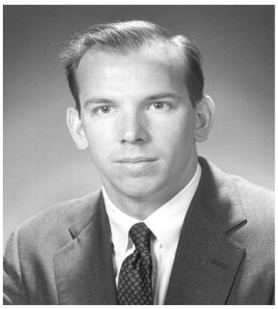


1

## The Power of Analytics

**Hon. Milton Shadur (N.D. Ill.) (retired)**

"More significantly, Nancy certainly should have been alerted to the prospect that 'something is rotten in the state of Denmark' n5 . . . n5 William Shakespeare, Hamlet act 1, sc. 4, line 90."

"Nonetheless, even though doing so may be 'to paint the lily, to gild refined gold' (William Shakespeare, King John act 4, sc. 2), . . ."

"But because it may be that 'the better part of valour is discretion' (William Shakespeare, King Henry IV, Part I, act 5, sc. 4, line 120), . . ."

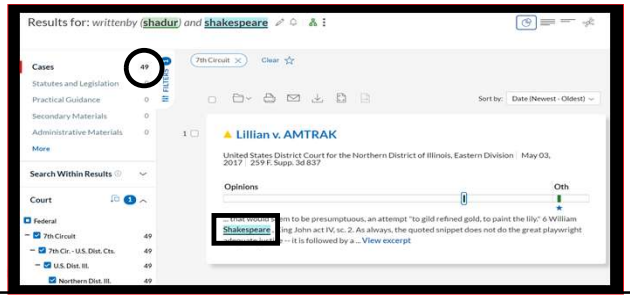
"Eiben's beef that the new plans were derived from and were substantially similar to his earlier drawings is much like Portia's contention that the contracted-for pound of flesh could not be extracted unless it were done without any accompanying drop of blood (William Shakespeare, Merchant of Venice act 4, sc. 1)[.]"

"On examination, what had presented such a formidable appearance turned out in large part, with full apologies to the Bard of Avon, to be 'full of sound and fury, signifying nothing.' n4 . . . n4 William Shakespeare, Macbeth act 5, sc. 5, lines 27-28."

2

## The Power of Analytics

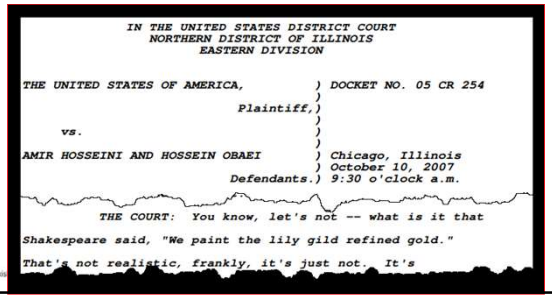
**Hon. Milton Shadur (N.D. Ill.) (retired)**




3

## The Power of Analytics

**Hon. Milton Shadur (N.D. Ill.) (retired)**



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

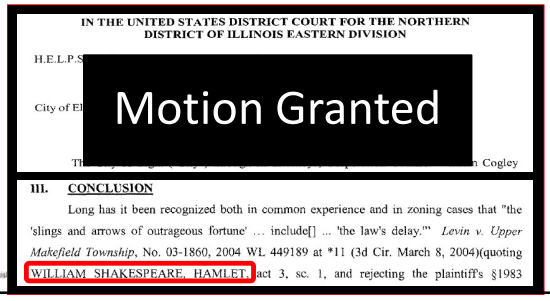
THE UNITED STATES OF AMERICA, ) DOCKET NO. 05 CR 254
Plaintiff,
vs.
AMIR HOSSEINI AND HOSSEIN OBAEI ) Chicago, Illinois
Defendants. ) October 10, 2007
9:30 o'clock a.m.

THE COURT: You know, let's not -- what is it that Shakespeare said, "We paint the lily gild refined gold." That's not realistic, frankly, it's just not. It's

4

## The Power of Analytics

**Hon. Milton Shadur (N.D. Ill.) (retired)**



IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

H.E.L.P.S

City of El

Motion Granted

n Cogley

III. CONCLUSION

Long has it been recognized both in common experience and in zoning cases that "the 'slings and arrows of outrageous fortune' ... include[] ... 'the law's delay.'" *Levin v. Upper Makefield Township*, No. 03-1860, 2004 WL 449189 at *11 (3d Cir. March 8, 2004)(quoting WILLIAM SHAKESPEARE, HAMLET act 3, sc. 1, and rejecting the plaintiff's §1983

5

## Analytics

**Defined**

**"Analytics is the process of discovering, interpreting and communicating significant patterns in data. Quite simply, analytics helps us see insights and meaningful data that we might not otherwise detect."**

Source: https://www.oracle.com/business-analytics/what-is-analytics/

6

# Analytics for Patent Evaluation & Prosecution: Marrying Effectiveness with Efficiency

February 16, 2023

Presented By:

**David V. Dilenschneider, Esq.**
Client Relations Consultant
LexisNexis Intellectual Property Solutions



7

## Agenda

- The Importance of Effectiveness and Efficiency for Today's Practitioner
- How Analytics Help One to be Effective and Efficient
- The "Ethical Rule" Guidepost: Comment 8 to Rule 1.1
- Using a Patent Analytics Platform to Evaluate a Patent Portfolio
- Using a Patent Analytics Platform to Identify Disruptive Innovation
- Using a Patent Analytics Platform to Assist in Patent Prosecution



8

## Disclaimer

The thoughts and opinions presented in this presentation do not, and are not intended to, constitute legal advice; instead, all information, content, and materials presented are for general informational purposes only. Moreover, information conveyed in this presentation may not be current (as new developments occur regularly).

Attendees of this presentation should contact their own counsel to obtain advice with respect to any particular legal matter. No attendee should act or refrain from acting on the basis of the information presented without first seeking legal advice from counsel in the relevant jurisdiction. Only an attendee's individual counsel can provide assurances that the information contained herein – and any interpretation of it – is applicable or appropriate to a particular situation. Moreover, this presentation does not create an attorney-client relationship between the attendee and the presenter and his/her employer(s).

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9

## What Do Patent Practitioners Need?

**Effectiveness**

**More than ever before, today's practitioner must get the right answer – preferably the first time.**



10

## What Do Patent Practitioners Need?

**Effectiveness**

**Effectiveness is simple – it means getting the right result.**



11

## What Do Patent Practitioners Need?

**Effectiveness**

**Think – what information does a practitioner need in order to achieve the most-favorable result for his/her client?**



12

What Do Patent Practitioners Need?

**Effectiveness – but what is missing?**

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13

What Do Patent Practitioners Need?

**Effectiveness**

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14

What Do Patent Practitioners Need?

**Effectiveness – without Efficiency**

***"Another such victory, and I will be left without an Army."***

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15

What Do Patent Practitioners Need?

**Efficiency**

**More than ever before, today's practitioner must be efficient when it comes to accessing and analyzing information.**

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16

What Do Patent Practitioners Need?

**Efficiency: The Headlines**

Increasing The Efficiency of Lawyers

**Law Firm Efficiency: Responsiveness, Reflection and Checklists**

The Ethics Corner: The New Efficiency Trend

LAW FIRMS MAKE MORE MONEY BEING MORE EFFICIENT

Legal Productivity: 7 Ways to Make Your Law Firm More Efficient

EFFICIENCY TIPS WEBINAR FOR SMALL LAW FIRM ATTORNEY'S

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17

What Do Patent Practitioners Need?

**Efficiency**

**Efficiency means performing the identified task quicker – or in an easier way – or perhaps even in a better way.**

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18

What Do Patent Practitioners Need?

**Efficiency**

**Think – how can a practitioner do his/her work in the shortest amount of time (with fewer resources)?**

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19

What Do Patent Practitioners Need?

**Effectiveness and Efficiency – Together**

Effectiveness is getting the right results
Efficiency is getting results quickly

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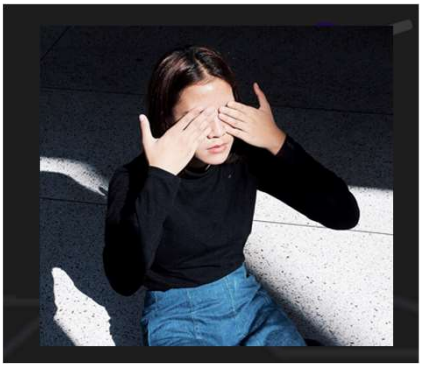
20



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21

Pre-Modern Analytics Decision Making

**The Need for More Data**

**"Increasingly, CEOs are expanding their exposure to gather new experiences that can help them make more-informed decisions."**

Source: "Using Analytics to Pursue New Patents," Deepak Syal, Forbes (Aug. 27, 2021)

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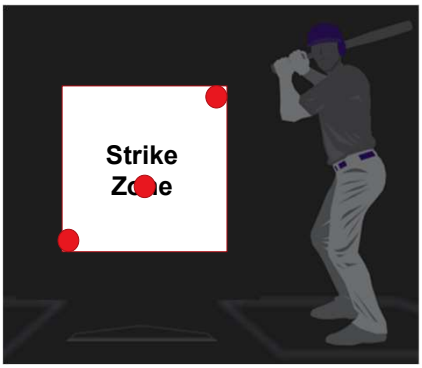
22

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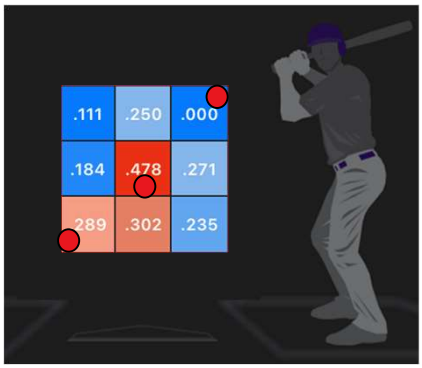
23

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24

Article

# Goal Side Selection of Penalty Shots in Soccer: A Laboratory Study and Analyses of Men's World Cup Shoot-Outs

Perceptual and Motor Skills
0(0) 1–25

DOI: 10.1177/00315125211025412
journals.sagepub.com/home/pms
SAGE

Mauro R. Pereira[1] and
Geoffrey R. Patching[1]

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25

Technology

**One of the Biggest Challenges Facing Firms and Practitioners**


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26

ABA Model Rule of Professional Conduct 1.1

**Competence**

**"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."**

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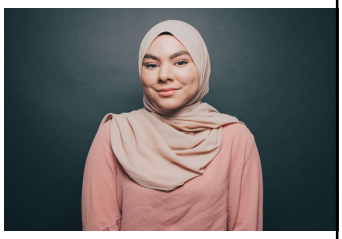
27

ABA Model Rule of Professional Conduct 1.1

**Commentary 8 to Rule 1.1** (with emphasis added)

**"To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes and the law and its practice, including the benefits and risks associated with relevant technology."**



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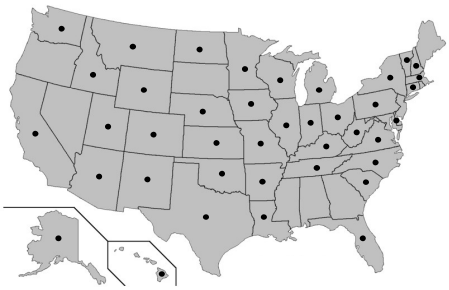
28

States with a Duty of Tech Competence = 40

**as of February 16, 2023**



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29

ABA Model Rule of Professional Conduct 1.1

**Example: Video-Conferencing Technology**

zoom

webex by cisco

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30

ABA Model Rule of Professional Conduct 1.1

**Article in The Business Lawyer (Winter 2019-20) – written by a former Chief Justice of the Supreme Court of DE**

## Protection of Client Confidential Information from Cyberattacks Is a Compelling Business and Ethical Priority for Inside and Outside Corporate Counsel

*By E. Norman Veasey**

LexisNexis 31

31

ABA Model Rule of Professional Conduct 1.1

**Hur v. Lloyd & Williams, LLC, 2023 Wash. App. LEXIS 166, *12 n6 (Wash. Ct. App. Jan. 31, 2023)**

[6] We do not mean to excuse counsel's lack of familiarity with metadata. The Rules of Professional Conduct require competent representation, including "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." RPC 1.1. To the extent a lawyer uses computer technology in communications, document management, or the exchange of electronic discovery, competent representation requires an understanding of metadata. *See* WSBA Advisory Op. 2216.

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32

ABA Model Rule of Professional Conduct 1.1

**Potential Violation in Recent High-Profile Lawsuit**

**"[P]roducing an entire cellphone in discovery because you do not understand how to segregate Dropbox links, perform keyword searches or apply redactions is a clear Rule 1.1 violation."**

Source: "Ethical Lessons from the Alex Jones Discovery Debacle," Law360, Hilary Gerzhoy, Julienne Pasichow and Grace Wynn (Aug. 5, 2022)

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33

ABA Model Rule of Professional Conduct 1.1

**James v. Nat'l Fin. LLC, 2014 Del. Ch. LEXIS 254 (Del. Ch. Ct. Dec. 5, 2014)**

HN9 Professed technological incompetence is not an excuse for discovery misconduct. Effective March 1, 2013, the Delaware Supreme Court amended Comment 8 to Rule 1.1 of the Delaware Lawyers' Rules of Professional Conduct, which addresses [*36] competence, to include maintaining technological competence. The new comment states that "a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology* . . ."[5] This language finds parallels in the Pennsylvania Rules of Professional Conduct, where National's counsel is admitted to practice, and the Model Rules of Professional Conduct. *Compare id. with* Pa. Rules of Prof'l Conduct R. 1.1 cmt. 8 *and* Model Rules of Prof'l Conduct R. 1.1 cmt. 8. "[D]eliberate ignorance of technology is inexcusable . . . . [I]f a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical constraints." Judith L. Maute, *Facing 21st Century Realities*, 32 Miss. C. L. Rev. 345, 369 (2013). Legal publications in Delaware and Pennsylvania have

34

ABA Model Rule of Professional Conduct 1.1

**Attorneys Needn't Be Technologists, But Must Be Prudent**

**"'This doesn't mean that lawyers need to become technologists, but they do need to be aware of when bringing in one is prudent,' [Andy] Reisman [CEO of ELIJAH] says. 'Engaging an e-discovery or digital forensics expert can help ensure that ESI productions go smoothly. Clients who aren't willing to pay for that expertise, in essence, are asking outside counsel take on that cost in the form of increased risk.'"**

ABA JOURNAL

Source: "Alex Jones case shows inadvertent disclosure of electronically stored information is a real risk," ABA Journal, David L. Hudson, Jr. (Oct. 27, 2022)

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35

ABA Model Rule of Professional Conduct 1.1

**Does Commentary 8 to Rule 1.1 Apply to Analytics Platforms?**

**"Bar authorities are likely to expect similar competence for other uses of big data analytics."**

Source: "How Big Data Analytics Is Changing Legal Ethics, Renee Knake Jackson, Bloomberg Law (Aug. 9, 2016)

LexisNexis 36

36

ABA Model Rule of Professional Conduct 1.1

**Does Commentary 8 to Rule 1.1 Apply to Analytics Platforms?**

**"I can see [Comment 8] being extended to include an obligation to communicate with clients about whether their case could be improved by using predictive analytics[.]"**

Source: "The Ethics of Legal Analytics," law.com (from ALM), Renee Knake Jackson (March 22, 2018) (found at: https://www.law.com/2018/03/22/the-ethics-of-legal-analytics/)

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37

37

Analytics for the Legal Practitioner

**Putting It Into Practice**

San Francisco Chronicle

Intellectual property lawyer Huong Nguyen walked into a federal courtroom

"The time is coming when it's going to be universal," said Kirk Jenkins, a Chicago lawyer who chairs Sedgwick LLP's appellate practice. "Everyone is going to need a familiarity with these tools."

better than losing.

38

Analytics for the Patent Practitioner

**Using Analytics to Gain Insights into Patent Data**

**"[W]e're all struggling with [patent] data overload. There's so much out there, how do we get insights through all this noise?"**

Source: "The Secret Weapon: Leveraging Patent Agents to Gain a Competitive Edge," The Geek in Review, TGIR Ep. 186 (January 25, 2023) (quote from Shayne Phillips)

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39

39

Analytics for the Patent Practitioner

**What Is It?**

**"The primary role of an analytics platform is to gather information from various sources and distill them into actionable intelligence."**

Source: "Using Analytics to Pursue New Patents," Deepak Syal, Forbes (Aug. 27, 2021)

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40

40

Patent Analytics Platforms

**Some of the Options**

- ✓ **Assessing Strengths / Weaknesses of One's Own Patent Portfolio**
- ✓ **Evaluating the Competition's Patent Portfolio**
- ✓ **Targeting Other Corporations for Partnership / Merger / Acquisition**
- ✓ **Identifying Disruptive Innovations and Trends**
- ✓ **Identifying New Entrants into a Tech Area**
- ✓ **Recognizing Opportunities for R&D Expense**
- ✓ **Strategizing to Complete a Successful Patent Prosecution**
- ✓ **Reviewing Performance of an Attorney**

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41

41

Patent Analytics Platforms

**Some of the Providers**

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JURISTAT

patsnap

PatSnap's Analytics platform allows you to perform highly targeted global searches that generate reliable detailed innovation intelligence. With a connected view of 126 jurisdictions, 140 million patents, and 250+ million innovation datapoints worldwide, you will be able to make decisions with all of the information you need, thereby mitigating risk.

PATENT 300

Interactive Dashboard Report gives access to pages of detailed secution analytics on thousands of mpanies and law firms obtaining patents in the U.S.

**Patent Analytics for Prosecution Strategy**

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42

Patent Analytics Platforms

**Some of the Options**

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43

Patent Analytics Platforms

**Assessing Strengths / Weaknesses of One's Own Patent Portfolio**

# Example:

# Sustainable Development Goals

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44

United Nations Sustainable Development Goals

**Background**

**Adopted in 2015, the UN SDGs "provide a powerful aspiration for improving our world – laying out where we collectively need to go and how to get there."**

Source: https://www.unglobalcompact.org/sdgs/about

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45

United Nations Sustainable Development Goals


LexisNexis 46

46

United Nations Sustainable Development Goals

**Background**

"Business is a vital partner in achieving the Sustainable Development Goals. Companies can contribute through their core activities, and **we ask companies everywhere to assess their impact, set ambitious goals and communicate transparently about the results.**"

"In making sure that the SDGs are all implemented in its entirety, it's important that we need to have various systematic and scientific checking and assessment of the situation and (...) information and data can play a very important role. Without knowing how much we are making progress you will not be able to know where we are going."

Ban Ki-moon, United Nations Secretary-General (2007-2016)

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47

Patent Analytics Platforms – To Assess Strengths/Weakness of a Portfolio

**Example: Sun Life Financial Inc. Form 40-F Disclosure to the S.E.C. (for the Fiscal Year ended Dec. 31, 2022)**

# 3. Sustainability Plan

Our sustainability commitment is guided by the United Nations Sustainable Development Goals (SDGs). We focus primarily on supporting the five SDGs where we believe we can have the greatest impact. These are #3 Good health well-being, #5 Gender equality, #7 Affordable and clean energy, #8 Decent work and economic growth and #13 Climate action.

Dated: February 8, 2023

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48

## United Nations Sustainable Development Goals

**Background**

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Ban Ki-moon, United Nations Secretary-General (2007-2016)

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49

## Patent Analytics Platforms – To Assess Strengths/Weakness of a Portfolio

**Example: SDG Quantification**

**"Enabling technology is critical to tracking our progress against each of the SDGs[.]"**


Source: https://kennedyslaw.com/media/6738/kennedys-sustainability-report-2021.pdf

LexisNexis 50

50

## United Nations Sustainable Development Goals

**Why Do Corporations Promote Sustainability?**

**78% of customers are more likely to buy from companies that have aligned themselves with a SDGs agenda.**

Source: "Make it your business: Engaging with the Sustainable Development Goals," PwC

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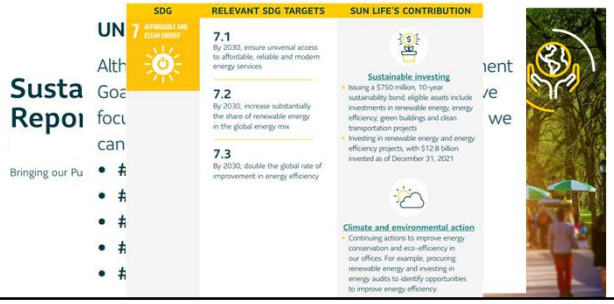
51

## United Nations Sustainable Development Goals

**Example: Sun Life Financial Inc.'s Sustainability Report**




52

## Some SDG "Measuring" Platforms

**(Not a Comprehensive List)**

- LexisNexis® PatentSight® (for corporations with patent portfolios)
  - **SDG patent mapping, in combination with the industry-proven and validated patent value indicator Patent Asset Index™, enables a corporation to measure its progress towards SDGs while avoiding "greenwashing"**
  - www.patentsight.com/en/
- SDG Monitor
  - **"[A] cloud-based tool that helps to pair your sustainability actions with the United Nations Sustainable Development Goals (SDGs) and use the SDG indicators for measurement. With SDG Monitor you can easily follow where your company is making progress and where you are falling behind"**
  - www.sdgmonitor.co
- SDG Action Manager (from B Lab)
  - **"[A] unique impact management solution can help every business set goals, track progress, and stay motivated on specific actions to support the SDGs"**
  - www.bcorporation.net/en-us/programs-and-tools/sdg-action-manager

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53

## Measuring SDGs Through Types of Data

**Analysis of Data Types**

| Data Type | Forward Looking | Output Metric | Objectively Measurable | Third Party Assessment | Commonly Accepted Definition | Publicly Available Data |
|---|---|---|---|---|---|---|
| Energy consumption | ✗ | ✓ | ✓ | ✗ | ✓ | ✗ |
| Waste & pollution (CO2, ..) | ✗ | ✓ | ✗ | ✗ | ✗ | ✗ |
| Water management | ✗ | ✓ | ✓ | ✗ | ✓ | ✗ |
| Employee metrics (wellbeing, diversity, ..) | ✗ | ✓ | ✗ | ✗ | ✗ | ✗ |
| Sales | ✗ | ✓ | ✓ | ✗ | ✓ | ✗ |
| R&D Spending | ✓ | ✗ | ✓ | ✗ | ✗ | ✗ |
| Patents | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

LexisNexis 54

54

## The Benefits of Using Patents for Analytics

**Publicly Available and Objective**

**"In addition to the link between crises and innovation management, prior research has also established a relation between innovation management and patent analytics. To profit from innovation, firms often rely on intellectual property rights like patents to appropriate returns. In industries like pharmaceuticals, this is particularly prevalent. Patents are publicly available and serve as objective data sources on firms' innovation activities. Patents offer unique insights into technology and business activities of firms that could not be assessed by external parties otherwise." [Internal Citations Omitted]**


Source: "Innovation Management in Crisis: Patent Analytics as a Response to the COVID-19 Pandemic" (Page 225), R&D Management, Carsten C. Guderian, et al., (Dec. 13, 2020)

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55

55

## Measuring SDGs Through Patent Portfolios

**Tracking Objective Data**


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56

56

## Mapping Patent Portfolios to SDGs

**Provides Corporations . . .**

**Measurability**

Most sustainability metrics include subjective and qualitative sources, such as "expert" interviews, conversly **patent data is factual comparable data source.**

**Transparency**

**Patent data provides a unique objective windows into a company,** their investments and developments, free of spin or "greenwashing".

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57

57

## Measuring SDGs Through Patent Portfolios

**Using Patents to Measure SDG Progress -- A Sampling of Corporate Reaction**

**MERCK**

**Intends to use mapping of its patent portfolio to SDGs to implement a "sustainability-related patent KPI for performance monitoring."**

**MITSUBISHI GAS CHEMICAL**

**"Being able to classify patents by SDG categories is very useful to easily promote the strengths of our technology or complement its weaknesses from a different perspective."**

**RICOH**

**"It is not easy for us to create and analyze the search query for 17 [SDG] goals by ourselves, so we feel that it is very useful for us to understand our own patent strength and to compare with other companies by providing it as a new function. We immediately compared our company with our competitors."**

**JVCKENWOOD**

**"Having just been asked by top management to check our portfolio in relation to SDGs, this is very useful. The objective criteria of SDGs is very important because we tend to create results that fit our own good image."**

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58

58

## Measuring SDGs Through Patent Portfolios

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59

59

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60

60

## Measuring SDGs Through Patent Portfolios

**Using Patents to Measure SDG Progress**

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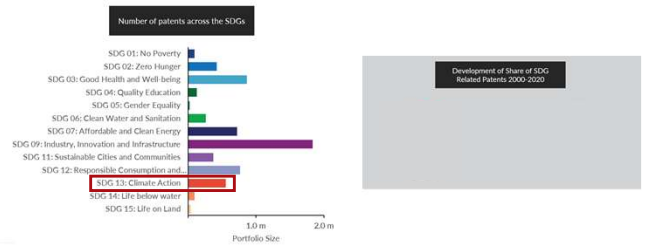
61

## Measuring SDGs Through Patent Portfolios

**Using Patents to Measure SDG Progress**

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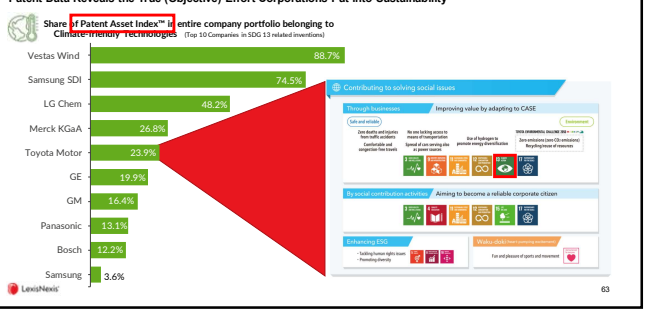
62

## United Nations Sustainable Development Goal #13 (Climate Action)

**Patent Data Reveals the True (Objective) Effort Corporations Put into Sustainability**

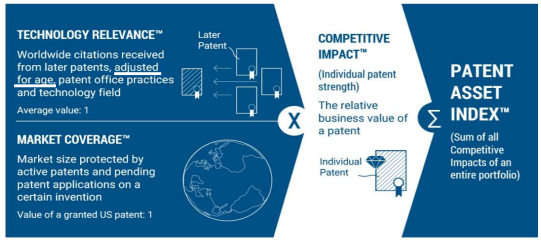



LexisNexis 63

63

## The Patent Asset Index (used in LexisNexis® PatentSight®)

**The Only Scientifically-Developed, Peer-Reviewed, and Industry-Wide-Adopted Patent Indicator**




Source: "The Patent Asset Index – A New Approach to Benchmark Patent Portfolios," Ernst, H & Omland, N., World Patent Information (pp. 34-41) (2011)

LexisNexis 64

64

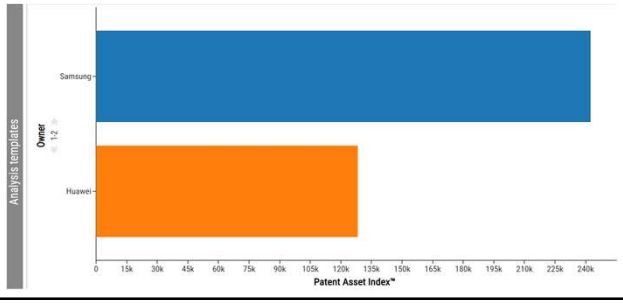
## The Patent Asset Index (used in LexisNexis ® PatentSight ®)

**Example of Top 100 Most-Innovative Corporations (2020-2021)**


65

## The Patent Asset Index (used in LexisNexis ® PatentSight ®)

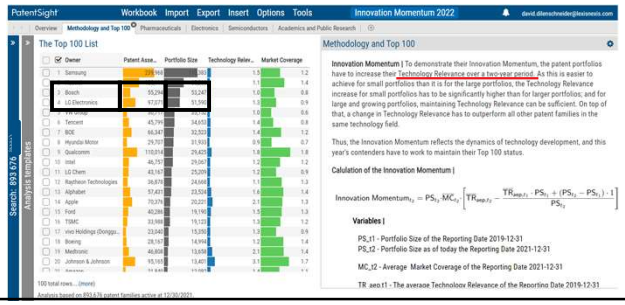
**Example of Top 100 Most-Innovative Corporations (2020-2021): Samsung & Huawei**




66

The Patent Asset Index (used in LexisNexis ® PatentSight ®)

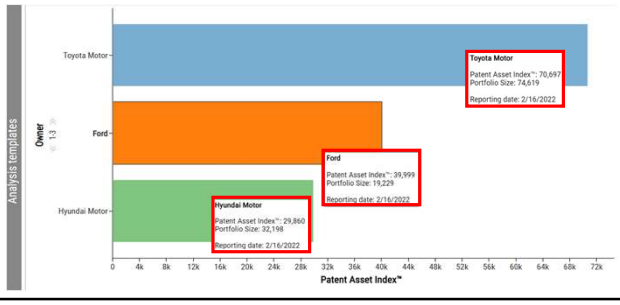
**Example of Top 100 Most-Innovative Corporations (2020-2021)**




67

The Patent Asset Index (used in LexisNexis ® PatentSight ®)

**Example of Top 100 Most-Innovative Corporations (2020-2021): Toyota, Ford & Hyundai**




68

Patent Analytics Platforms

**Some of the Options**

- ✓ **Assessing Strengths / Weaknesses of One's Own Patent Portfolio**
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- ✓ **Strategizing to Complete a Successful Patent Prosecution**
- ✓ **Reviewing Performance of an Attorney**

LexisNexis 69

69

Disruptive Innovation (or Tech)

**What Is It?**

**"Disruptive innovation refers to the innovation that transforms expensive or highly sophisticated products or services — previously accessible to a high-end or more-skilled segment of consumers — to those that are more affordable and accessible to a broader population. This transformation disrupts the market by displacing long-standing, established competitors."**

Source: Investopedia (www.investopedia.com/terms/d/disruptive-innovation.asp)

LexisNexis 70

70

Identifying "Disruptive" Tech Through Patent Portfolios

**Using Patents to Identify / Predict Technology Is Over a Decade Old**

**"In 2003, [Chris Magee, a professor of the practice of engineering systems] began determining the improvement rates of various technologies. At the time, he was curious how technologies were developing relative to Moore's Law — an observation pertaining originally to computers, in which transistors on a computer chip double every two years."**

Massachusetts Institute of Technology

Source: "Patents Forecast Technological Change," MIT News Office (April 15, 2015)

LexisNexis 71

71

Identifying "Disruptive" Tech Through Patent Portfolios

**Using Patents to Identify / Predict Technology Is Over a Decade Old**

**"Magee initially approached the problem on a case-by-case basis, determining which metrics best represent productivity for a given domain. He then compiled data for each metric, such as the price and speed of manufacturing a product, and used the data to calculate the overall rate of improvement."**

Massachusetts Institute of Technology

Source: "Patents Forecast Technological Change," MIT News Office (April 15, 2015)

LexisNexis 72

72

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**"In 2010, he realized that one of the most comprehensive resources on technology lay in the U.S. patent record.**

*** * ***

**For several years, he and his group identified the most relevant patents in a technological domain, by literally reading through thousands of patents — an incredibly time-intensive process."**

Source: "Patents Forecast Technological Change," MIT News Office (April 15, 2015)

Massachusetts Institute of Technology

LexisNexis 73

73

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Massachusetts Institute of Technology

LexisNexis 74

74

Identifying "Disruptive" Tech Through Patent Portfolios

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**"In 2012, Magee . . . came up with a more efficient, repeatable method for identifying relevant patent sets, by looking at the overlap between the U.S. and international patent-classification systems."**

*** * ***

**The team found that . . . they could repeatedly identify the same set of patents that best represent a technology, within a matter of hours, rather than months."**

Source: "Patents Forecast Technological Change," MIT News Office (April 15, 2015)

Massachusetts Institute of Technology

LexisNexis 75

75

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Source: "Patents Forecast Technological Change," MIT News Office (April 15, 2015)

Massachusetts Institute of Technology

LexisNexis 76

76

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Source: "Patents Forecast Technological Change," MIT News Office (April 15, 2015)

Massachusetts Institute of Technology

LexisNexis 77

77

Identifying "Disruptive" Tech Through Patent Portfolios

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**"Once [key technologies] were identified, the researchers analyzed certain metrics across patents in each domain, and found that some were more likely to predict a technology's improvement rate than others. In particular – forward citations . . . is a good predictor, as is the date of a patent's publication."**

Source: "Patents Forecast Technological Change," MIT News Office (April 15, 2015)

Massachusetts Institute of Technology

LexisNexis 78

78

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LexisNexis 79

79

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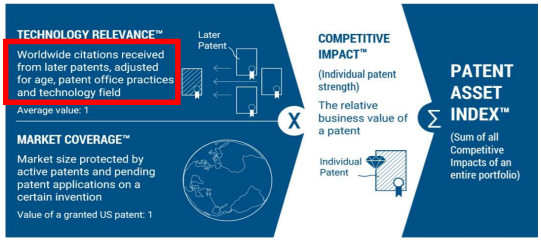



Source: "The Patent Asset Index – A New Approach to Benchmark Patent Portfolios," Ernst, H & Omland, N., World Patent Information (pp. 34-41) (2011)

LexisNexis 80

80

Identifying "Disruptive" Tech Through Patent Portfolios

**Patents Are Predictive of Frontier (aka Disruptive Innovation)**

**"Patents, even if never licensed, used, or enforced, send important signals to the outside world.**

*** * ***

**[They] help investors and researchers ascertain the frontier of a given field."**

Source: "The Predictive Power of Patents," Sabrina Safrin, Univ. of Illinois Journal of Law, Technology and Policy, Vol. 2021, pp. 35-74 (May 1, 2021)

LexisNexis 81

81

Identifying "Disruptive" Tech Through Patent Portfolios

**Patents Are Predictive of Frontier (aka Disruptive Innovation)**

**"I call [patent data] a window into the soul of a company in some fashion with their R&D teams and with what they're thinking[.]"**

Source: "The Secret Weapon: Leveraging Patent Agents to Gain a Competitive Edge," The Geek in Review, TGIR Ep. 186 (January 25, 2023) (quote from Shayne Phillips)

LexisNexis 82

82

Identifying "Disruptive" Tech Through Patent Portfolios

**Example: Swatch**

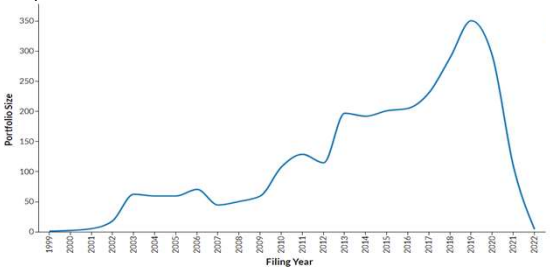
SWATCH GROUP

LexisNexis 83

83

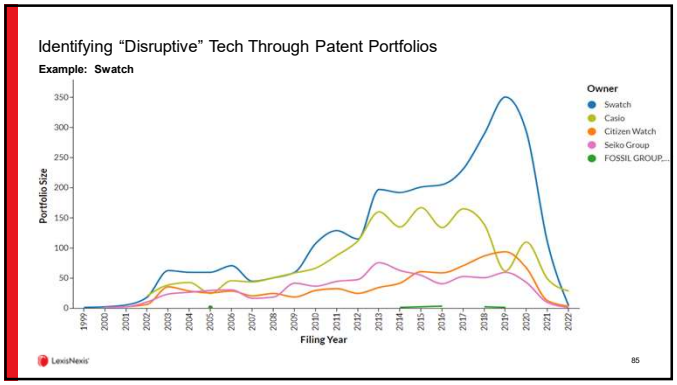
Identifying "Disruptive" Tech Through Patent Portfolios

**Example: Swatch**




LexisNexis 84

84

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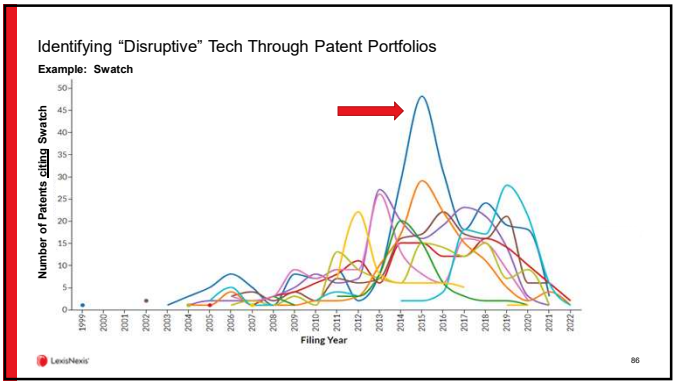


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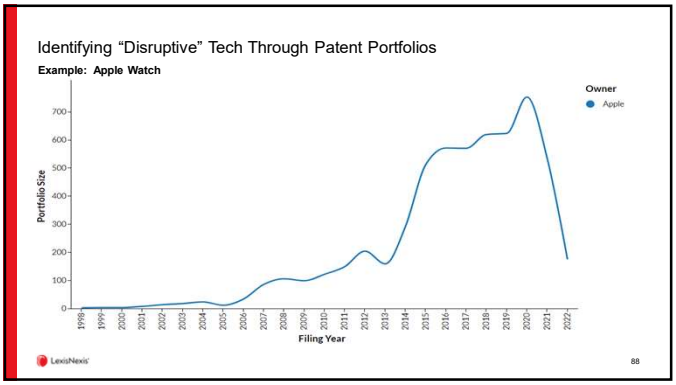


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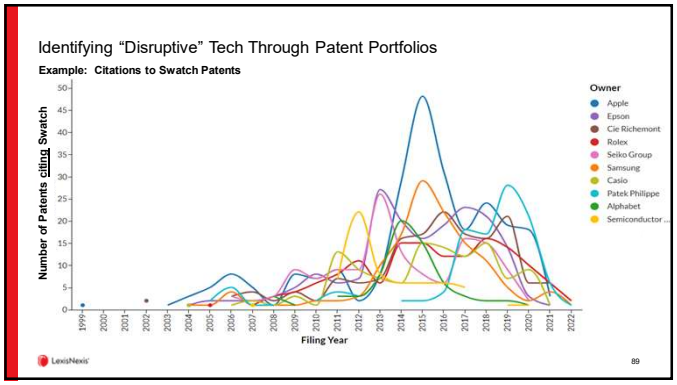


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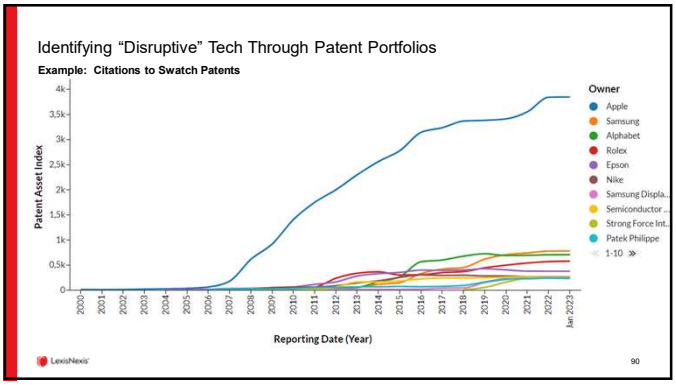


90

Patent Analytics Platforms

**Some of the Options**

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LexisNexis 91

91

Analytics for the Patent Practitioner

**Patent Prosecution**

**"Many companies begin the patent process by trying to understand the chances of a patent getting granted."**

Source: "Using Analytics to Pursue New Patents," Deepak Syal, Forbes (Aug. 27, 2021)

LexisNexis 92

92

Patent Analytics Platforms

**Strategizing to Complete a Successful Patent Prosecution**

# Example:

# Patent Examiner Analytics

LexisNexis 93

93

Patent Examiner Analytics

**2021 Webinar Poll: "How Often Do You Look at Patent Examiner Analytics?"**

| | |
|---|---|
| 44 | **"Never"** |
| 33 | **"Only When Stuck"** |
| 18 | **"Most of the Time"** |
| 5 | **"Always"** |

LexisNexis 94

94

Patent Analytics Platforms

**Measuring Examiner Behavior: Examiner Allowance Rate**

**"[T]his study finds that the likelihood of obtaining a patent will rely on large part on the examiner attached to the application."**

Stanford Technology Law Review

Source: "Luck / Unluck of the Draw: An Empirical Study of Examiner Allowance Rates," Shine Sean Tu, Stanford Technology Law Review (2012)

LexisNexis 95

95

Patent Analytics Platforms

**Measuring Examiner Behavior: Examiner Allowance Rate**

**"In the examiner lottery, there is a low probability that an applicant will receive a high allowance rate primary examiner, where the applicant will most likely will receive a patent in a short period of time and with few to no claim amendments."**

Stanford Technology Law Review

Source: "Luck / Unluck of the Draw: An Empirical Study of Examiner Allowance Rates," Shine Sean Tu, Stanford Technology Law Review (2012)

LexisNexis 96

96

Analytics for the Patent Practitioner

**Patent Prosecution**

**"When using a patent analytics platform, pay attention to the following data to determine the likelihood of getting a patent:**

- **Success Rate of the Patent Prosecutor**
- **Allowance Rate of the Patent Examiner**
- **Allowance Rate of the Art Unit."**

Source: "Using Analytics to Pursue New Patents," Deepak Syal, Forbes (Aug. 27, 2021)

LexisNexis 97

97

Analytics for the Patent Practitioner

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Source: "Using Analytics to Pursue New Patents," Deepak Syal, Forbes (Aug. 27, 2021)

LexisNexis 98

98

Patent Analytics Platforms

**Measuring Examiner Behavior: Allowance Rate**

**Examiner Allowance Rate**

$$\frac{\text{Patents Granted}}{\text{(Patents Granted + Patents Abandoned)}}$$

LexisNexis 99

99

Patent Analytics Platforms

**Measuring Examiner Behavior: Allowance Rate**

**"The current metric for examiner prosecution activity is allowance rate, which is calculated by dividing the total number of allowances by the sum of the allowances and abandonments (allowance rate = total allowance / (total allowances + total abandonments)). Importantly, however, allowance rates do not consider an examiner's pending docket. Specifically, allowance rates do not fully capture if the examiner is simply writing office actions thereby prolonging prosecution or allowing cases."**


Source: "Office Actions per Grant Ration (OGR): A New Metric for Patent Examiner Activity," Shine Sean Tu, Journal of Patent and Trademark Office Society (Jan. 1, 2018)

LexisNexis 100

100

Patent Analytics Platforms

**Measuring Examiner Behavior: Allowance Rate**

**Allowance Rate**

$$\frac{\text{Patents Granted}}{\text{(Patents Granted + Patents Abandoned)}}$$

**Doesn't Account for Pending Applications**

**Penalizes Examiner for Abandonments (which are out of his/her control)**

**Very Limited Utility for New Examiners**

LexisNexis 101

101

Patent Analytics Platforms

**Measuring Examiner Behavior: Examiner Time Allocation ("ETA™")**

**Examiner Time Allocation***

$$\frac{\text{Total Office Actions}}{\text{Total Allowances}}$$

**Accounts for Pending Portfolios**

**Doesn't Directly Penalize Examiner for Abandonments**

**Helpful for Evaluation of New Examiners**

LexisNexis ** Also includes factors in the LexisNexis proprietary algorithm, such as: pending cases, examiner tenure and more* 102

102

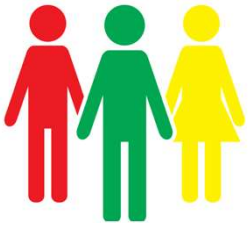
## Patent Analytics Platforms

**Measuring Examiner Behavior: Examiner Time Allocation ("ETA™")**

Red = ETA of 6+, indicating a high likelihood of long prosecution length. The examiner may have less experience, grant less than 15 applications per year on average, or have a high backlog of pending cases.

Yellow = ETA of 2.6-5.9, indicating mediocre prosecution length. The examiner has average experience and grants between 15-150 applications per year, on average.

Green = ETA of .1-2.5, indicating high likelihood of a short prosecution length. The examiner has lots of experience and grants over 150 applications per year, on average.



LexisNexis 103

103

## Patent Analytics Platforms

**Measuring Examiner Behavior: Examiner Time Allocation ("ETA™") – Green vs. Red**

| METRIC | GREEN V. RED |
|---|---|
| Allowance Rate | Green is 2x Higher |
| Office Actions to Disposal | Red is 2x Higher |
| Time to Disposal | Red is 2x Higher |
| At least One Final Office Action | Red is 2x Higher |
| Two or More Final Office Actions | Red is 4x Higher |
| Interviews | Red is 2x Higher |
| Allowance Rate in response to After Final Amendment | Green is 3x Higher |
| At least one RCE | Red is 2x Higher |
| Allowance Rate in response to RCE | Green is 4x Higher |
| Time to Next Action After RCE | Red is 50% Higher |
| Appeals | Red is 3x Higher |
| Win Rate of Appeal | Green is 15% Higher |

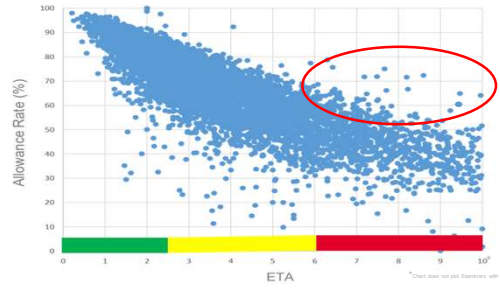
Source: "Impact of USPTO Examiners on Prosecution Outcomes" (found at: https://www.youtube.com/watch?v=sybltw01ywI) (August 11, 2020)

LexisNexis 104

104

## Patent Analytics Platforms

**Allowance Rate vs. Examiner Time Allocation – Correlation Exists, but Variability Exists**

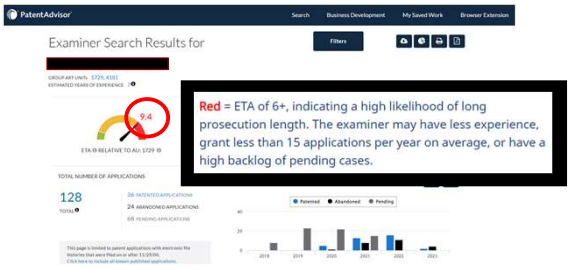



LexisNexis 105

105

## Patent Analytics Platforms

**Measuring Examiner Behavior: Examiner Time Allocation ("ETA™")**




LexisNexis 106

106

## Patent Analytics Platforms

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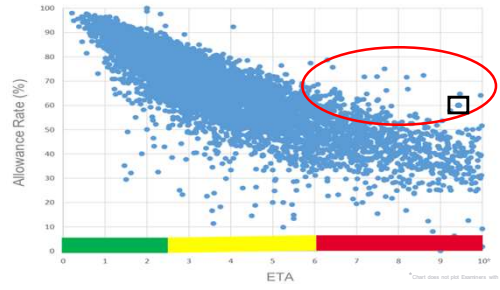


LexisNexis 107

107

## Patent Analytics Platforms

**Measuring Examiner Behavior: Allowance Rate**

**"Even if a patent issues from an application that has been in prosecution for a decade, much of the damage may have already been done. Specifically, applicants who prosecute patents for long periods of time may be irreparably harmed because of: (1) the inability to get funding (due to a lack of a robust patent portfolio), (2) the inability to exclude competitors to enter the field (competitors may discount those applications locked in prosecution for long periods of time or have a longer time to develop design-arounds), (3) the inability to capture royalties for most of the patent life and (4) the actual cost to prosecute patents for such a long duration of time."**

Stanford Technology Law Review

Source: "Luck / Unluck of the Draw: An Empirical Study of Examiner Allowance Rates," Shine Sean Tu, Stanford Technology Law Review (2012)

LexisNexis 108

108

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LexisNexis 109

109

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LexisNexis 110

110

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LexisNexis 111

111

Patent Analytics Platforms

**Things to Look For . . .**

LexisNexis 112

112

Patent Analytics Platforms

**Remember to Consider: Four Things**

1. **More Data Is Better**
2. **Data Needs To Be "Clean"**
3. **Seemingly "Identical" or Mis-Matched Data Must Be Disambiguated**
4. **Visual Display Should Be Easy**

LexisNexis 113

113

Patent Analytics Platforms

**Remember to Consider: Four Things**

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LexisNexis 114

114

Patent Analytics Platforms

**More Data Is Better**

**"There are many tools that can provide you with analytical data. If you are considering using a tool to take the raw data and turn it into useful information for IP decision-making, there are some things you should consider. Look for a tool that has access to a huge data set. The more data a tool has access to, the stronger insight it can provide. Additionally, I suggest looking for a tool that provides the patent analytics information in an easy-to-digest format."**

Source: "Using Analytics to Pursue New Patents," Deepak Syal, Forbes (Aug. 27, 2021)

LexisNexis 115

115

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LexisNexis 116

116

Patent Analytics Platforms

**More Data Is Better – A "Huge" Data Set Considerations**

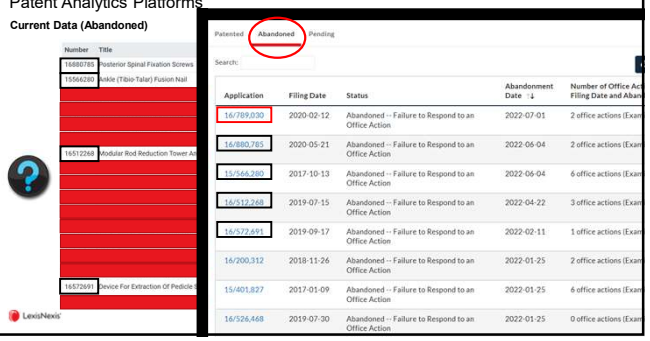
1. **Depth of Coverage**
2. **Breadth of Coverage**

LexisNexis 117

117

Patent Analytics Platforms

**Current Data (Abandoned)**




LexisNexis

118

Patent Analytics Platforms

**Example: Examiner Daniel H. Miller**

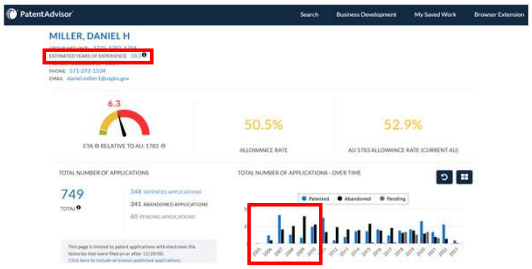
Our current dataset is all utility patent applications filed in 2010 or later. This gives us plenty of data for computing 3-year grant rates but also allows us to focus on more recent data in case an examiner's behavoir changes over time.

LexisNexis 119

119

Patent Analytics Platforms

**Example: Examiner Daniel H. Miller**

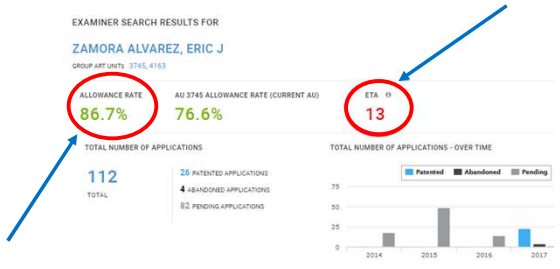



LexisNexis 120

120

Patent Analytics Platforms

**Certainly – Recency Is Important Too (Eric Alvarez Zamora – 2018)**

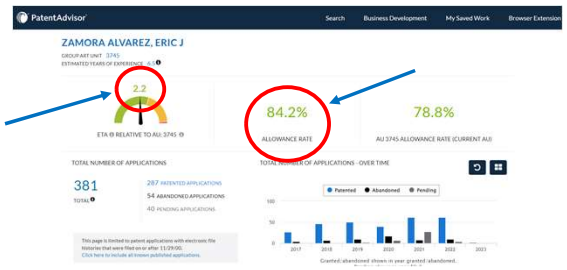



LexisNexis 121

121

Patent Analytics Platforms

**Certainly – Recency Is Important Too (Eric Alvarez Zamora – 2023)**

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122

Patent Analytics Platforms

**Remember to Consider: Four Things**

1. **More Data Is Better**
2. **Data Needs To Be "Clean"**
3. **Seemingly "Identical" or Mis-Matched Data Must Be Disambiguated**
4. **Visual Display Should Be Easy**

LexisNexis 123

123

Analytics

**"Dirty" Data – The Problem**

**"To begin with, all data analytics processes start with a basic truism: Garbage in, garbage out. If the data being analyzed is not accurate and representative of the world, then it's not useful."**

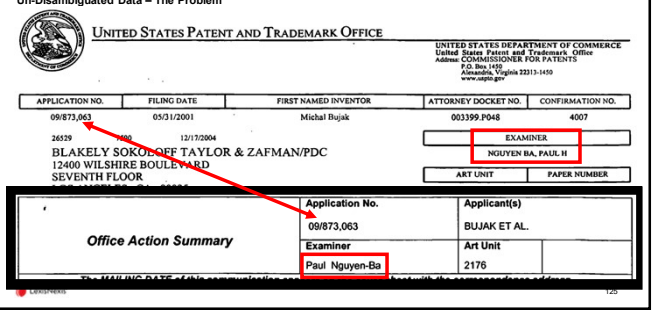
Source: "Data Analytics: Garbage In, Garbage Out," Thornton McEnery, Dealbreaker (Jan. 14, 2019)

LexisNexis 124

124

Analytics

**Un-Disambiguated Data – The Problem**

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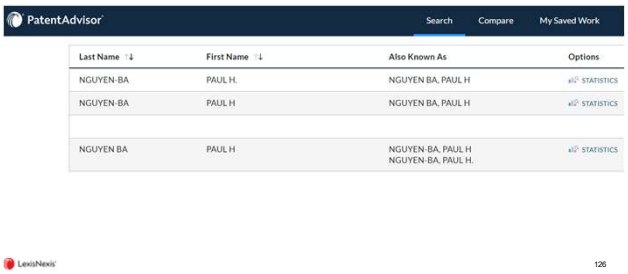
125

Analytics

**Cleaned ("Harmonized") Data**




LexisNexis 126

126

Analytics

**Types of "Harmonization" Work**

- ✓ **Identifying Variations & Misspellings (e.g. Patent Examiners)**
- ✓ **Ensuring Accurate Corporate Structures (e.g. Parent – Subsidiary)**
- ✓ **Tracking Historical Company Name Changes**
- ✓ **Assigning "Ultimate Owner" (e.g. When a Merger/Acquisition Occurs)**
- ✓ **Recognizing Homonyms (i.e. Similar Names Used by Distinct Entities)**
- ✓ **Monitoring Transactions Involving Patents (e.g. Sales, Assignments)**

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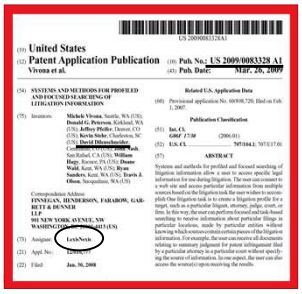
127

Patent Analytics Platforms

**"Harmonization" Work**





128

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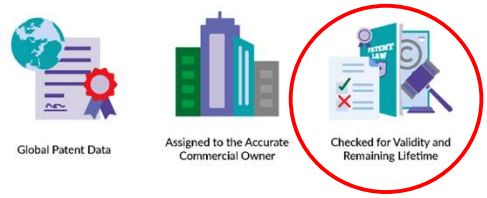
**"Harmonization" Work**



129

Analytics

**Data Quality is NOT a One-Time Thing**

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130

Patent Analytics Platforms

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131

Patent Analytics Platforms

**The Need for "Disambiguated" Data – Example: Baseball Pitcher ("Brady Feigl")**

LexisNexis 132

132

Patent Analytics Platforms

**The Need for "Clean" Data – Example: Examiner Daniel Miller**

| Office Action Summary | Application No. 15/931,477 | Applicant(s) Shenker, Evgeny |
|---|---|---|
| | Examiner DANIEL MILLER | Art Unit 3786 / AIA (FITF) Status Yes |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING

Miller Dan

**Miller Dan**iel H (1783)
**Miller Dan**iel E (2148)
**Miller Dan**iel R (2863)
**Miller Dan**iel A (3786)

133

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**Un-Disambiguated Data – The Problem**

| Office Action Summary | Application No. 13/495,957 | Applicant(s) BULLOCH ET AL. |
|---|---|---|
| | Examiner LYNNSY SCHNEIDER | Art Unit 3733 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS

Schneider

**Schneider** Andrew J (3669)
**Schneider** Brendan K (3644)
**Schneider** Joshua D (3629)
**Schneider** Craig M (3753)

134

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**Un-Disambiguated Data – The Problem**

RESULTS FOR SCHNEIDER

| Last Name | First Name | Also Known As | Options |
|---|---|---|---|
| SCHNEIDER | THOMAS FRANK | - | STATISTICS |
| SCHNEIDER | THOMAS F | - | STATISTICS |
| SCHNEIDER | BRENDAN KROGER | - | STATISTICS |
| SCHNEIDER | BRENDAN KROGEN | - | STATISTICS |
| SCHNEIDER | ANDREW JAMES | - | STATISTICS |
| SCHNEIDER | ANDREW J | - | STATISTICS |
| SCHNEIDER | PAULA LYNN | - | STATISTICS |
| SCHNEIDER | LYNNSY M | SUMMITT, LYNNSY M | STATISTICS |
| SCHNEIDER | JOSHUA D | - | STATISTICS |
| SCHNEIDER | CRAIG M | - | STATISTICS SPE |

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135

135

Patent Analytics Platforms

**Un-Disambiguated Data – The Problem**

PatentAdvisor

SUMMITT, LYNNSY M → SCHNEIDER, LYNNSY M

3.7

69.3%

69.3%

691

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136

136

Patent Analytics Platforms

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137

137

Patent Analytics Platforms

**Visualization**

**"There are many tools that can provide you with analytical data. If you are considering using a tool to take the raw data and turn it into useful information for IP decision-making, there are some things you should consider. Look for a tool that has access to a huge data set. The more data a tool has access to, the stronger insight it can provide. Additionally, I suggest looking for a tool that provides the patent analytics information in an easy-to-digest format."**

Source: "Using Analytics to Pursue New Patents," Deepak Syal, Forbes (Aug. 27, 2021)

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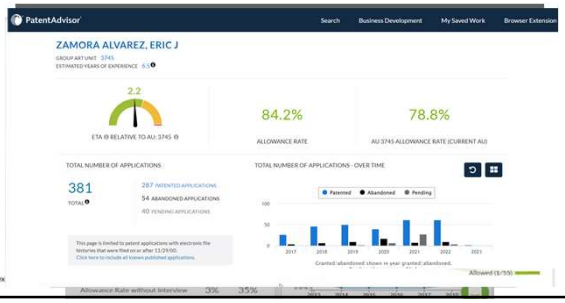
138

138

Patent Analytics Platforms

**Visualization**



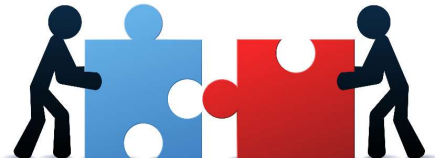

139

139

What Do Patent Practitioners Need?

**Effectiveness and Efficiency Together = Value**

Practitioners must be both **EFFECTIVE** ***and*** **EFFICIENT** to provide the greatest **VALUE** to their clients



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140

140

What Do Patent Practitioners Need?

**Effectiveness and Efficiency Together = Value**

**"[W]ith [a] limited patent-procurement budget, you need to be efficient and really cost-effective as possible. That's really, I think, important[.]"**

Source: "Impact of USPTO Examiners on Prosecution Outcomes" (found at: https://www.youtube.com/watch?v=syblw0t1ywA), Michael Sartori, Baker Botts (August 11, 2020)

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141

141

What Do Patent Practitioners Need?

**Analytics (to be Effective and Efficient)**

HBW Haynes Beffel & Wolfeld LLP
*Intellectual Property Law*

We use Innography to better understand the patent landscape in specific technology fields, including information regarding the quantity and nature of competitors' filings, as well as for patent litigation matters involving patents in the specific area of technology.

PatentAdvisor enables us to leverage publicly available patent information while saving our clients both time and money throughout the patent prosecution process.

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142

142

What Do Patent Practitioners Need?

**Analytics (to be Effective and Efficient)**

**"Today, technology isn't simply meant to improve efficiencies in business operations and the practice of law; it's intended to drive the more effective delivery of legal services while increasing access and responding to the risks of managing client relationships in an online environment."**


Source: "Innovation Trends Report 2022" (Page 27: Technology Competency), American Bar Association Center of Innovation, Kimberly Yvette Bennett, (2022)

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143

143

What Do Patent Practitioners Need?

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Source: "Innovation Trends Report 2022" (Page 27: Technology Competency), American Bar Association Center of Innovation, Kimberly Yvette Bennett, (2022)

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144

144

Analytics for the Patent Practitioner

**The Value**

**"As with many industries, Shayne recognizes that there is a giant role that technology and AI tools will play in the immediate future of the profession. With millions upon millions of patents to parse through, there is definitely value in leveraging the technology to enhance the role she plays in finding the hidden jewels that are buried in patent information."**


Source: "The Secret Weapon: Leveraging Patent Agents to Gain a Competitive Edge," The Geek in Review, TGIR Ep. 186 (January 25, 2023) (Podcast Summary)

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145

145

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# Thank You

David V. Dilenschneider, Esq.

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146