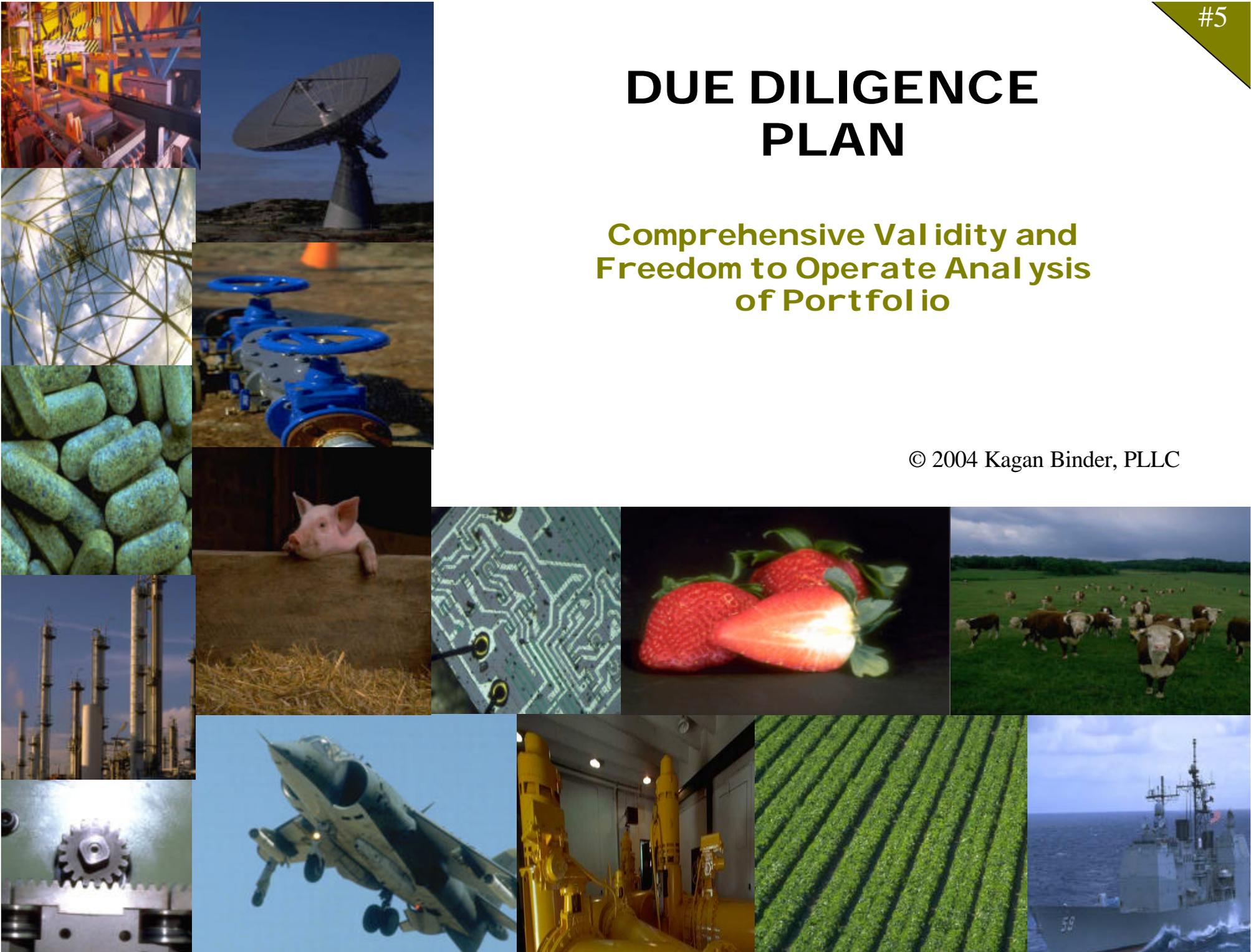


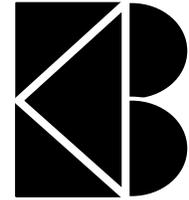
# DUE DILIGENCE PLAN

Comprehensive Validity and  
Freedom to Operate Analysis  
of Portfolio

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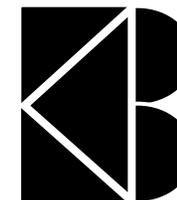
When considering acquisition of a patent portfolio by purchase or license, it is desirable to conduct a study of the target portfolio to determine its value. This is a two part analysis: first to evaluate the strengths and weaknesses of the patent portfolio as it applies to the products to be sold, and second to assess the freedom to practice relative to third party patents. While there is no formal duty to conduct a freedom to operate study if you are not aware of intellectual property barriers to product introduction, the downside risk of finding your company in a patent litigation, with potential forced withdrawal from the marketplace in addition to damages, may dictate that at least some form of study should be undertaken. The degree of rigor of search for unknown patents that is actually executed is determined by the value of the product and the damage to the company if a surprise patent does surface. Once a patent is identified as raising a potential issue, a process needs to be conducted to manage the related risks.

A useful first step in conducting an efficient valuation and freedom to operate study is to identify tasks and potential issues to be considered for a comprehensive and meaningful analysis of the technology to be analyzed. It is helpful to list these tasks and issues in outline form to understand the potential scope of the project and to efficiently plan the steps to be carried out. The degree of rigor of the study that is actually executed is determined by the value of the deal and the significance of the various potential issues.

The following mock project analysis outline is a typical analysis format that is used at Kagan Binder as a tool to explain the valuation and freedom to operate study process to the client, and to work with the client in arriving at an agreed-upon estimate of the cost of the analysis process prior to incurring expenses.

**-SAMPLE-**

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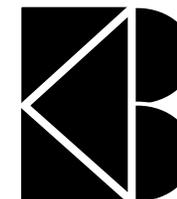
## Proposed Task List and Budget for Widget Alloy Due Diligence

**Phase 1 Tasks.** The objective of this phase is to evaluate the strengths and weaknesses of the Smith Jones patent portfolio applicable to these products.

	Task	Authorized	Completed
1	Preliminary study, including initial review and study of documentation, develop project design, and prepare initial task list and budget.	?	?
2	Initial technical discussion with Acme personnel at designated facility to learn about technical and business details of the Widget alloy products.  <b>Note: This assumes only one attorney will attend the discussion. However, it will be extremely desirable for two to attend, given the manner in which the project divides into two discreet phases. Please let us know if you authorize two Kagan Binder attorneys to participate in this task.</b>	?	?
3	Travel expenses for one attorney relating to task 2, including airfare, lodging for one night, and meals.	?	?
4	Ongoing business and technical discussions encompassing two detailed, follow-up phone conferences.	?	?
5	Obtain copies of the publicly available patent properties owned by Smith Jones. Initial screening to identify those applicable to the products at issue; order the US prosecution histories for those that are relevant. Presently, 11 patent families are known to exist.  <b>Note: about \$3000 to \$5000 of this section could be avoided if Smith Jones would make its patent files available for our review so that we do not need to order 11 file wrappers from the USPTO.</b>	?	?
6	Detailed analysis of 11 patent families to evaluate strengths and weaknesses of each; develop strategies to bolster weaknesses or otherwise improve the portfolio.	?	?
7	Optional Travel expense (air fare, lodging for three nights, and meals) for two attorneys to travel to Smith Jones facility to review their patent files for three full days.	?	?
8	Prepare detailed final report and forward to Susan Doe.	?	?

**-SAMPLE-**

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**Phase 2 Tasks.** The objective of this phase is to assess the freedom to practice relative to third party patents.

	<b>Task</b>	<b>Authorized</b>	<b>Completed</b>
9	Preliminary study, including initial review and study of documentation, develop project design, and prepare initial task list and budget.	?	!
10	Initial technical discussion with Acme at designated Acme facility to learn about technical and business details of the Widget alloy products.  <b>Note: This is the same as task 2 in Phase 1 and involves no additional expense.</b>	?	?
11	Travel expenses for one attorney relating to task 2, including airfare, lodging for one night, and meals.  <b>Note: This is the same as task 3 in Phase 1 and involves no additional expense.</b>	?	?
12	Ongoing business and technical discussions encompassing two detailed, follow-up phone conferences.	?	?
13	Define search scope; prepare letter describing technical aspect to be searched and its background; forward to searching associate and commission search of third party patent properties.	?	?
14	In-house searching of computer databases to locate third party patent documents of interest.	?	?
15	Evaluate search results to identify third party patents at issue.	?	?
16	Prepare detailed final report and forward to Susan Doe.	?	?

**The foregoing is intended to provide you with helpful suggestions in protecting your organization from avoidable liability concerns in intellectual property matters. Each matter is different, and the advice of competent counsel in each situation should be obtained.**