



FÉDÉRATION INTERNATIONALE DES CONSEILS  
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF  
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION  
VON PATENTANWÄLTEN

**Covid-19 Resources**

## **FICPI WEBINAR 6 MAY 2020** **'Delighting the client in difficult times'**

### **Session notes**

**Speakers:** Stephen Krouzecky - Australia  
Alexander Wyrwoll - Germany  
Fabrice Mattei - Asia

**Alex Wyrwoll, Germany** – FICPI is a global community, built on trusted relationships, which strengthens the practice of independent IP attorney. In the current Covid-19 crisis, FICPI is supporting the business family through this situation. The situation is sometimes difficult and at times can cause technical problems and limitations, as our moderator Ximena Castellanos of Colombia could not get into this webinar, so we will have to try and do without her valuable support at the moment.

The FICPI community is driven by a shared interest among like-minded people to promote common solutions and advocacy for private practice. We believe that the FICPI business family makes the world a little bit smaller, bringing independent IP attorneys from around the globe together to connect, share knowledge and grow.

FICPI's regular conferences, meetings and seminars are temporarily on hold as a result of the Covid-19 crisis. Therefore, our webinars, spreadsheet of key changes in IP offices, blogs and news articles, plus other initiatives, bring alternative ways to share knowledge and thought leadership and for members to contribute their own ideas and experiences.

Like everyone else in the world, FICPI and FICPI members are striving to address issues that arise as a result of the Covid-19 crisis and to support FICPI members and the IP community at large.

In an effort to do so, FICPI has created a FICPI Covid-19 Strategy Team. The team comprises experienced members from around the globe. FICPI has developed its own Covid-19 webpage, which is a dedicated area for Covid-19 related information and member resources, including a constantly updated spreadsheet of information relating to the changing deadlines and rules for IP applications and granted rights in countries and regions around the globe. You will find a link to the webpage on the FICPI website.

We are also encouraging all FICPI members to participate in conversations on the LinkedIn FICPI group pages - which are ONLY open to members of our community. The first time you visit, if you have not previously done so, you will be asked to apply to become a member. Approval will be granted very quickly!

**FICPI is a global community, built on trusted relationships,  
which strengthens the practice of the independent IP attorney.**



Following this webinar, we will have number of additional webinars discussing areas such as enhancing attorney-client relationships during the crisis and dealing with the likely changes to our practice after the crisis. Keep an eye open for announcements.

For those of you who are not yet members of FICPI, but are interested in joining, we will send you details about how to join after the webinar. As you all know, continuing to practice law in the time of Covid-19 is a challenge, while we are attempting to maintain social distance, and indeed most non-essential businesses are closed for business. And we are all balancing our attempts to work from home with family demands, and we feel isolated, stressed, and anxious about what the future will bring, both professionally and personally.

Please note that we have a Q&A feature in the webinar, so please feel free to ask questions as we go along, noting if there is a particular speaker you would like to have answer the question, and I will try to be mindful as questions arise. Questions are visible to all attendees and we will either answer live or reply by text. So let's start:

**Stephen Krouzecky, Australia** - The focus of our webinar is 'delighting the client in difficult times'. I thought I would share with you this short video of delighting the client from a Bavarian perspective, continuing with the theme from my last presentation at the Vienna Forum – and here you see people enjoying the traditional Oktoberfest Festivities at the "Wiener Wiesn" after the FICPI Open Forum last year before social distancing.

Of course, the event has been cancelled for this year. The Oktoberfest was a great mechanism used by the German attorneys, in particular, to delight their clients and generate client loyalty... and it works! I've been invited there as a client, where a firm would invite their clients along enjoy the small things such as beer and meal and the atmosphere and build client loyalty. In a Covid-19 situation we can't do that any more but attorneys are innovative and here may be one way of doing it – using some innovation in a video for the virtual world.

We're having to do things using the internet and social media and it's not so much of a toast (ein prosit) but it's a process (ein prozess). We are required to do this much more so during COVID-19 restrictions than before because we are having to look at different ways to attract the client. My point back at the Vienna Open Forum last year is still valid, though during these current times of crisis in that we are not only looking at doing the small things to delight the client and bring about happiness to achieve client loyalty but adopting a process to not only get really delighted and loyal clients, but also to focus our efforts on achieving loyalty with the right clients to bring about profitability.

In terms of ideas– small details can make the difference to differentiate you from your competitors. Different types of clients and individuals that are especially attracted to you need to be identified and targeted in a methodical way. It's an analytical process that is part of digital marketing theory and is something that the smaller firms need to embrace so that they can target the 'right' clients in different ways. Social media and digital marketing is key at the moment given that traditional methods of accessing new clients by way of conferences and seminars is not available at the moment. Building respect and trust with your clients is important and how to handle exploitation. We see mental health as a problem at the moment



and are concerned that there is an uptake in exploitation of good attorneys not only by clients, but by competitors. Google AdWords can be exploited to channel work intended to companies and individuals away from them – my name or my firm’s name, for example, can be linked to a competitor’s Google AdWords and their website can be pitched to a searcher and listed as an alternative along my website to the searcher.

Where we are now is where I believed we were on track to be anyway using technology and digital marketing using the Internet as the main form of attracting clients as I outlined in Vienna but we have got there earlier due to the pandemic.

As best practice for building client loyalty, I was brought up with the maxim of ‘the client is always right’ and I want to get a view from the audience as to whether you agree – our poll shows: 58% say it depends; 25% yes; 17% no.

My take on this is that it depends ... on whether it’s your ideal client or not. If it’s your ideal client, they are likely to always be right. If it’s not your ideal client then you need to treat them as not necessarily being right, otherwise you could be in for a torrid time as they may not convert into sales. Convertibility to sales often gets left out – we need to make sure we make a profit out of clients as we are in business to be profitable, after all. We need to focus on retaining the right clients and repelling the wrong clients.

In terms of the small details – Ximena referred me to a fantastic book called ‘*It’s the Small Things*’ – it’s packed with ideas on how to delight the client. It’s a good read for a professional and gives you a good understanding of servicing and keeping clients. Innovation is the key – keep innovating on how you deal with clients in an incremental, continuous way, for the benefit of your client. [\[Click here for the link\]](#)

For FICPI members, we’re still professionals adhering to a code of conduct and that’s what distinguishes us from other businesses in the field. I see some borderline ethical behaviours on getting business from non-FICPI members. But high quality and ethics is what distinguishes us from the rest and this is something that we need to instil in our younger professionals coming into practice.

We are all individuals and have our individual differences and so do our clients. A digital marketer will tell you that the strategy you need to adopt will change according to who you are and you your ideal client is. You may need to go through a process of client segmentation, building up client personas/avatars, surveying existing clients to find out who are the ideal clients, why they came to you and what attracts them to you. Varying personality types and generational features also have an impact and we need to educate ourselves to understand this as part of our attorney toolkit.

Regarding generations, we’re edging towards having five generations in the workforce at the same time, for the first time in history. We’re in a uniquely new phase. The generations may differ in their effectiveness in the workplace in areas such as tech-savviness, adaptability, collaboration, relationship building and executive presence.



Poll on make-up of our audience today:

- Baby boomers – 24%
- Gen X – 67%
- Millennials – 7%
- Traditionalists – 2%
- Gen Z – 0%

Building respect and trust –

- Don't presume loyalty
- Bad clients are lost because of price, good customers are lost because of bad service.
- Deliver on promises, otherwise don't promise
- Clients expect clarity, simplicity and solutions – not excuses
- Small, unexpected things that surprise - WOW

Differentiating you in the marketplace – it's price alone you have a problem! It will be a race to the bottom and you won't have client loyalty for long.

Handling exploitation -

Essential skills for an attorney these days must include interpersonal management skills, emotional intelligence, - they can be acquired, they're not necessarily something that's intrinsic. Youngsters coming through may be more naturally adept at these skills.

The future – Covid-19 is the biggest disruptor in history, but in my view it's made us move quicker down the path we were on anyway such as more home working and more use of digital and virtual, more personal. It is a real leveller of the playing field between large and small firms.

**Q: do you have any data on the impact of Covid-19?**

**Fabrice Mattei, Asia** - This crisis is so unique in many respects that IP litigation and trade mark are more likely to be impacted than patents in the short term,.

**Alex Wyrwoll, Germany** – currently in Germany we think there may be a 2.4-2.6% downturn in the general business but there are also voices who say it will be 25-30% downturn. Our view is that if we see that there is a downturn in general business, it may be different in the specialised IP sector, as we have seen this before in other crises that the patent and trade mark applications in those times were going up.

**Stephen Krouzecky, Australia** – From my perspective with the lockdown in a country such as Australia, where our manufacturing went offshore, our profession has really changed. That manufacturing is now being incentivised to come back to our country and that is good for our profession. In the past in recessionary times people tend to be very innovative – the challenge is how you access those clients. It's your social media and virtual presence that's the



challenge. If a client does get to me, there's no shadow of doubt that quality comes through. It's only short term that a client would jump to someone else to get a better service and if you're charging a low price you'll have problems servicing them

**Q – if there is only one thing you can do in the current situation what would you consider to be a priority?**

**Stephen Krouzecky, Australia** – I'm certainly trying to be more social and to get on LinkedIn – our competitors are accountants and lawyers who aren't necessarily advocating IP protection, entrepreneurs who want to get products to market – we need to be switching into those channels. We need to move from more the academic side of what we're doing to more the entrepreneurial and commercial side.

**Fabrice Mattei, Asia** – thank you for attending this webinar. I'm talking about value pricing in this session and value-based fees. This is a value and pricing strategy we started to implement three years ago, mainly with Asian and US clients and now we have enough data to reflect on this strategy.

### **Defining the context**

Most law firms bill their clients for activities (e.g. filing, late filing of documents, amendment, publication etc) they undertake. As intellectual property professionals, how should we react to the over-commoditization, over-simplification and over-discounting of legal services? Those externalities gradually diminish the importance and value of legal guidance, impact the future of our profession and direction in business affairs.

Some solutions implemented by IP firms consist in moving the 'commodity' work to offices in countries with lower overheads. However, what's the long-term impact of 'outsourcing' IP prosecution work to lower operating cost countries on IP professionals in higher cost operating countries? Alternative fee discussions have changed the way we work (e.g. fixed fees, increasing role of paralegals in prosecuting IPRs) but has the way we structure fees really changed? Do we enough highlight the elements of value, responsibility and accountability when we discuss discounts with our clients? Or do we simply tend to agree a % discount on fees to get/keep the work?

### **Question to ask ourselves**

Whether the time has come for IP professionals to ensure that clients pay for their services based on the value created to their business? The concept of charging clients for value is an age-old custom adopted in most competitive service industries. In the case of most patent and trade mark applications, we can say that value is generally achieved when a right is granted within a time frame that is aligned to the clients commercial and/or enforcement needs.



### **Value-pricing fees**

Value pricing means the attorney fee is based on the value the attorney is providing, or will provide, to his/her client by concentrating on outcomes and results rather than inputs, activities and time. It means the value of what the attorneys provide is determined by their clients' perception of value, not theirs. Not all fixed fees are value based and not all value-based fees are fixed.

### **Mindset changing**

Value-based pricing requires a change in mindset. It is not simply a billing model change. Looking at the value a lawyer creates for their client – but from their clients' perspective, not their own. The first thing a firm needs to do is to have a value conversation with the client. What clients see as important and valuable, what they are trying to achieve, when.

### **Some challenges**

- Determining a value is difficult – firms do not necessarily recognize where the value is, how much value they create;
- Revenue impact (lower up-front fees);
- Risk of losing team members within the firm who prefer the traditional way of working and billing based on activity;
- Time to deliver outcomes in some countries (e.g. long pendency of patent applications in Indonesia);
- How to work with foreign associates who don't apply value fees system.

### **Benefits**

- Matching value with expectations at the start of a relationship with every client;
- Fewer price disputes if value is well understood and agreed;
- Attracting and retaining staff that likes working in a timeless environment, focusing on achievements;
- Better client relationships (and the client not worrying about the clock);
- Lower administration costs (less frequency of invoices);
- A better focus on value and delivery;
- Competitive differentiation in the marketplace for the IP firm;
- Better team relations focusing on achievement rather than individual performance;
- Better assessment of team performance;
- Focusing on more innovative solutions with a client;
- Clients pay bills faster.

### **Activity based fees principle**

- Fees are calculated based on activities (e.g. filing, publication, amendment, registration);
- High upfront filing fees, regardless of what are the chances of success of the patent or mark for which registration is sought;



- Filing Fees (FF) + Publication Fees (PF) > Registration Fees (RF)
- Piecemeal fees and invoices based on activities (e.g. late filing of documents etc) result in multiple invoices, many of them of a small amount;
- On average, 8-10 invoices are issued covering the following activities:
  - Filing
  - Translation
  - Late filing of documents
  - Office action, formality examination
  - Office action, substantive examination
  - Disclaimer request, amendments
  - Publication fees
  - Registration fees
  - Maintenance
    - Time consumption in issuing and processing invoices;
    - Tracing the total amount of fees spent on an application is difficult due to the number of invoices

**Value based fees principle**

- Value Fees reflect the created value to the client’s business;
- Value fees are not success or contingent fees;
- Value fees can be fixed or hourly fees, or a mixture;
- The equation of Value Fees is : Filing Fees + Publication Fees < Registration Fees
- The Value Fees mostly apply to procedural steps or activities but not to drafting a patent for example.
- Value Fees may be invoiced at three phases only reducing the number of invoices, for example:

<i>Steps</i>	<i>Value achieved</i>	<i>Invoices</i>	<i>Value scoring</i>
<b><i>Full completion of filing of an application</i></b>	Priority date is firmly established	✓	**
<b><i>Publication of a patent &amp; request for examination</i></b>	Pre-issuance damages. In a number of countries, damages begin accruing after publication of a pending application which issues with substantially similar claims.	✓	***
<b><i>Registration &amp; maintenance</i></b>	Patent is enforceable, remedies (civil and/or criminal) are available, ease the commercialization of the patented product/process.	✓	*****



- Value Fees can use patent and trade mark prosecution predictability (data collected from TM/Patent Offices allowing to ‘predict’ the likelihood of registration of a patent/trade mark, data collected from the patent prosecution/examination report (e.g. PCT))

### **Ecosystem**

Value fees should not only reflect the value given to client but also the value to the ecosystem within which IPRs evolve.

As part of that ecosystem, the impact of the protection and enforcement of IPRs on climate change is critical to assess, especially since the adoption of the Paris Agreement on Climate Change in 2016. Calculating the greenhouse gas emissions (GHG) incurred in protecting and enforcing IPRs make it now possible for IP owners to assess, reduce and offset those emissions in order to achieve IP Carbon emissions neutrality, giving full sense to the term “Value” of IP services. CLIPMATE is the world’s first calculator of carbon emissions of IPRs. It was first unveiled at the French Parliament on March 25, 2019 and featured at the EUSEW week conference organized by the DG Energy of the European Commission. The video link below explains how it works.

<https://www.youtube.com/watch?v=Dyk7J7URXwA>

**Alex Wyrwoll, Germany** – We still have to demonstrate the personal connection to the client, and to help them on the daily tasks to keep this personal connection and to set up webinars to focus on the necessary education if things change in the legal space, we do brainstorming and working meetings and discuss strategy. We have webinars and video calls but it can be harder for people who are more used to the body language and nuances which we see more clearly in-person. Covid-19 has made it more difficult to react to this.

What we have experienced is that if you want to ‘meet’ the client it may be harder now – for example a CEO may just drop by an in-person meeting but that’s more difficult now. We might need to ask his secretary to arrange a quick phone call for us up front to avoid technical difficulties or at least the negative impacts of those difficulties.

### **Q – have you good ideas on how to cope with rebuttal to discounts?**

**Fabrice Mattei, Asia** – with the value-based fees we don’t get into discount discussions anymore, it’s a completely different mindset. Clients understand better where is the value of our work and don’t wish to compromise the value through discounts. Firms may also consider having two fees structures, Value Fees and Activity Fees, and select either one based on clients’ needs and long term visions.

**Stephen Krouzecky, Australia** – I was using discounting as a tool to get cashflow. I was offering a 10% discount if clients paid within 14 days but for some client that didn’t work and others who didn’t pay on time but still wanted the discount. So, I decided to stop discounting completely as I was just losing 10% of income going into a lockdown phase and now looking



to the future, I'm looking at how we will work in this market after the lockdown and opening up. A lot of my clients can't necessarily get my quality service from a competitor unless they're prepared to pay a lot more as I have worked at lowering my overheads. I also tend to have very loyal clients, but not necessarily very profitable ones, so that is my challenge.

**Q – loyalty is one thing but some clients like to move firm frequently.**

**Fabrice Mattei, Asia** – we have experienced this situation and also some staying with us but abandoning their patent or trade mark midway through so we then can't really charge. Once you start a discussion on value you are able to identify which prospects will be value-based clients – you can choose not to work with them. After a period of working using value-based fees you will soon be able to identify the value of your clients.

### How to join FICPI

Go to the website [www.ficpi.org](http://www.ficpi.org) where you can see many national sections and you can contact them directly and join that way

Otherwise – can apply direct to [secretariat@ficpi.org](mailto:secretariat@ficpi.org) and we will contact you and provide you with more information.

Covid-19 spreadsheet: <https://ficpi.org/covid-19-resources>

Covid-19 resources on FICPI site: <https://ficpi.org/covid-19-resources/covid-19-updated-deadlines-and-rules-of-ip-rights> (including links to upcoming and past webinars)