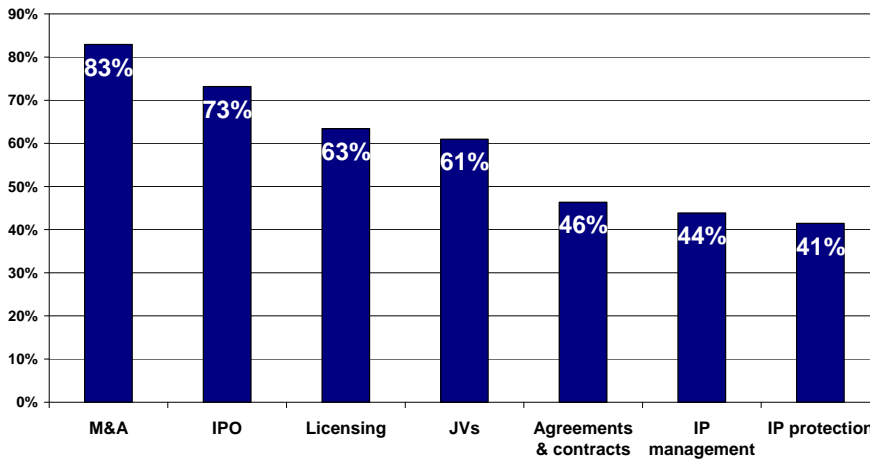
87% of disputes result in the recovery of less than 75% of the claim. Only 13% of lawyers see a recovery of between 75% and 100% of their claim, with the majority, 52%, seeing only between 50% and 75%. 22% of lawyers typically see a return of between 25% and 50% of their claim and 13% see only less than 25%.

32% of respondents noted the question was too general for them to specify a particular range. Although it is difficult to generalise about claim recovery as the amount varies considerably, this does highlight a number of issues. Firstly, either the relatively low recovery rate is an indication of the limitations of the legal system. Secondly, it could be because a higher claim is submitted than losses received so the actual target amount is recovered, allowing for the expected shortfall between claim and settlement. Or thirdly, this reflects the comparatively low level of valuations carried out to support claims. More resource and quality on quantum, including valuation, may contribute to an increased recovery benefiting lawyers and their clients.

# Valuation In Practice

## 6. Use of valuations (non-contentious)

What types of legal projects involve valuations?



Valuations for mergers and acquisitions are seen by 83% of lawyers, nearly twice as many as for disputes. Across the board, valuations are seen over two and a half times more frequently in non-contentious matters. Lawyers working on non-contentious matters see valuations an average of 59% of the time compared to 23% for disputes.

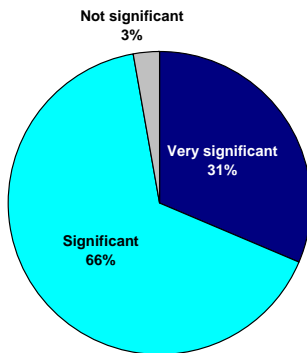
The second biggest type of projects that involve valuations are for IPOs, by 73% of lawyers. 63% use valuations when dealing with licensing issues and 61% for joint ventures. Agreements & contracts, IP management and IP protection issues involve valuations by nearly half of all lawyers, by 46%, 44% and 41% respectively.

Other reasons for valuations were also mentioned, such as for group reorganisations, tax planning, securitisation and raising finance.

# Valuation In Practice

## Significance of the valuations

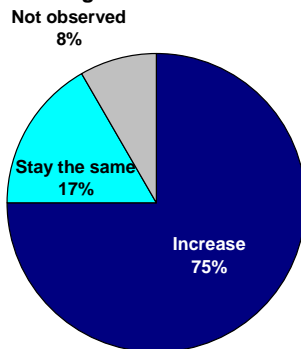
How significant are valuations for the project?



97% of lawyers found the valuations used for non-contentious matters significant or very significant in supporting the project objectives. The usefulness increases with the proportion of IP in the transaction or case and the significance of the valuation can vary a lot.

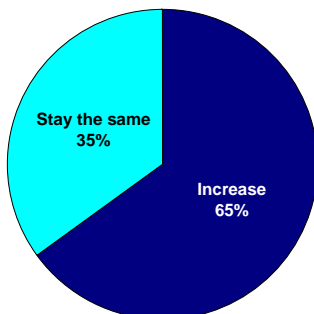
*“Very significant for M&A and flotations”  
IP lawyer*

How will the significance of IP issues change?



In the future, the significance of IP will become more relevant, especially in M&A and flotations. 75% of lawyers thought IP's significance will increase with only 17% saying it will stay the same. Again, IP's significance changes upon the nature of transaction and nature of business

How will the use of IP-focused valuations change?



The use of IP-focused valuations is also set to increase as the awareness of IP's importance increases, based on 65% of lawyers. No-one thought the use of IP-focused valuations would decrease and 35% thought its use would stay the same.

*“I suspect they all stay the same now. People are generally aware of brand importance.”  
Corporate lawyer*

# Valuation In Practice

## Proportion of deal value



Although its difficult to generalise as each deal is different, the average proportion of the deal value that is typically reflected by IP is claimed to be 34%. It can reach as high as 70% and as low as 10% depending on the deal, but typically, an average of 34% is seen. Only 22% of lawyers responded to this question with 38% stating this cannot be generalised and 40% who did not respond.

The low response rate could reflect the difficulties of the question but also that lawyers may not necessarily be aware of the values of the IP component of non-contentious matters. The reality is the opposite to the perceptions of lawyers witnessed here; about 30% of the value of deals generally are allocated to tangible assets, not intangible as seen by lawyers.

“20% based on typical non IP rich company. Obviously this will vary and will increase significantly if the company is technology/ IP rich.”  
*IP lawyer*

“If you include goodwill it is frequently well over 50% of the value.”  
*Corporate lawyer*

“Depends entirely on the deal 0-90%”  
*Commercial litigator*

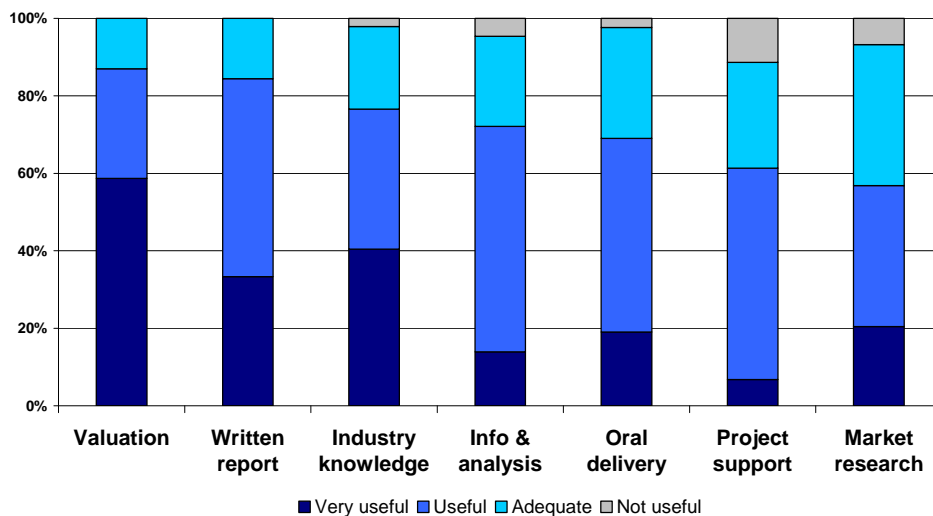
“10%- very difficult to generalise e.g. in M&A can be done to 100% or nothing. It depends on underlying asset & nature of deal. Usually gave goodwill high!”  
*Corporate lawyer*

“Typically 40% but can vary dramatically”  
*IP lawyer*

# Valuation In Practice

## 7. Valuation services

How useful are the following services provided by valuers?



“Valuation experts could do more to increase their perceived worth.”  
IP lawyer

Encouragingly, over half of all lawyers found all the key services that business, IP or share valuers provide either useful or very useful. The most useful service was the core product, valuation, which 87% of lawyers found useful – 59% found it very useful and 28% found it just useful. No-one found the valuation service not useful. The reports which documented the valuations were the second most useful service. Written reports were nearly as useful as the valuations themselves, with 84% finding it either useful or very useful.

Supporting services provided by expert valuers were also considered beneficial. Industry knowledge was the third most useful service with supporting information and analysis fourth, found useful or very useful by 72% of respondents. Oral delivery and general project support were deemed to be either useful or very useful by 69% and 61% of lawyers.

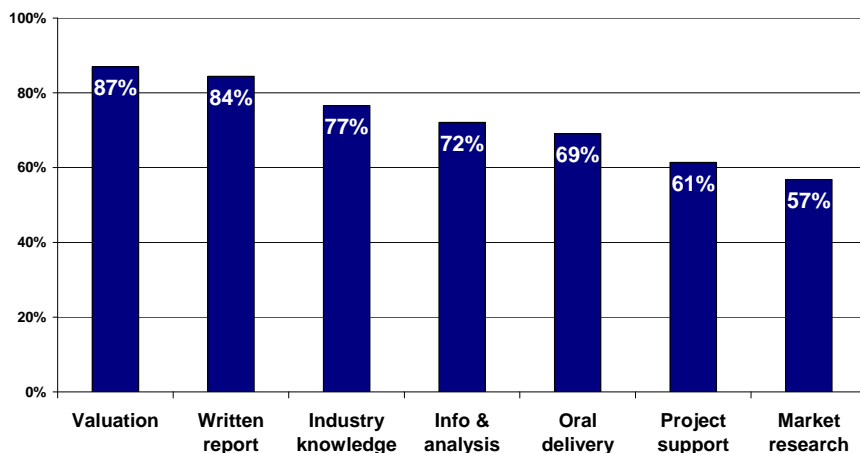
Market research generated the most polarised opinions and was considered the least beneficial. Market research often forms a critically important basis of the valuation, thereby contributing significantly to all the other components of valuation services. However, this study reveals that market research is found to be the least useful service provided by valuers with 20% finding it very useful, 36% useful, 36% adequate and 7% not useful.

This may simply be because lawyers consider market research to be beyond the competence of valuation professionals and accountants whereas in reality, market research generally underpins robust valuations.

“Room for more experts.”  
Commercial litigator

# Valuation In Practice

The most useful component services valuers provide

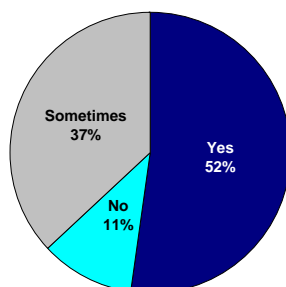


“Often reports are a little thin on detail required to support the case in hand.”  
IP lawyer

One possible explanation for this low confidence in market research could stem from the courts themselves which have a limited acceptance of market research in general. Maybe expert valuers could improve their communication of market research to lawyers. Also, market research may be used infrequently, because of the court’s attitude. Still, the majority of lawyers, 57%, found the market research either useful or very useful.

“Need for a recognised standard for IP valuation in disputes.”  
IP lawyer

Do you receive adequate support from valuers?

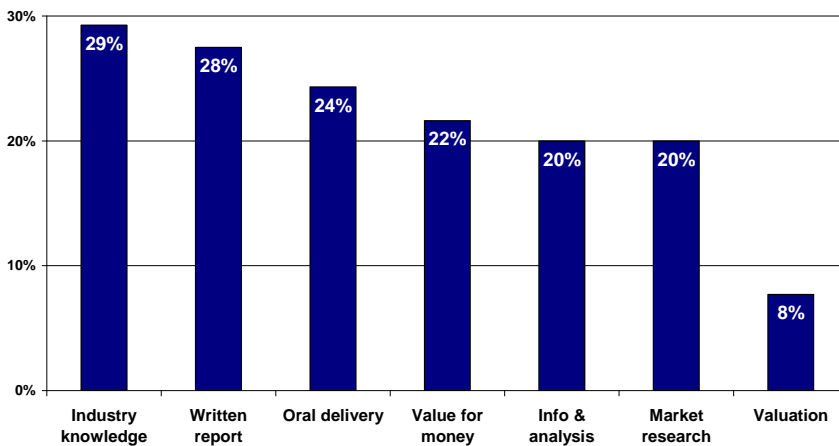


Overall, the majority of lawyers are satisfied with the service they receive from business, IP or share valuation experts. 37% are sometimes satisfied with the service and only 11% were dissatisfied. Clearly the quality of service received varies which indicates much scope for improvement. Overall the services provided to lawyers are just satisfactory.

# Valuation In Practice

## Room for improvement

Which services require a lot of improvement?



“In litigation, a good written report is often the key and I think it is easy to forget how important it is that they be reader friendly and not too full of jargon.”

*Corporate lawyer*

“Rarely interactive.”  
*Corporate lawyer*

The core valuation service provided by valuation experts requires the least amount of improvement, according to lawyers, with only 8% saying it needs a lot of improvement. The areas requiring the most improvement are in industry knowledge and the written report, which 29% and 28% of lawyers respectively cited as needing a lot of improvement.

Overall, every service was named as requiring improvement, with valuation requiring the least amount, according to 64% of lawyers. There is always room for improvement in every business – regardless of the industry or service – so these scores are more representative of this facet rather than being reflective of a poor quality of service.

# Valuation In Practice

## 8. Conclusion

This study highlights a number of positive elements, such as the core product valuers provide – that of valuation – being considered both the most useful element and delivered to at least a satisfactory standard more often than not. However, this does need to be improved. This study also identifies areas of improvement which valuers should focus on to improve and lawyers should recognise when using valuations.

The dominance of IP and its increasing significance in disputes and non-contentious issues stands out as an over-riding theme. The main forms of IP are considered with goodwill being the most frequently valued. Interestingly, goodwill is also the least understood. This presents an opportunity for valuers to explain what goodwill is comprised of and for lawyers to demand a thorough explanation from their valuers.

Claim recovery rates and the proportion of IP to deal value ratios are both relatively low. With the increasing significance of IP and the use of expert valuers set to increase, there are opportunities for lawyers to use IP to increase the typical claim recovery and recognise its increased contribution to a deal, thus boosting the overall value to the client.

“My view is that especially when it comes to IP, the legal profession needs to work more closely with valuation experts, since the legal strengths/weaknesses heavily impacts on value.”  
*IP lawyer*

“It would benefit the legal profession and valuation experts alike to work more closely together to increase the usefulness of valuations.”  
*IP lawyer*

## Intangible Business

Intangible Business is the world's leading independent IP valuation consultancy, specialising in valuing intellectual property such as brands, for financial, banking, management and litigation purposes.

For further information and enquiries, please contact William Grobel or Thayne Forbes:

Intangible Business Ltd.  
9 Maltings Place  
169 Tower Bridge Road  
London  
SE1 3JB

Tel: + 44 (0) 870 240 7386  
Fax: +44 (0) 20 7089 9239