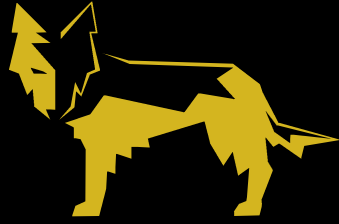
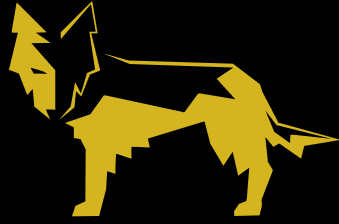


**MIELE LAW GROUP** PC



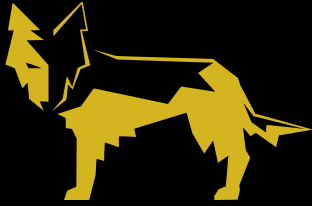
## Injunctions: It's not all about you

- Injunctions are not always available
- But they need to be taken seriously
- So how do injunctions fit into the bigger picture?

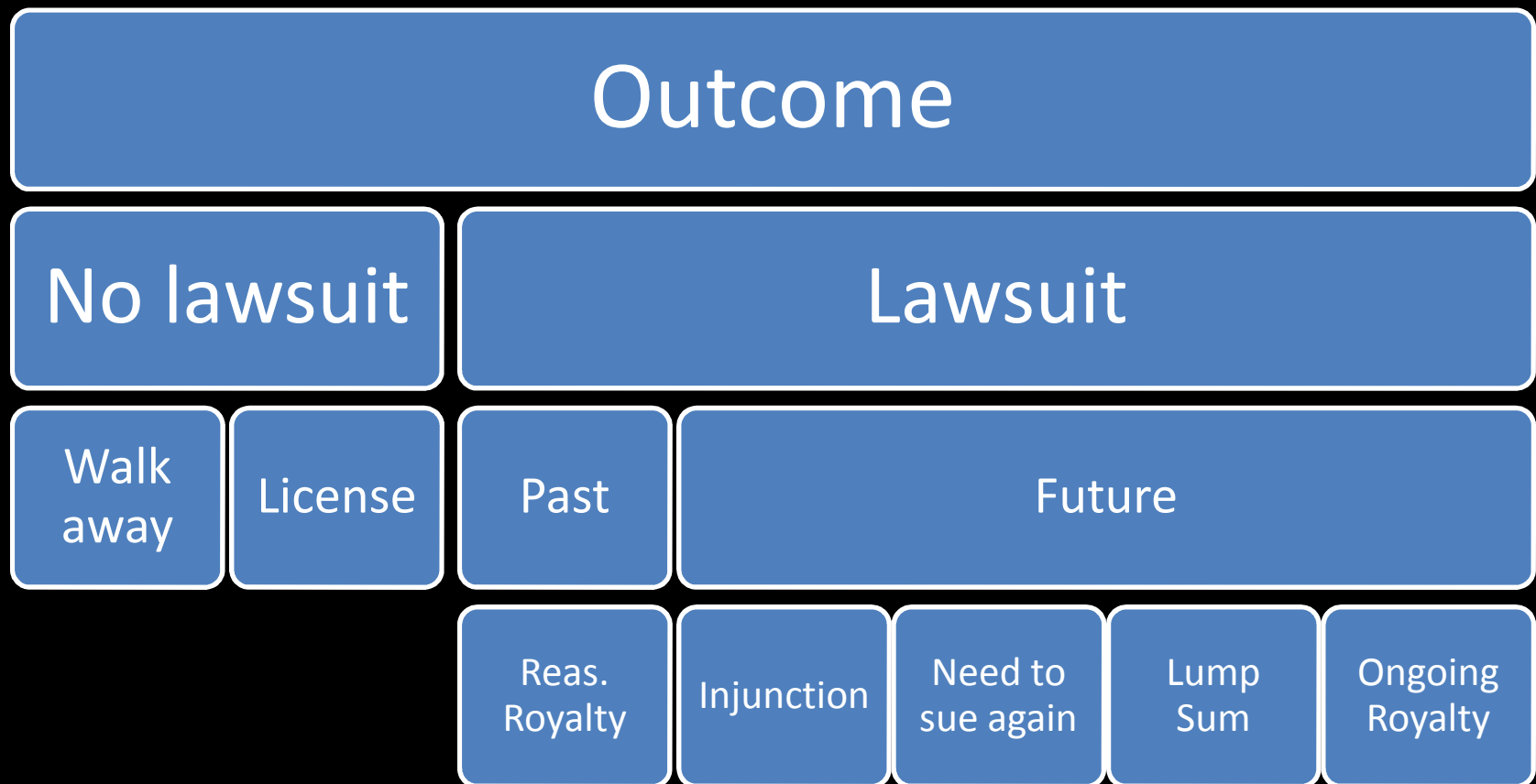


## Asserting and Defending Patents

- The Outcome Drives the Licensing Terms



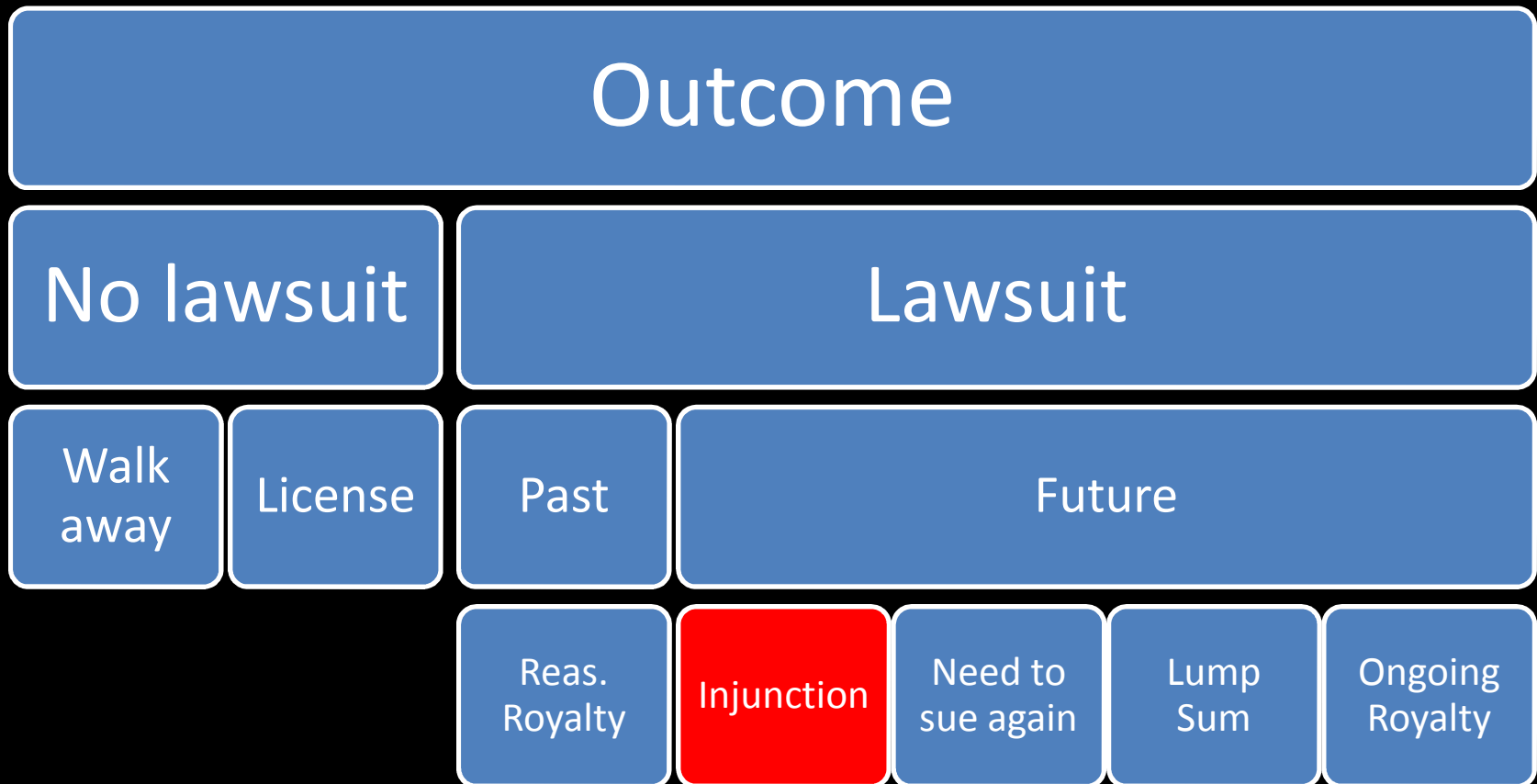
# Asserting and Defending Patents

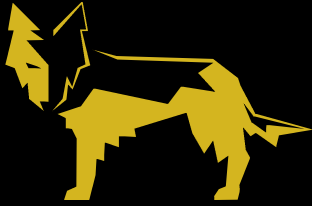




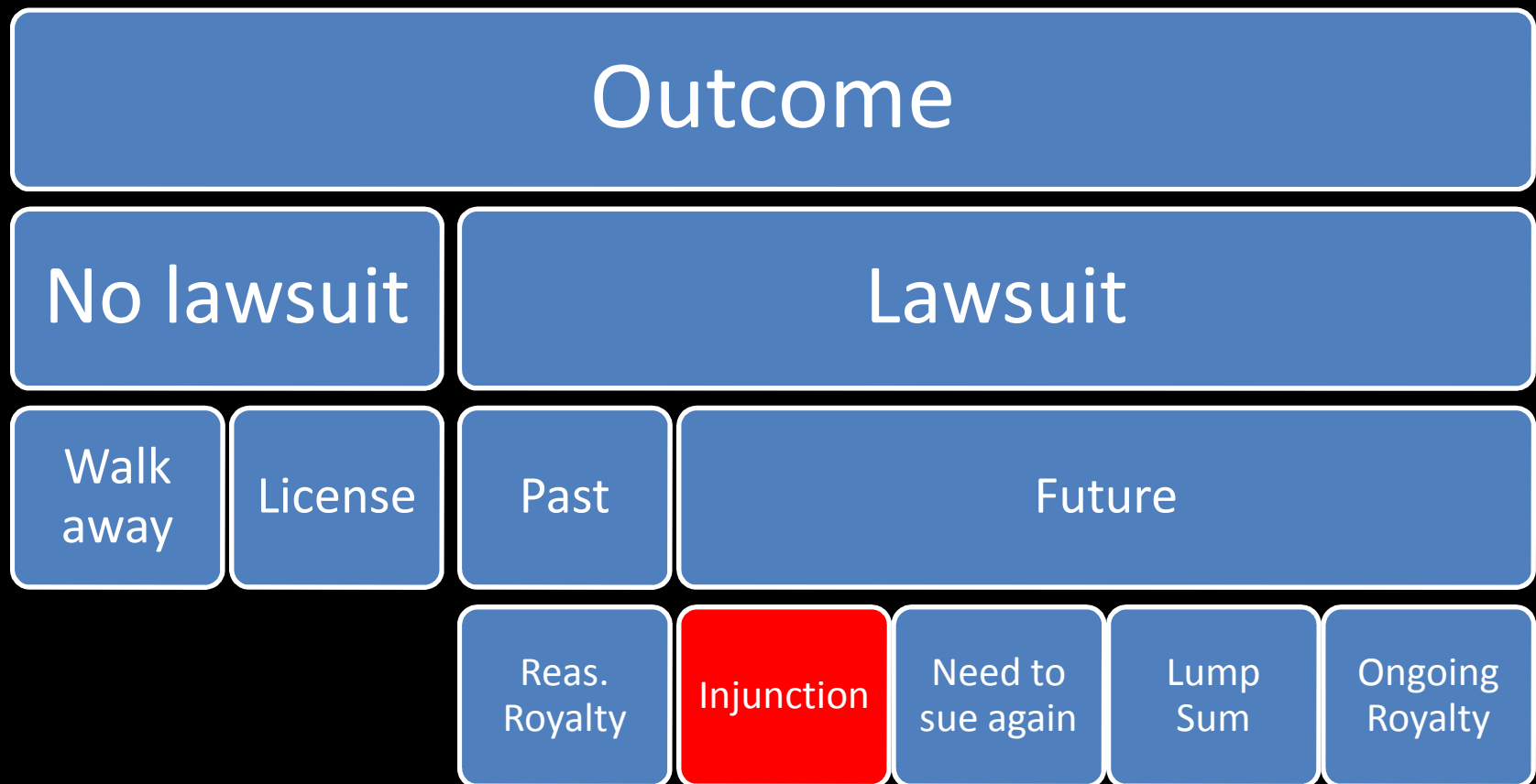
## NTP v RIM

(>600M; settlement on eve of injunction)





**3Com v Xircom (Intel subsidiary)**  
(15M with cross-license; settlement upon preliminary injunction)





**Assertion v Family Owned Bus. (true story)**  
**(Self Imposed Inj.; settlement before trial)**  
**(in lieu of Ongoing Royalty Agreement)**

Outcome

No lawsuit

Lawsuit

Walk away

License

Past

Future

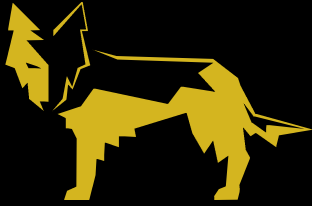
Reas. Royalty

Injunction

Need to sue again

Lump Sum

Ongoing Royalty



Paice v Toyota (\$25/\$98 of \$6500 portion of hybrid revenue)  
(Jury verdict reas. royalty; judge determination of ongoing royalty)  
-- \$98 per vehicle is 17% of 9% profit margin

## Outcome

No lawsuit

Lawsuit

Walk  
away

License

Past

Future

Reas.  
Royalty

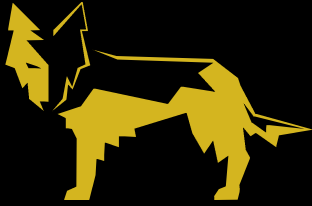
Injunction

Need to  
sue again

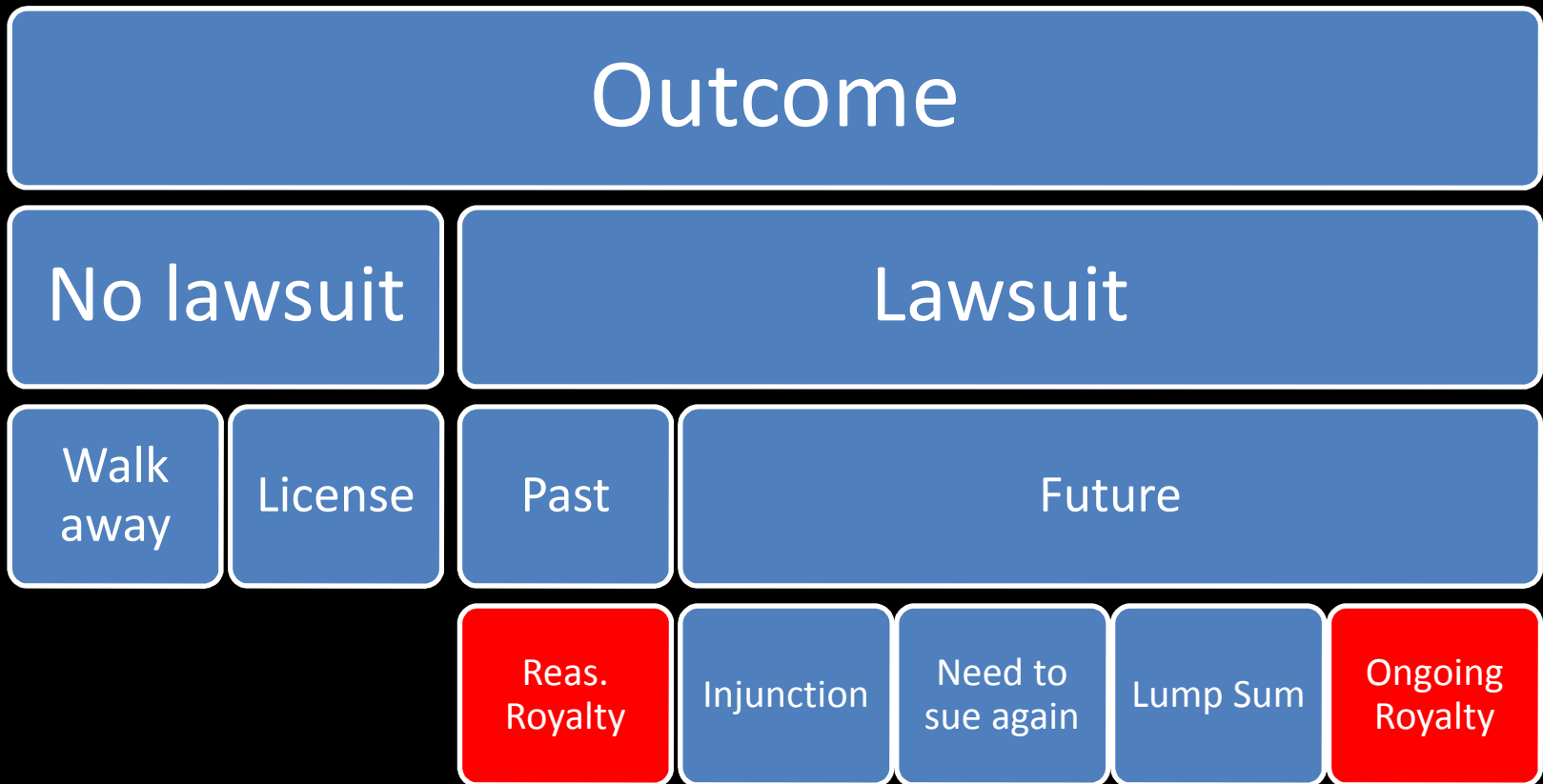
Lump Sum

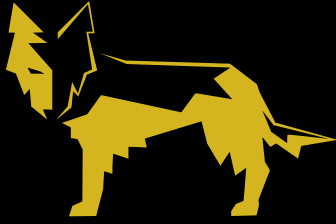
Ongoing  
Royalty





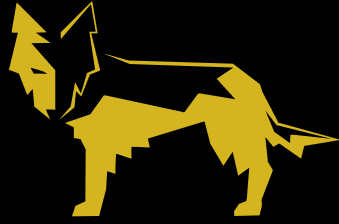
Douglas v Buyers (3.3%/6%)  
(Jury verdict reas. royalty; judge determination of ongoing royalty)  
-- case involved non-pioneering patents; percent profit big factor





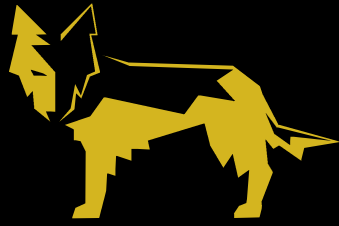
## Patent Holder's Perspective

- Do not rule out injunctive relief automatically
- Do not undervalue the effect of an ongoing royalty
- Do not use a cookie cutter approach to licensing unless you are sure it is right for your business
- You do not have to agree to terms not good for your business



## Targeted Party's Perspective

- Fight the royalty rates hard (but be careful)
- Keep in mind that lower royalties could mean an injunction or noninfringement (i.e., a de facto injunction) are options
- Do not completely ignore the percent profit factor
- Even without an injunction, ongoing royalties can be substantial



## Take Aways

- The law on injunctive relief is in flux
- The law on damages is in flux
- Negotiation decisions are still key

