

Patent Valuation and Baseball Players

It appears that patents and baseball players share similar odds of success and the same value curve.

Likelihood of Success

The chances of a high school baseball player making it to Major League Baseball are roughly equivalent to an inventor deriving commercial success from patenting his invention. According to the Sports Digest, high school baseball players have a 0.4% chance of playing professionally. My research indicates that roughly 3% to 5% of patents find licensees. Further, the current allowance rate at the USPTO is 51.1%. Assuming that only one quarter of inventions pursue patents, the chances of an invention turning into a licensed patent are roughly 0.5% ($((3\% + 5\%)/2) * 51.1\% * 25\%$), substantially the same odds as a high school baseball player eventually playing professionally.

Similar Life Expectancy

The statutory life of a patent is 20 years. Twenty years is about as long as you can expect a baseball player to last. After studying the 5,989 position players who began their careers between 1902 and 1993 and who played 33,272 years of major league baseball, three demographers have concluded that only about 1 percent of players last 20 seasons or more.

Timing of Lower Values

Baseball players do not reach their peak levels of performance for a few years due to inexperience and sometimes a lack of mental toughness. (It is understandably difficult for a very young adult to go from obscurity to making millions of dollars and becoming an icon overnight. Professional gamblers read tweets of young athletes to determine their mental toughness, or “where their heads are at”.) Patents usually do not achieve their highest levels of value until they pass the three year mark, which is the period of time of maximum risk of experiencing an invalidity challenge.

Finally just as there is not much demand for baseball players that have been playing for more than 18 seasons, there is not much demand for patents with only one or two more years of life. As Donald Boreman, Executive Vice-President of ICAP Patent Brokerage Group, pointed out, “Buyers don’t want patents with only one or two more years of life. In the case of method patents, buyers will be concerned that insufficient notification has been given to the alleged infringer. In the case of apparatus patents, buyers will be concerned that mistakes could have been made with respect to patent marking which would hinder assertion efforts.” Other concerns with aged patents are that there may not be sufficient time for the patentee to put the patents through a re-examination proceeding (which could better focus the claims) and that the seller of the patents could have inadvertently jumped the gun on starting the laches clock.

Similar Period of Peak Value

The above-referenced research also indicated that, on average, a rookie can expect to play major league baseball for 5.6 years. Similarly, there are reasons to suggest that patents have roughly 5 to 7 years of producing their maximum value. First, laches allows patent-holders to seek damages going back 6 years. Second, when reviewing a high-tech, high-risk technology, only about 5 to 7 years produce value when applying the income method because the discount rates attached to expected revenue streams are at such a high level that they render the anticipated net present cash flow modeled in after about seven years virtually irrelevant.

Timing of Peak Value

WAR, short for Wins Above Replacement, is an all-encompassing metric of a baseball player's value. It incorporates hitting, defense, baserunning, durability, and spits out one number. WAR analysis indicates

that baseball players peak during the ages of 26 to 30. While the youngest professional baseball players are 19, most baseball players begin their professional careers a few years later, around the age of 21 or 22. This could mean that baseball players' fifth to eighth seasons are their years of peak performance.

According to Robert Aronoff, Managing Director of Pluritas, "Assuming a product turnover of between eight and 11 years, patents will typically be most important strategically between five and eight years after they issue. A business gains the most true market advantage by stopping or slowing down competitors when copycat innovations and improvements are still fresh and remain important purchase considerations in the marketplace. At this juncture, the decision becomes whether to use patent or other market power to fend off competition."

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