

## Compensation for a Patent Attorney Error

The plaintiff in this case obtained the rights to an invention while it was in the process of its patent application. Unfortunately, the patent attorney who had filed the application in Japan forgot to pay the examination fees at the Japan Patent Office and the application was cancelled and the path to secure the patent in Japan was permanently blocked.

The plaintiff retained KLO to sue the patent attorney for the profits that the plaintiff could have made had the patent application been successful. This claim raised some challenging issues: whether the invention would have been successfully patented had the examination fees been paid, and how much profit might the invention have generated if it had been successfully patented?

We located and submitted expert opinions to establish these two points. The bulk of our efforts went into substantiating our expert's calculations as to the potential lost profits. We collected evidence from other countries in which the same invention had been patented successfully, and in which subsequent profits had been generated from those successful patents. Based on the sales of relevant products in other countries, the experts convincingly calculated the plaintiff's lost profits by predicting sales and profits in Japan, taking into account factors such as the population ratios between countries.

With the effort of this evidence, we were able to win a settlement substantially more fair than the amount for which the patent attorney had originally admitted responsibility.