

ITEM 5

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, March 20, 2012 11:13 AM
To: Verne, B. Michael
Subject: CONFIDENTIAL (Item 5)

Dear Mike,

This question concerns the treatment of certain revenues for purposes of Item 5. In particular, I would be interested in your thoughts on which of the licensing and service revenues described below should be considered "US operations" for purposes of Item 5.

Company A is a U.S. corporation engaged in the business of intellectual property licensing. Company A owns the rights to US IP and holds bare legal title to all foreign IP. Company A has set up a foreign controlled subsidiary ("Foreign Sub") that owns all economic benefit from all foreign IP (ex-US) and manages, in total, the licensing operations. Foreign Sub has the right to license collectively all of the IP to licensees and is the entity that enters into the contractual licenses with all licensees worldwide. Foreign Sub collects all licensing revenues from licensees worldwide. Foreign Sub retains all revenues derived from the licensing of non-US IP (which accounts for the vast majority of all licensing revenues) and pays to Company A the revenues related to the licensing of US IP.

Foreign Sub also has arrangements with Company A under which Company A provides legal, financial, R&D, and other services to Foreign Sub, on a cost-plus basis, in connection with the development and maintenance of the IP and the negotiation of licenses by Foreign Sub with licensees (Company A does not negotiate directly with licensees, but provides, for example, legal services to Foreign Sub in connection with contract review). In addition, to the extent that licensees require post-licensing product support, Company A provides those services to licensees in the US and is compensated for them by Foreign Sub (not by the licensee) on a cost-plus basis. Foreign Sub has similar arrangements with other controlled, non-US subsidiaries of Company A for the provision of sales and product-support services to licensees in their respective countries.

Under these conditions, I believe that Company A (which is the UPE) should report in Item 5 only the revenues derived from (a) the fees received from Foreign Sub for the licensing of US IP; and (b) the cost-plus payments received from Foreign Sub for providing post-licensing support services to US licensees.

As always, I would be very grateful for your thoughts on these points. Thank you.

Regards,

[REDACTED]

AGNES -
BM
3/20/12

[REDACTED]