



Going to court for an IP dispute



How to reduce the costs of going to court for an IP dispute

This factsheet is for people and businesses going to court over intellectual property (IP) disputes relating to registered IP rights, namely patents, trade marks, designs and plant breeder's rights.

There are ways to minimise the cost of going to court over an IP dispute. This factsheet includes tips on engaging a lawyer, and possible questions and options to discuss with your lawyer.

This factsheet provides general information only and is not legal advice. Your individual circumstances may vary and you should seek informed legal advice.

Engaging a lawyer

You should speak to a lawyer about the possible outcomes and risks of participating in court proceedings. A lawyer with experience in resolving IP disputes can help you navigate these complex cases.

Before you see a lawyer, it can be beneficial to ensure you have gathered all relevant information and evidence relating to your IP dispute. This may save time and money during the early stages by expediting the process and minimising the need for excess meetings.

You can find more information on our website here: [‘Get professional assistance with your IP’](#).

How much will it cost?

The cost of going to court can vary significantly depending on a range of factors. These include the complexity of the case, the duration of the proceedings, and the legal representation you engage.

A lawyer should provide you with a written estimate of costs and fees for the legal services to be provided, based on your specific circumstances.*

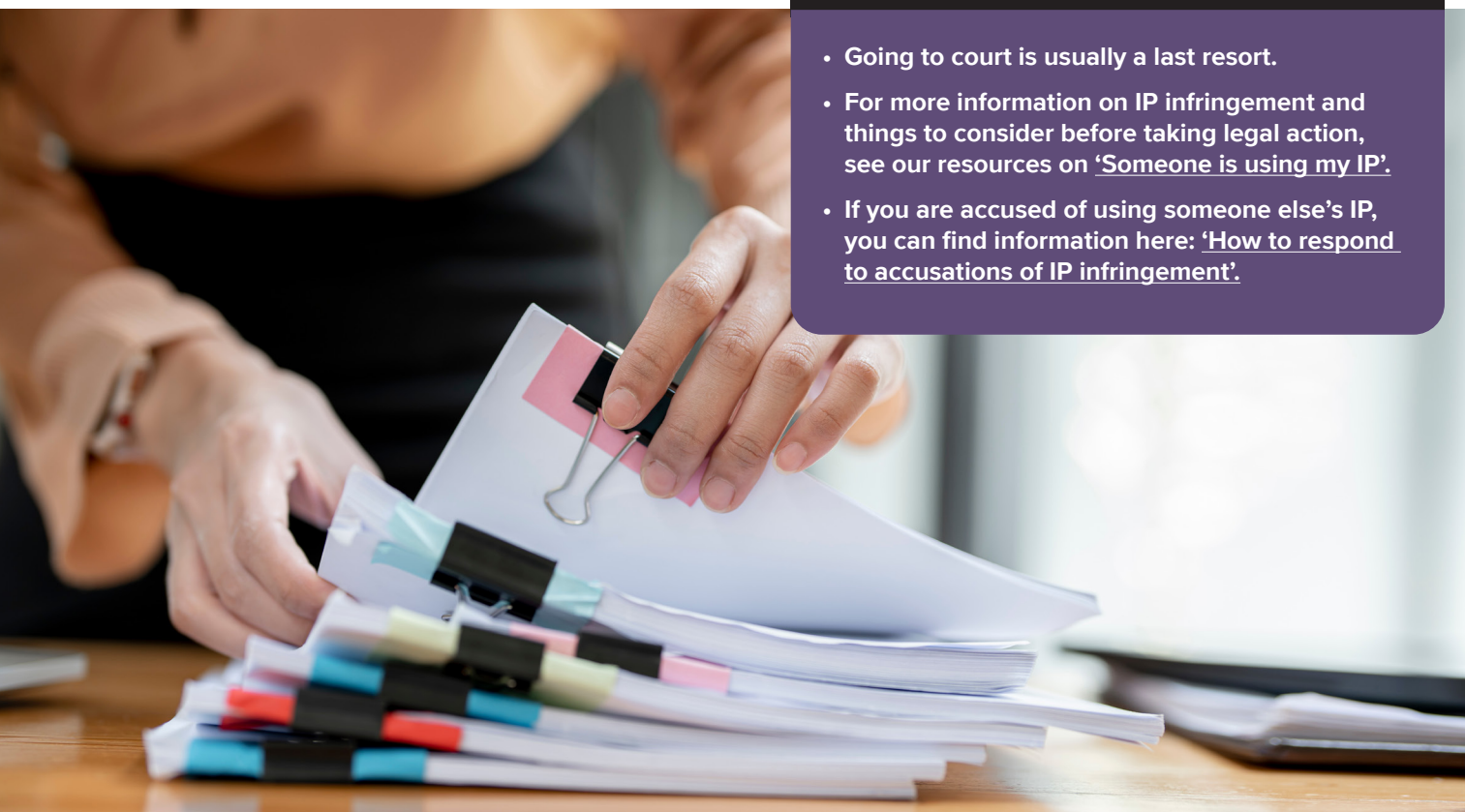
You can find general information on costs and fees associated with court proceedings in the Federal Court on their website under the [‘Forms & Fees’](#) section.

*In New South Wales, Victoria and Western Australia it is mandatory for legal service providers to provide a written costs estimate for legal costs likely to exceed \$750. A written costs estimate is required in Queensland, South Australia, Tasmania, Australian Capital Territory and Northern Territory for legal costs that exceed or are likely to exceed \$1,500.



Before going to court

- Going to court is usually a last resort.
- For more information on IP infringement and things to consider before taking legal action, see our resources on [‘Someone is using my IP’](#).
- If you are accused of using someone else's IP, you can find information here: [‘How to respond to accusations of IP infringement’](#).





Questions you might ask your lawyer

Here are some questions you could ask your lawyer about ways to minimise the cost of going to court over an IP dispute.

- What is your estimated fee and what does it cover?
- What other charges might I have to pay?
- How will my costs be impacted if I am successful in the proceedings?
- What if I am unsuccessful?
- How can we make the process as efficient and cost effective as possible?
- Do all of these issues need to be resolved through a hearing?
- Are there some sub-issues which could be resolved in other ways?
- Should I explore alternative dispute resolution options?



Before going to court

If legal action becomes necessary, it is important to be prepared, consider all options and understand the potential outcomes. Professional legal assistance can help you navigate the court process, but it is important to ensure you understand the potential costs involved and ask the right questions to make informed decisions.

Remember: This is general information only and is not provided as legal advice. Your individual circumstances may vary and you should seek informed advice from a lawyer.



Some options to consider

You might want to discuss with your lawyer whether any of these could be useful for you.

Alternative dispute resolution ('ADR')

At any time in the proceedings, it is possible to seek from the court orders to attempt to resolve matters in dispute through mediation. This may assist you to reach a faster conclusion or settle some of the core disputes in the matter, outside of the court proceedings.

Resolving sub-issues

It is important for parties involved in an IP dispute to have a clear understanding between each other on what key issues are in dispute and what issues or matters there can be a common agreement on. This can include matters relating to evidence, which may save time and money.

Limit costs through cost capping

Early in the proceedings, it is possible to limit the costs that can be ordered at the conclusion of the proceedings. This is known as 'cost capping' and may reduce the costs payable by the unsuccessful party.

Put limits on evidence

During the early stages of a proceeding, it is possible to seek orders from the court that limit:

- the number of witnesses that can give evidence
- the number of documents that can be relied on as evidence
- the length of written submissions and time allocated for verbal submissions.

For patents, seeking re-examination to resolve disputes concerning validity.

It is possible for the court to refer a matter back to the Commissioner of Patents to re-examine the specification of the patent, which may save time and money.



For more information visit our website
[ipaaustralia.gov.au/manage-my-ip/
someone-is-using-my-ip/escalate-to-court](http://ipaaustralia.gov.au/manage-my-ip/someone-is-using-my-ip/escalate-to-court)
or give us a call on 1300 65 10 10
(Monday – Friday 9am-5pm AEST)

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