

802.50

From: [REDACTED]
To: "Mike Verne (E-mail)" <mverne@ftc.gov>
Date: 4/29/02 5:15PM
Subject: Follow up to message

Hi Mike:

As a follow up to my message and earlier call to you today, both parties are foreign and this is a merger. My client is the acquired company. It's sales into the US are well below the \$50 million threshold. Its total assets per its balance sheet are \$57 million and a footnote to the financials indicates that below \$50 million are located in the US. However, that is the book value and I know that the company books its IP assets in Canada, where it is located. I believe that it has assets issued by the PTO and this transaction is primarily being undertaken for purposes of the IP. The transaction amount exceeds \$200 million. Thus, there is at least one non-US company willing to pay in excess of \$200 million for the assets of this company. I assume that I should direct my client to conduct a FMV test with respect to its assets located in the US, but I am not sure whether they should be considering their IP as assets within the US and if so, to what extent, if any, they need to consider the price that the acquiring company is willing to pay for the assets in determining FMV. Do you have any thoughts?

[REDACTED]

Advised that any U.S. patents or trademarks would be considered assets located in the U.S. They must be valued at fair market value, not book value, to determine whether they exceed the \$50 MM limitation in 802.50. The amount that a buyer is willing to pay for the assets is a factor to consider in the fair market valuation, but no specific method of valuation is mandated by the PNO. Any reasonable method done in good faith by the board of directors is acceptable.

Michael Verne

4/30/02