

Effectively Discharging Fiduciary Duties in IP-Rich M&A Transactions

Only 10% of CEOs consider the value of intellectual property (IP) in M&A deals—could your non-core IP assets be worth more than the rest of your company?

Shareholders are becoming increasingly sophisticated about their companies' innovation quality, because the financial outcomes of their investments rely on it more heavily than ever before. With growing shareholder activism focused on IP value and risks, and the increasing importance of IP assets to overall company value, corporations need to consider the potentially material separate non-core value locked in their IP portfolios, especially in M&A settings.

Non-core IP—IP not directly related to a company's central business—has been potentially material in **more than 50%** of 1,000 public technology company M&A deals in the past five years. Yet non-core IP was separately traded to a different party from the core M&A buyer **less than 10% of the time**.

Of the remaining majority of technology M&A deals, with potentially material non-core IP, critical questions arise:

- Did the sellers' directors and their advisors maximize the value available to the shareholders who paid for the development or acquisition of that IP?
- How much of the overall IP was truly core to the businesses being sold, and how much could have been transacted separately to generate incremental cash to the shareholders?
- Was it possible that the IP on a stand-alone basis was worth more than the company itself, in more than the rare instance where it in fact was separated and separately sold (as was the case for the separated MIPS Semiconductor, where IP sold for \$350 million and the entire company sold for \$100 million)?
- Did the sellers' directors engage a competent and independent IP advisor to assist the board in valuing non-core IP and evaluating strategic alternatives?

These questions raise the issue of whether directors have effectively discharged complex fiduciary duties in corporations undergoing IP-rich M&A transactions.

To learn how Houlihan Lokey's [Tech+IP Advisory services](#) can help you, contact Elvir Causevic.

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