802.51

Verne, B. Michael

From: [redacted]
Sent: Monday, June 01, 2009 10:58 AM
To: Verne, B. Michael

Mike:

This is a follow up to a question that I posed to you last week.

My client is a foreign corporation which is considering the acquisition of a foreign company (either stock or assets).

The foreign target is an R&D company with no sales. Assume that it meets the "size of the person" test (assets in excess of $13 million).

The only arguable U.S. asset that the foreign target possesses is a U.S. patent for a product under development.

My client has done an initial valuation of the foreign target, including the value of the U.S. patent.

Based on my client's evaluation of the possible stream of revenues that may be generated by the U.S. patent, my client has valued the U.S. patent at in excess of $65.2 million.

I reviewed a December 6, 1999 letter to you (file # 9912003) that discusses the meaning of "assets located in the United States" for purposes of 802.51 (I assume that this is also relevant to 802.50 to distinguish "assets located outside the U.S."). Based on that letter, it appears that a U.S. patent, even if owned by a foreign company, must be treated as an asset "located in the United States" if the source of revenues derived from the U.S. patent is from the U.S.

The present situation is somewhat complicated in that the U.S. patent in question has not yet generated any revenue anywhere in the world, but it is clear that the value that my client is placing on the U.S. patent is based on an assumption that the U.S. patent is likely to generate revenues in the U.S.

Accordingly, it appears that if this acquisition proceeds, an HSR filing will be required even though the foreign target has no U.S. sales.

Do you agree?

[redacted]

Agree.
BM
6/1/09