

The logo features the text "AIPLA" in a dark blue, sans-serif font, followed by a white line-art icon of a document with a bar chart on it. Below this, the year "2021" is written in a large, bold, orange font. Underneath "2021", the text "Report of the Economic Survey" is written in a smaller, dark blue, sans-serif font. The entire logo is centered within a light blue rectangular area.

AIPLA
2021
Report of the Economic Survey

Prepared Under Direction of the
American Intellectual Property Law Association
Law Practice Management Committee

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Property Law Association**
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Report of the Economic Survey 2021

Prepared Under Direction of the
American Intellectual Property Law Association
Law Practice Management Committee

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September 2021

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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 was new in 2019 and updated for the 2021 survey, Trademark Infringement, Trademark Opposition/Cancellation, Copyright Infringement, and Trade Secret Misappropriation. In 2017, 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.

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				
	2012	2014	2016	2018	2020
PATENT INFRINGEMENT, ALL VARIETIES					
LESS THAN \$1 MILLION AT RISK					
Initial case management	N/A	N/A	\$25	\$50	\$50
Inclusive of discovery, motions, and claim construction	\$350	\$400	\$250	\$250	\$300
Inclusive of pre and post-trial, and appeal when applicable	\$700	\$600	\$500	\$700	\$675
Cost of mediation	N/A	\$100	\$25	\$40	\$35
\$1-\$10 MILLION AT RISK					
Initial case management	N/A	N/A	\$60	\$80	\$75
Inclusive of discovery, motions, and claim construction	\$1,000	\$950	\$550	\$600	\$650
Inclusive of pre and post-trial, and appeal when applicable	\$2,000	\$2,000	\$1,000	\$1,500	\$1,000
Cost of mediation	N/A	\$200	\$50	\$50	\$75
\$10-\$25 MILLION AT RISK					
Initial case management	N/A	N/A	\$100	\$150	\$113
Inclusive of discovery, motions, and claim construction	\$2,000	\$1,900	\$1,000	\$1,225	\$1,000
Inclusive of pre and post-trial, and appeal when applicable	\$3,325	\$3,100	\$2,000	\$2,700	\$3,000
Cost of mediation	N/A	\$250	\$75	\$80	\$80
MORE THAN \$25 MILLION AT RISK					
Initial case management	N/A	N/A	\$138	\$250	\$250
Inclusive of discovery, motions, and claim construction	\$3,000	\$3,000	\$1,700	\$2,375	\$2,125
Inclusive of pre and post-trial, and appeal when applicable	\$5,500	\$5,000	\$3,000	\$4,000	\$4,000
Cost of mediation	N/A	\$300	\$100	\$100	\$150

MEDIAN LITIGATION COSTS (CONTINUED)		\$000s			
	2012	2014	2016	2018	2020
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	\$150
Inclusive of discovery, motions, and claim construction	\$300	\$350	\$163	\$400	\$400
Inclusive of pre and post-trial, and appeal when applicable	\$513	\$650	\$250	\$900	\$900
Cost of mediation	N/A	\$75	\$40	\$100	\$100
\$1-\$10 MILLION AT RISK					
Initial case management	N/A	N/A	\$50	\$250	\$200
Inclusive of discovery, motions, and claim construction	\$1,000	\$1,000	\$300	\$1,000	\$1,000
Inclusive of pre and post-trial, and appeal when applicable	\$1,800	\$1,500	\$288	\$2,500	\$2,500
Cost of mediation	N/A	\$200	\$68	\$100	\$100
\$10-\$25 MILLION AT RISK					
Initial case management	N/A	N/A	\$80	\$250	\$250
Inclusive of discovery, motions, and claim construction	\$2,500	\$1,500	\$400	\$2,000	\$2,000
Inclusive of pre and post-trial, and appeal when applicable	\$4,000	\$3,000	\$750	\$3,500	\$3,500
Cost of mediation	N/A	\$200	\$65	\$150	\$150
MORE THAN \$25 MILLION AT RISK					
Initial case management	N/A	N/A	\$100	\$400	\$400
Inclusive of discovery, motions, and claim construction	\$3,250	\$3,000	\$500	\$3,000	\$3,000
Inclusive of pre and post-trial, and appeal when applicable	\$6,000	\$5,000	\$1,100	\$5,000	\$5,000
Cost of mediation	N/A	\$175	\$125	\$150	\$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	\$50
Inclusive of discovery, motions, and claim construction	\$300	\$300	\$200	\$250	\$350
Inclusive of pre and post-trial, and appeal when applicable	\$600	\$500	\$500	\$750	\$725
Cost of mediation	N/A	\$100	\$25	\$45	\$50
\$1-\$10 MILLION AT RISK					
Initial case management	N/A	N/A	\$50	\$75	\$75
Inclusive of discovery, motions, and claim construction	\$750	\$570	\$500	\$750	\$500
Inclusive of pre and post-trial, and appeal when applicable	\$1,250	\$1,000	\$850	\$1,875	\$1,750
Cost of mediation	N/A	\$113	\$35	\$50	\$63
\$10-\$25 MILLION AT RISK					
Initial case management	N/A	N/A	\$55	\$125	\$100
Inclusive of discovery, motions, and claim construction	\$1,500	\$1,200	\$713	\$1,500	\$1,500
Inclusive of pre and post-trial, and appeal when applicable	\$2,400	\$2,000	\$1,250	\$3,000	\$3,000
Cost of mediation	N/A	\$200	\$50	\$90	\$75
MORE THAN \$25 MILLION AT RISK					
Initial case management	N/A	N/A	\$100	\$200	\$400
Inclusive of discovery, motions, and claim construction	\$2,500	\$2,000	\$1,100	\$2,500	\$2,500
Inclusive of pre and post-trial, and appeal when applicable	\$4,000	\$3,750	\$2,000	\$4,500	\$4,000
Cost of mediation	N/A	\$213	\$63	\$100	\$120