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[Everything's Negotiable: How Corporations Can Drastically Reduce Their IP Legal Costs without Sacrificing IP Quality](#)

Corporate legal managers and the business teams they support complain seemingly constantly about outside counsel expense, and intellectual property ("IP") is no exception. And, why wouldn't they complain when every dollar spent on legal representation is money that is effectively removed from the company's P&L statement? This sets up an ongoing tension between corporations and law firms to reduce legal costs even while lawyers' incomes have sky-rocketed in recent years.

For most corporate buyers of legal services, however, the ability to obtain substantive cost reduction has been somewhat limited due to the lack of transparent information available about legal fees. It may be even more difficult for corporate legal services buyers to gain meaningful reductions in IP costs because of the highly specialized nature of this area of law practice which, arguably, makes IP more of a "Black Box" than most areas. Moreover, regardless of the type of law involved, clients just don't talk about what they pay for lawyers because of the confidential nature of the details underlying such information. In any event, even if they could share such information with their peers, the highly subjective nature of legal representation--IP or otherwise--would make cost comparisons between clients not particularly meaningful.

IP law firms have benefited markedly from the lack of pricing transparency. This effectively allows IP lawyers to set the baseline for negotiation on legal fees. If a lawyer

thinks the market rate for her services are \$500 an hour (and that's what her peers are charging), any discounts or reductions take place from this starting point. In this context, a 10% discount would seem like a "win" for the client, irrespective of the actual business value of the work being done by the lawyer. In fact, value rarely comes enters the conversation between a lawyer and her client.

One must wonder why IP law firms have managed to exercise such pricing power in a world where "everything is negotiable." My opinion is that lawyers have been able to perennially convince clients that price equates with value obtained. And, to validate this ostensible value, a client could look at the opulent downtown offices occupied by his lawyers, as no "cheap" lawyers would reside in such an expensive location. Corporate clients have also seemingly relied on a "wisdom of crowds" theory of IP lawyer value. That is, a law firm wouldn't have so many prestigious clients unless they were good, right?

It is my belief that corporate legal buyers have not pushed IP law firms hard on pricing because it has been too hard to have a conversation about value conferred in the "Black Box" world of IP legal representation. In the business world, if you can't measure it, you can't manage it and IP legal service buyers can neither objectively measure price nor value aspects of IP legal representation. As a result, corporate IP legal service buyers have failed to develop methods to effectively manage legal costs while still maintaining IP quality, a fact which has been to the great advantage of IP lawyers and law firms.

This is starting to change, however. The current economic environment has made it increasingly untenable for corporations to continue business as usual in regard to how they deal with their IP lawyers. Indeed, a friend of mine who is Chief IP Counsel at a multi-national technology company puts it this way:

I don't care about marble and mahogany. My IP lawyers are welcome to have it, but I won't pay for it. Moreover, I am drastically cutting now in my department but still expected to maximize the value of my company's IP, and I expect my IP lawyers to do the same. Yes, it will hurt our law firms to get less money from my company, but those law firms that walk through this dark valley with me will get my company's enduring loyalty when things ultimately improve. But, if my lawyers don't sacrifice with me, I will drop them, and I will do so no matter how long they have been doing my company's legal work.

Another friend of mine, who recently took a job as Chief IP Counsel at a mid-sized chemical company, just put out her company's patent work for competitive bid. She said that

never before in her 15 years of corporate legal practice had she seen IP firms more willing to negotiate on price and she was surprised at some of the concessions that were made on price without her asking. Moreover, once she obtained the first round of bids, she went back and asked them to cut again, pitting these law firms against each other on price. Notably, the law firms seeking her work did not push back, presumably because they were willing to do almost anything to get her company's work. At the end of the process, my friend stated that she gave the work to those law firms that she had previous relationships with while at another company, but she was nonetheless able to obtain these same lawyers at a deep discount over what she had paid just last year.

I will note that the firms who got my friend's work are known to be the best and brightest IP law firms in the Southeastern US. These firms were competitors of mine when I was a law firm partner and I purchased their services when I was a senior in-house IP counsel at a major US corporation. These firms did not offer such discounts in the past and, if someone dared to asked for such a deep reduction in costs, no doubt would they likely politely "be shown the door." Times have certainly changed.

Interestingly, however, my Chief IP Counsel friend indicated that her "legacy" firms (that is, those firms that had done her company's work for many years prior to her joining the chemical company) did not come to her and offer her discounts in order to keep the business. Her belief is that they enjoyed "milking" her company for fees and saw no reason to proactively reduce the fees they charged her company, even when they found out she was bidding out the work. This comports with what I saw as an in-house IP lawyer: several prestigious firms apparently historically saw my company as a "cash cow" and charged outrageous fees for legal work of dubious quality as long as no one complained.

These anecdotes should demonstrate to corporate buyers of IP legal services that your current law firms are likely not going to proactively offer your company a discount, even when it would be the right thing to do to help you address the budget pressures you are feeling even while your business teams are placing increasing focus on IP as a corporate asset. And, why should they--does your business proactively lower the costs of products when there is no competitive reason to do so? But, as my Chief IP Counsel friend's competitive bidding experience indicates, and as I can confirm from my in-house experience, most corporate IP legal service buyers should assume that they can save considerable outside IP counsel expense by sending their work out for competitive bid.

Unfortunately, corporate legal managers must themselves be proactive in order to get "the right price" for IP legal counsel, where the right price is what the law firm is willing to charge other corporations for similar legal services that presumably also provide comparable overall business value. (This sort of makes IP legal service pricing seem a bit like air travel-- the guy next to you may have paid \$100's less than you to fly to the same place.) Moreover, one should not feel reticent about "firing" a long-standing IP law firm if the law firm is not willing to sacrifice some of its income to, as my other Chief IP Counsel friend says "to walk with [you] through this dark valley." Loyalty should be a two-way street.

Law firms should acknowledge that their clients can no longer justify paying for IP legal services without also understanding and justifying the business value obtained. As such, law firms must decide whether they can stand to lose a long term client's business forever if they do not move proactively today to demonstrate the specific value they bring to their clients. Law firms must also be willing to modify their pricing structures to provide measurable relief in this time of economic uncertainty. Moreover, law firms must recognize that their competitors are actively seeking their clients and even the most prestigious firms are willing to provide innovative pricing and practice models to gain business (more on this in a subsequent blog post). It is also worth adding that once a client leaves a law firm because of price, chances are that the client will never come back. A bit of proactive "sacrifice" today may provide immeasurable long term benefit by demonstrating to corporate clients that their loyalty is well-deserved.