

### Introduction

At the end of the year, you are likely to receive letters from your patent firms containing one of the following sentences:

- 'Unfortunately we need to increase our fees next year.'
- 'We need to increase our fees a small amount next year in order to reflect increasing costs.'
- 'We find ourselves in a position where we need to increase our fees to meet our ongoing financial needs.'

However, you are unlikely to receive letters containing one of these sentences:

- 'We have no need to increase our fees at present.'
- 'We are healthy financially and there is no need to increase our fees.'
- 'Instead of increasing our rates, we have chosen to decrease them so that you will save money.'

It is our conviction that you should be able to negotiate the most favourable fees for your company. The objective of this newsletter is to present some arguments to strengthen your position.

### Factors that influence patent attorney fees

Patent attorney fees are influenced by many factors. Assuming an economic model of supply and demand, two extreme situations may be characterized:

- a seller's market in which the sellers (i.e. patent firms) have most influence on the price setting and are able to set prices that the market can bear;
- a buyer's market in which the buyers (i.e. companies) have most influence on the price setting and are able to set prices based on the actual cost of providing the service plus a profit margin.

Whether the patent firm market in a specific country is more a seller's market or a buyer's market is determined by many aspects, such as:


- the number of patent firms and their capacity to handle the work with respect to workload and technical specialization;
- the number of clients and the volume of their demand;
- the ability of companies to move workload from one patent firm to another;
- the ability of new patent firms to enter the market.

Apart from the supply and demand model, other factors also influence patent attorney fees.

- Providing the same patent service time after time to the same client implies efficiency improvement and thus cost reduction.
- Patent attorneys gain more experience as the years go by, and this usually implies an annual increase in hourly fees.
- Exchange rates may significantly influence the price level when the services are charged in foreign currencies.

### Engaging the right team for your cases

Before meticulously arguing about the hourly fee of an individual attorney, the composition of the team working on your cases must be carefully considered. The balance between senior and junior attorneys is of particular importance from a cost perspective. Generally speaking, senior attorneys charge higher hourly fees than junior attorneys, but are able to perform the work more efficiently and to deliver higher quality. Junior attorneys generally charge lower hourly fees, but may need guidance from senior attorneys, which is additionally charged to the client.



This means that over the years, the senior attorneys in your team will gradually need to be replaced with junior attorneys. Those new attorneys will need time to acquaint themselves with the particulars of your portfolio and to get up to speed. However, if you do not change the team, you will end up working only with the most senior and most expensive attorneys in the firm. Ideally, your team will be composed of both junior and senior attorneys, whereby the senior attorneys are educating the junior attorneys, before gradually leaving the team.

### **Price index of patent attorney fees**

Patent attorney fees usually rise over time due to inflation. The following table lists historical price indices of patent attorney fees in several countries. In most countries, only the consumer price index (CPI) is available. In some countries (e.g. the USA), the historical price index of legal services is available. In only a few countries (Japan and South Korea) is the historical price index of patent attorney services available. The table also lists estimated consumer price indices for 2011 and 2012.

The historical data is based on information published by the OECD, national statistical bureaus and central banks. The information was gathered on 7 November 2011. The estimated consumer price indices are based on IMF's World Economic Outlook of September 2011.

### **Conclusion**

The table has to be carefully applied. Your patent attorney fees will not necessarily follow the price index of legal services, neither the national consumer price index. Even the price index of patent attorney services in Japan and South Korea may not apply to your patent firm.

The historical 2010 and 2011 price indices vary widely from indices equal or lower than 0.1% in Israel, Japan and South Korea, to indices equal or higher than 5% in Brazil, India and Russia. The estimated 2012 consumer price index varies between 0.9% and 3.5% in most countries. The exception on the low side is Japan with an index of -0.5%. The exceptions on the high side are Brazil, India and Russia with estimated 2012 consumer price indices of 5% or higher.

We trust that this information will assist you in negotiating your 2012 patent attorney fees. Please do not hesitate to contact us if you need more recent information or price indices for countries not listed.

Country	Historical data				Estimated CPI (IMF WEO Sep2011)	
	2009	2010	2011 (Period)	Source, kind of index	2011	2012
Australia	1.8	2.8	3.5 (Q3)	OECD, CPI	3.5	3.3
Belgium	-0.1	2.2	3.6 (Q3)	OECD, CPI	3.2	2.0
Brazil	4.9	5.0	7.1 (Q3)	OECD, CPI	6.6	5.2
Canada	0.3	1.8	3.0 (Q3)	OECD, CPI	2.9	2.1
China	-0.7	3.3	6.3 (Q3)	OECD, CPI	5.5	3.3
Denmark	4.4	0.7	-0.2 (Q2)	Statistics Denmark, price index legal services	3.2	2.4
France	-1.8	-3.1	1.7 (Q2)	INSEE, price index legal services	2.1	1.4
Germany	0.8	0.3	0.9 (Q2)	Destatis, price index legal services	2.2	1.3
India	10.9	12.0	9.2 (Q3)	OECD, CPI	10.6	8.6
Israel	7.2	-1.4	-0.9 (Q2)	CBS, price index legal services	3.4	1.6
Italy	0.8	1.5	2.8 (Q3)	OECD, CPI	2.6	1.6
Japan	-2.1	0.1	0.1 (Q3)	BOJ, price index patent attorney services	-0.4	-0.5
Mexico	5.3	4.2	3.4 (Q3)	OECD, CPI	3.4	3.1
Netherlands	0.7	0.5	2.2 (Q2)	Statistics Netherlands, price index legal services	2.5	2.0
Russia	11.7	6.9	8.1 (Q3)	OECD, CPI	8.9	7.3
Singapore	0.6	2.8	5.5 (Q3)	Statistics Singapore, CPI	3.7	2.9
South Korea	0.4	0.0	0.0 (Q3)	BOK, price index patent attorney services	4.5	3.5
Sweden	1.9	2.1	2.6 (Q2)	SCB, price index legal services	3.0	2.5
Switzerland	-0.5	0.7	0.4 (Q3)	OECD, CPI	0.7	0.9
Taiwan	-0.9	1.0	1.3 (Q3)	DGBAS, CPI	1.8	1.8
United Kingdom	2.2	3.3	4.7 (Q3)	OECD, CPI	4.5	2.4
United States	2.7	3.6	3.2 (Q3)	BLS, price index legal services	3.0	1.2

**Note:** All figures are percentage changes relative to (the same period in) the previous year.

**Disclaimer:** This table contains public information and has been prepared solely for educational purposes to contribute to the understanding of price indices. While every attempt was made to ensure that the information in this table is accurate, errors or omissions may appear, for which any liability is disclaimed.



## Profile

*Van Merle IP Counsel Select specializes in selecting outside IP counsel.*

*We provide the following services:*

- *the selection of patent and trademark firms, patent translation agencies, prior art search firms, patent monitoring firms and annuity payment providers*
- *the selection of EPO opposition experts*
- *regular auditing of outside IP counsel*
- *contract renewal with outside IP counsel*

*We have created a global database of patent firms containing almost all countries of the world:*

- *the technical specializations of the patent firms*
- *the clients of the patent firms*

*By using this database, we can advise you precisely:*

- *which patent firms and which patent attorneys are specialized in your technologies*
- *which patent firms have been engaged by your competitors*

*We serve companies:*

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- *by selecting the most suitable IP counsel in all countries of the world*

*Our clients confirm the following advantages of working with us:*

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- *improvement of the quality of the outside counsel*
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*Van Merle IP Counsel Select has performed projects in Brazil, China, France, Germany, India, Israel, Japan, Mexico, Netherlands, Russia, Singapore, South Korea, Taiwan, United Kingdom, United States, and in many more countries.*

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