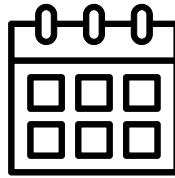
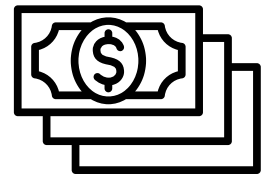




**Longest time before
reported claim: 14 years**



Average 47 claims per year



\$90,500 average cost
per claim**

RISK MANAGEMENT TIPS



Ask for, and make sure you receive receipt of correspondence

When sending correspondence to others, especially foreign agents, ask them to confirm receipt of that correspondence. If you don't receive confirmation within a reasonable time, follow up to ensure the correspondence was received.



Review delegated work

To run an efficient and profitable IP practice you probably delegate appropriate work to a clerk. Remember that as the lawyer you are ultimately responsible for the work of a clerk, so take care to review delegated work, especially if there is something unusual involved with the matter.



Check and double-check dates

Date related errors are one of the most common causes of claims in IP law. Encourage lawyers and staff to double-check that correct dates are entered on all documents and diary systems.



Carefully document instructions, advice and steps taken

Taking detailed notes and documenting client conversations can minimize misunderstandings and help give clients reasonable expectations, which in turn can help avoid fee disputes.



Don't leave things to the last minute

Get in the habit of making payments and completing filings well before actual deadlines. In the event there is an unexpected problem, the extra time will allow you to take corrective action before the deadline has passed. Document your advice to clients about the need for timely instructions.



Don't give advice on foreign law

Remember that the LAWPRO policy provides protection for claims that are the result of your "professional services" for others involving the practice of the law of Canada, its provinces and territories. What will or will not be covered can be very fact-specific, but you should expect you are not covered for work involving non-Canadian law. If your client requires assistance from a foreign agent consider having your clients retain foreign agents directly. Being the conduit for communications with foreign agents increases your exposure to a claim.

COMMON MALPRACTICE ERRORS

Clerical and delegation - 29%

- Fees not paid (e.g. missing specific fee, payment not included, or wrong amount paid).
- Mistakes made when completing application or other document (e.g. wrong/missing dates, incorrect/missing information, pages missing or wrong pages included).

Time management - 25%

- Wrong date entered in tickler system.
- Deadline not entered in tickler system.
- Failure to respond to tickled date.
- Not knowing a deadline.

Communication - 23%

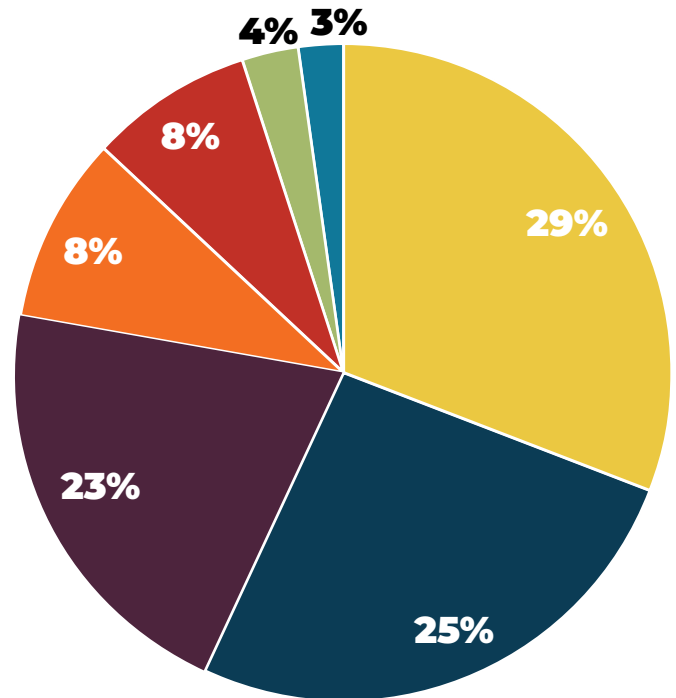
- Not responding to incoming communication (e.g. notices from CIPO, letters or emails from foreign agents).
- Miscommunications or misunderstandings with foreign agents (e.g. filing deadlines, insufficient information).
- Lost or undelivered communications (e.g. faxes, emails, courier packages or electronic filings).
- Confusion as to when retainer terminated and who is responsible for payment of maintenance fee.
- Action not taken when document sent without covering letter (e.g. filing of documents, cheque sent for payment).

Errors of law - 8%

- Failure to appreciate when actions taken in one country impact on rights in another country (e.g. filings elsewhere impact on priorities) or when law in another jurisdiction changes.
- Alleged error or insufficiency in drafting application.
- Improper advice on infringement.

Inadequate investigation - 8%

- Error in or insufficient search.
- Not getting enough information to recognize if large or small entity.



Other - 4%

Conflict of interest - 3%

- Acting on a patent application for same or similar products for different clients.
- Using confidential information for benefit of another client.
- Taking opposite position in subsequent matter for a different client.

Visit practicepro.ca for resources including LAWPRO Magazine articles, checklists, precedents, practice aids and more

We can provide knowledgeable speakers who can address claims prevention topics.

Email practicepro@lawpro.ca

*All claim figures from 2012-2022. All cost figures are incurred costs as of April 2023

**Excludes the 87% of IP claims closed with no cost