

AIPLA

2019

Report of the Economic Survey

Prepared Under Direction of
Law Practice Management Committee

American Intellectual Property Law Association
1400 Crystal Drive, Suite 600
Arlington, VA 22202

www.aipla.org

TYPICAL COSTS OF LITIGATION

Survey participants were asked to provide cost estimates, *but only for the types of litigation they had personal knowledge of, either as a service provider (attorney in private practice) or as a purchaser (corporate counsel), and were engaged in relatively recently.* “Total cost” was requested, and includes outside legal and paralegal services, local counsel, associates, paralegals, travel and living expenses, fees and costs for court reporters, photocopies, courier services, exhibit preparation, analytical testing, expert witnesses, translators, surveys, jury advisors, and similar expenses. Participants were also asked to estimate based on a single IP asset (i.e., one patent at issue, one trademark, etc.).

The following table reports median litigation costs for Patent Infringement, All Varieties, Patent Infringement Pursuant to the Hatch-Waxman Act, Patent Infringement by Non-Practicing Entity, Section 337 Patent Infringement Action in the International Trade Commission, Post-Grant Proceedings by Technology – which is new this year, Trademark Infringement, Trademark Opposition/Cancellation, Copyright Infringement, and Trade Secret Misappropriation. In the previous (2017) survey, new categories (varieties) were created including initial case management; inclusive of discovery, motions, and claim construction; inclusive of pretrial, trial, post-trial, and appeal (when applicable); and the cost of mediation.

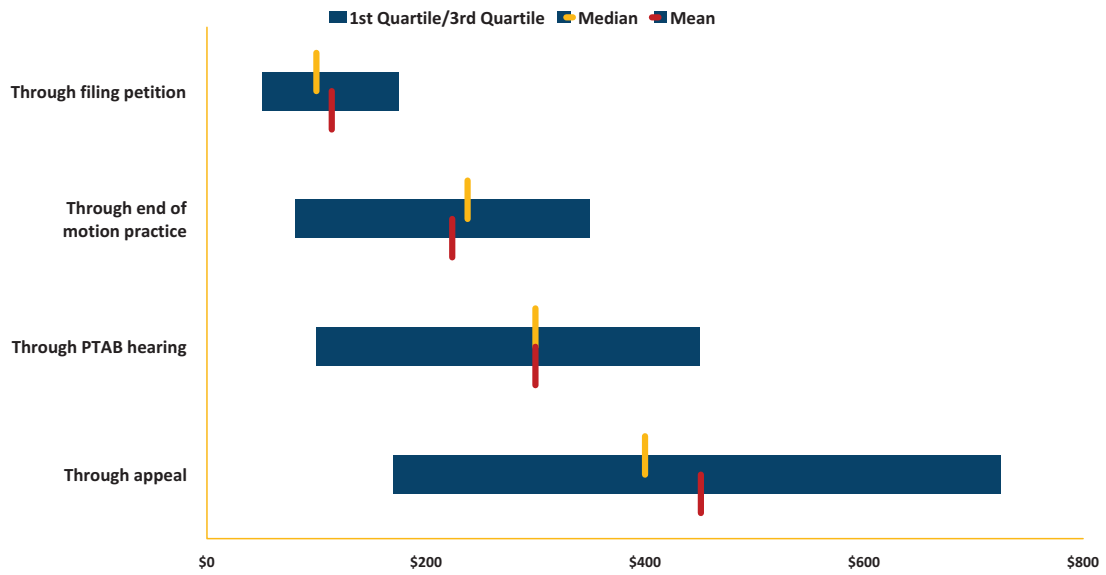
In order to facilitate temporal comparisons of litigation costs to previous surveys, and in consultation with AIPLA staff, new varieties were matched up (when possible starting in 2017) with old varieties based mainly on the variety name. For example, Inclusive of discovery, motions, and claim construction was matched up with End of discovery, and Cost of mediation was matched up with Mediation. It should be noted that these comparisons are approximate given the differences in variety names, and thus caution should be exercised when making comparisons to the historical data.

MEDIAN LITIGATION COSTS	\$000s			
	2013	2015	2017	2019
PATENT INFRINGEMENT, ALL VARIETIES				
LESS THAN \$1 MILLION AT RISK				
Initial case management	N/A	N/A	\$25	\$50
Inclusive of discovery, motions, and claim construction	\$350	\$400	\$250	\$250
Inclusive of pre and post-trial, and appeal when applicable	\$700	\$600	\$500	\$700
Cost of mediation	N/A	\$100	\$25	\$40
\$1-\$10 MILLION AT RISK				
Initial case management	N/A	N/A	\$60	\$80
Inclusive of discovery, motions, and claim construction	\$1,000	\$950	\$550	\$600
Inclusive of pre and post-trial, and appeal when applicable	\$2,000	\$2,000	\$1,000	\$1,500
Cost of mediation	N/A	\$200	\$50	\$50
\$10-\$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$100	\$150
Inclusive of discovery, motions, and claim construction	\$2,000	\$1,900	\$1,000	\$1,225
Inclusive of pre and post-trial, and appeal when applicable	\$3,325	\$3,100	\$2,000	\$2,700
Cost of mediation	N/A	\$250	\$75	\$80
MORE THAN \$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$138	\$250
Inclusive of discovery, motions, and claim construction	\$3,000	\$3,000	\$1,700	\$2,375
Inclusive of pre and post-trial, and appeal when applicable	\$5,500	\$5,000	\$3,000	\$4,000
Cost of mediation	N/A	\$300	\$100	\$100

MEDIAN LITIGATION COSTS (CONTINUED)	\$000s			
	2013	2015	2017	2019
PATENT INFRINGEMENT PURSUANT TO THE HATCH-WAXMAN ACT (I.E., "ANDA LITIGATION")				
LESS THAN \$1 MILLION AT RISK				
Initial case management	N/A	N/A	\$25	\$150
Inclusive of discovery, motions, and claim construction	\$300	\$350	\$163	\$400
Inclusive of pre and post-trial, and appeal when applicable	\$513	\$650	\$250	\$900
Cost of mediation	N/A	\$75	\$40	\$100
\$1-\$10 MILLION AT RISK				
Initial case management	N/A	N/A	\$50	\$250
Inclusive of discovery, motions, and claim construction	\$1,000	\$1,000	\$300	\$1,000
Inclusive of pre and post-trial, and appeal when applicable	\$1,800	\$1,500	\$288	\$2,500
Cost of mediation	N/A	\$200	\$68	\$100
\$10-\$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$80	\$250
Inclusive of discovery, motions, and claim construction	\$2,500	\$1,500	\$400	\$2,000
Inclusive of pre and post-trial, and appeal when applicable	\$4,000	\$3,000	\$750	\$3,500
Cost of mediation	N/A	\$200	\$65	\$150
MORE THAN \$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$100	\$400
Inclusive of discovery, motions, and claim construction	\$3,250	\$3,000	\$500	\$3,000
Inclusive of pre and post-trial, and appeal when applicable	\$6,000	\$5,000	\$1,100	\$5,000
Cost of mediation	N/A	\$175	\$125	\$150
PATENT INFRINGEMENT, DEFENDING CLAIMS OF PATENT INFRINGEMENT BY NON-PRACTICING ENTITY				
LESS THAN \$1 MILLION AT RISK				
Initial case management	N/A	N/A	\$25	\$40
Inclusive of discovery, motions, and claim construction	\$300	\$300	\$200	\$250
Inclusive of pre and post-trial, and appeal when applicable	\$600	\$500	\$500	\$750
Cost of mediation	N/A	\$100	\$25	\$45
\$1-\$10 MILLION AT RISK				
Initial case management	N/A	N/A	\$50	\$75
Inclusive of discovery, motions, and claim construction	\$750	\$570	\$500	\$750
Inclusive of pre and post-trial, and appeal when applicable	\$1,250	\$1,000	\$850	\$1,875
Cost of mediation	N/A	\$113	\$35	\$50
\$10-\$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$55	\$125
Inclusive of discovery, motions, and claim construction	\$1,500	\$1,200	\$713	\$1,500
Inclusive of pre and post-trial, and appeal when applicable	\$2,400	\$2,000	\$1,250	\$3,000
Cost of mediation	N/A	\$200	\$50	\$90
MORE THAN \$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$100	\$200
Inclusive of discovery, motions, and claim construction	\$2,500	\$2,000	\$1,100	\$2,500
Inclusive of pre and post-trial, and appeal when applicable	\$4,000	\$3,750	\$2,000	\$4,500
Cost of mediation	N/A	\$213	\$63	\$100

MEDIAN LITIGATION COSTS (CONTINUED)	\$000s			
	2013	2015	2017	2019
PATENT INFRINGEMENT, SECTION 337				
LESS THAN \$1 MILLION AT RISK				
Initial case management	N/A	N/A	\$50	\$100
Inclusive of discovery, motions, and claim construction	\$375	\$500	\$200	\$400
Inclusive of pre and post-trial, and appeal when applicable	\$550	\$750	\$250	\$750
Cost of mediation	N/A	\$100	\$30	\$50
\$1-\$10 MILLION AT RISK				
Initial case management	N/A	N/A	\$100	\$250
Inclusive of discovery, motions, and claim construction	\$750	\$1,000	\$500	\$2,000
Inclusive of pre and post-trial, and appeal when applicable	\$1,800	\$1,600	\$675	\$4,000
Cost of mediation	N/A	\$113	\$50	\$100
\$10-\$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$120	\$300
Inclusive of discovery, motions, and claim construction	\$1,500	\$2,000	\$1,000	\$4,000
Inclusive of pre and post-trial, and appeal when applicable	\$3,000	\$4,000	\$1,300	\$6,000
Cost of mediation	N/A	\$150	\$50	\$150
MORE THAN \$25 MILLION AT RISK				
Initial case management	N/A	N/A	\$275	\$500
Inclusive of discovery, motions, and claim construction	\$3,000	\$3,250	\$1,875	\$5,500
Inclusive of pre and post-trial, and appeal when applicable	\$5,000	\$5,000	\$2,000	\$8,000
Cost of mediation	N/A	\$250	\$75	\$150
POST-GRANT (WAS INTER PARTES) PROCEEDINGS				
Through filing petition <i>(Detail reported below in 2019)</i>	N/A	\$80	\$100	N/A
Through end of motion practice <i>(Detail reported below in 2019)</i>	N/A	\$200	\$200	N/A
Through PTAB hearing <i>(Detail reported below in 2019)</i>	N/A	\$275	\$250	N/A
Through appeal <i>(Detail reported below in 2019)</i>	N/A	\$350	\$350	N/A
COVERED BUSINESS METHOD (CBM) REVIEW				
Through filing petition <i>(New in 2019)</i>	N/A	N/A	N/A	\$150
Through end of motion practice <i>(New in 2019)</i>	N/A	N/A	N/A	\$325
Through PTAB hearing <i>(New in 2019)</i>	N/A	N/A	N/A	\$450
Through appeal <i>(New in 2019)</i>	N/A	N/A	N/A	\$650
PGR/IPR – ELECTRICAL/COMPUTER				
Through filing petition <i>(New in 2019)</i>	N/A	N/A	N/A	\$105
Through end of motion practice <i>(New in 2019)</i>	N/A	N/A	N/A	\$275
Through PTAB hearing <i>(New in 2019)</i>	N/A	N/A	N/A	\$325
Through appeal <i>(New in 2019)</i>	N/A	N/A	N/A	\$450
PGR/IPR - MECHANICAL				
Through filing petition <i>(New in 2019)</i>	N/A	N/A	N/A	\$100
Through end of motion practice <i>(New in 2019)</i>	N/A	N/A	N/A	\$238
Through PTAB hearing <i>(New in 2019)</i>	N/A	N/A	N/A	\$300
Through appeal <i>(New in 2019)</i>	N/A	N/A	N/A	\$400

Estimated Total Cost of Post-Grant Proceedings PGR/IPR - Mechanical (P. I-187 to I-190, Q48i-Q48iv)



	Thousands			
	Through filing petition	Through end of motion practice	Through PTAB hearing	Through appeal
1st Quartile	\$50	\$81	\$100	\$170
3rd Quartile	\$175	\$350	\$450	\$725
Median	\$100	\$238	\$300	\$400
Mean	\$114	\$224	\$300	\$451

Just over seven in 10 respondents (70.4%) say the total cost of filing a petition for post-grant proceedings (IPR, CMB or PGR) is about the same as the total cost of defending such an action. The average cost of filing is 101.3% of the cost of defending.

Total Cost Comparison of Filing a Petition for Post-Grant Proceedings (IPR, CBM or PGR) to Total Cost of Defending (P. I-191, Q48B)

