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Navigating through Economic Storms: Make your IP department ready for a recession

Crafting balanced and effective IP cost reduction strategies to ensure a downturn does not derail your business or compromise your long-term competitive edge, while meeting cost targets.

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In light of increasing economic uncertainty and fluctuating financial markets, businesses are once again bracing for impact and looking for ways to trim costs. Throughout 2023, we have had discussions with multiple Heads of Intellectual Property (IP) from leading global corporations and medium-sized enterprises. A recurring theme emerged: IP departments are expected to contribute to cost reductions.

These cost cuts, while they might help in the short-term, can create long-term damage if done too quickly and without careful thought. IP management holds a pivotal role, especially during challenging times. It should be viewed not merely as an area of expense, but as a strategic investment that drives value and competitive advantage.

Instead of knee-jerk cost cutting decisions, companies should encourage their Heads of IP to take a thoughtful approach. By getting rid of waste, focusing on areas with high potential, and using lean and effective methods, companies can make sure they get through the downturn and are ready to bounce back stronger, with a strong, value-creating IP portfolio.

Moreover, the current cost-cutting scenario is unfolding against a backdrop markedly different from the last downturn. The introduction of new technologies, evolving regulatory landscapes, and increased global competition has shifted the IP management playing field. Therefore, adopting an informed, strategic, and flexible cost-cutting approach is essential to avoid devaluing the corporate IP portfolio or exposing the business to undue risk.

In this article, we will discuss why IP cost-cutting should not be a rushed job, how to put a strategic and value-focused view into IP cost management, and good ways for IP leaders to start this work. We outline how to approach IP cost saving in 5 areas that are designed to get quick results in IP cost savings without hurting the long-term goals of the business.

This is the 2nd edition of the article 'Maintaining business continuity while reining in IP costs', first published in April 2020.

Exhibit 1

IP cost saving areas

o. IP cost structure

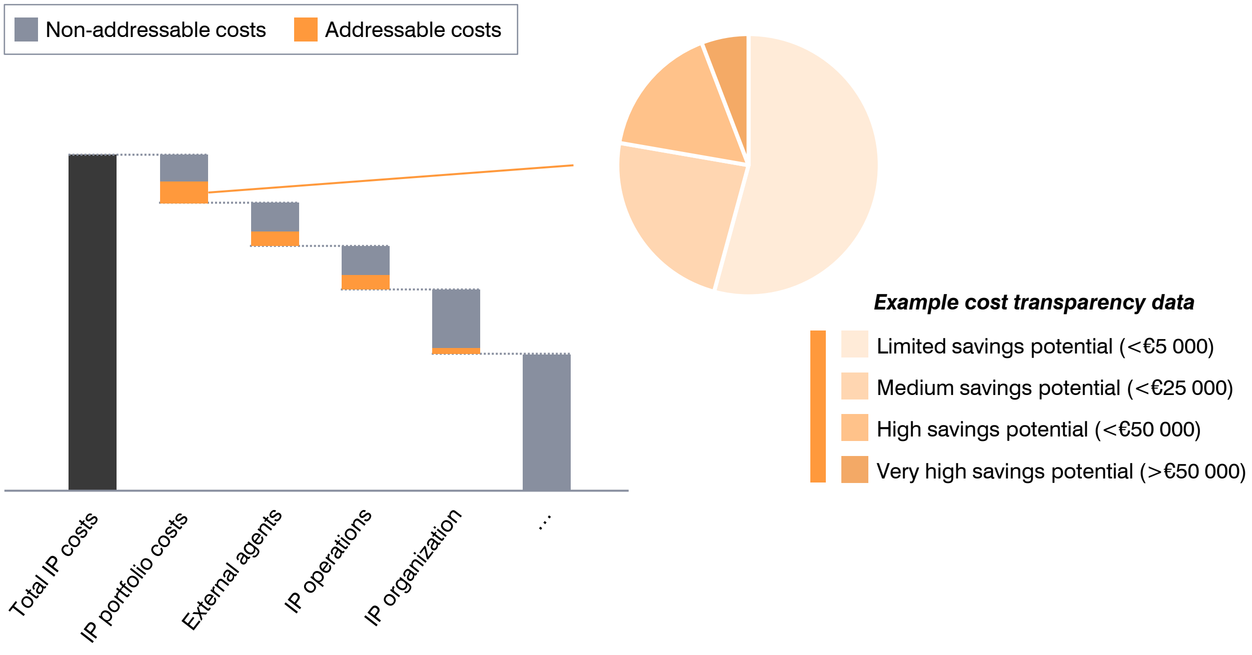
Know what to target, thanks to cost transparency

The first step towards cost control is cost transparency. Identifying your current cost drivers makes you much better positioned to judge the effects of potential cost cutting efforts, and lets you make informed decisions without lengthy investigation. Applying an IP cost transparency model uncovers the main cost drivers that could be addressed in the short term.

IP cost transparency models are typically built by combining historic cost data and forward-looking cost estimations but can also be complemented with external benchmark data. The effort needed to create a cost model will vary depending on the quality and completeness of your cost data. Even if you start with poor data quality, it is often possible to quite rapidly create an effective model. Knowing what parameters to use, which data to collect and how to structure and make sense of it, are keys to success.

Exhibit 2

IP cost structure breakdown with addressable share



Lasting effects: Continuous cost control and foresight

If your IP cost follow-up practices were not up to standard before, the creation of an IP cost transparency model should be your first step towards continuous cost control and foresight. Doing so improves your IP budgeting process and allows you to systematically follow up and address cost inefficiencies. Tracking and following up quality and cost of suppliers helps you identify areas where you should either reduce the number of suppliers, or renegotiate service provider contracts with the door open for new competition. You can also use cost data to improve predictability of office action costs, and set your cost control roadmap accordingly. Office actions occur depending on patent and trademark offices' planning and workload, and differs between technology areas, meaning that with historic cost data these can be predicted and triggered in more controlled manners. Your goal will be to match the right internal resource levels and external cost levels, and to make forward-looking projections to reduce volatility so that when a cost-cutting demand arises, you are well prepared.

1. IP portfolio costs

Quick win: Prune high-cost, low-contribution patents

The area that often ranks highest for quick cost-cutting opportunities, without harming the long-term value IP brings to the business, is targeting the existing patent portfolio. Portfolio maintenance costs typically represent 20-40% of the total IP budget, and pruning the portfolio can lead to savings both now and for several years to come, depending of the maturity of the portfolio.

The starting point for any portfolio pruning activity should be business rationale. Your ability to judge which technology domains to focus your pruning activities on is highly dependent on whether your IP portfolio structure is in sync with business priorities or not. If you already have an IP portfolio that is aligned with business objectives, identifying bottom-of-the-pile portfolio clusters to focus cost cutting on is easy. However, if you already keep a lean portfolio, and there are no or few “nice-to-have patents” left, it’s hard to realize extraordinary cost reductions through pruning without also putting the business at risk. If that is the case, you probably also have a strong rationale for why the portfolio is optimized and can make a convincing business case to your stakeholders, whether it’s the Business area President, CTO, CFO, or CEO.

If your patent portfolio structure is not in sync with business priorities, you can begin scanning the portfolio for low-hanging fruit, with a starting point in two typical cost driving factors: time and geography. By using these screening criteria to begin your assessment, you can funnel down the number of patents you need to seriously assess from a business relevance perspective. As a general rule, no patent should be reviewed in isolation but as part of portfolios fulfilling certain business objectives and these screening parameters should only be used to guide further assessments.

<u>Time as screening criterion:</u>

- **Upcoming renewal dates:** Patents with upcoming major annuity fee milestones, adjusted for patent renewal service providers’ due dates.
- **Old patent families:** Patents of more than 10 years age (depending on industry and average product lifecycle length) that will generate large renewal fees relative to the remaining lifespan.

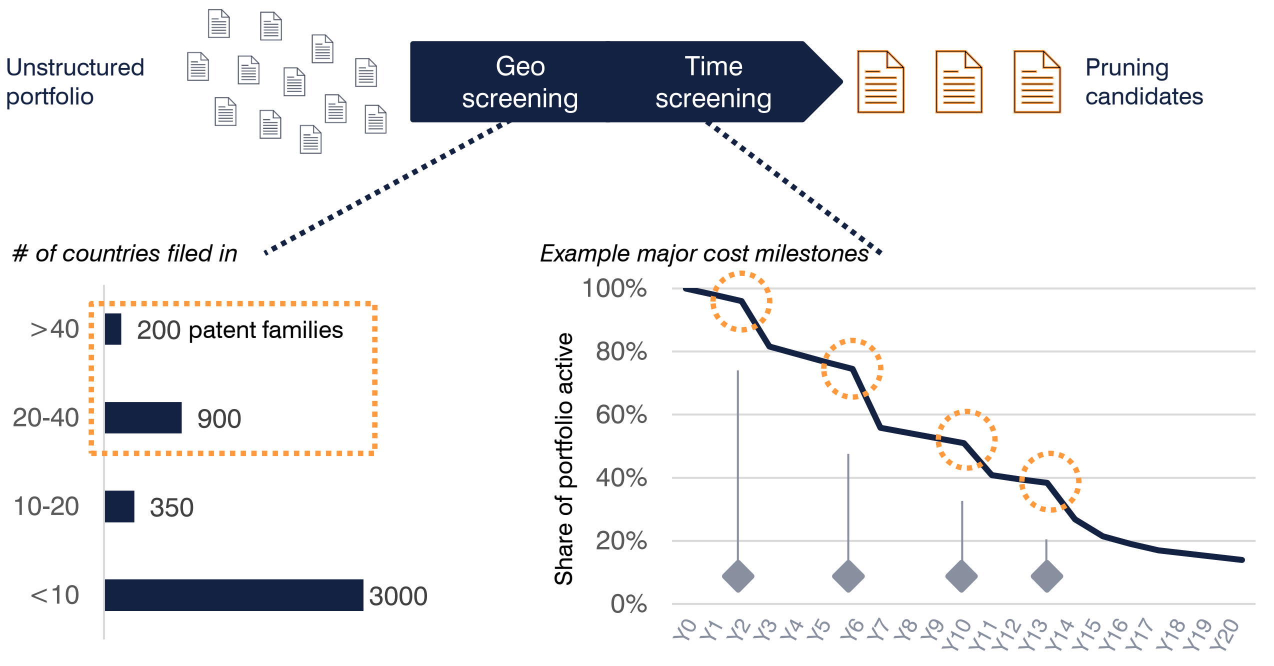
<u>Geography as screening criterion:</u>

- **Disproportionately large patent families:** Families with active members in many countries. This can mean 4, 10 or 20+ countries depending on the business and the portfolio composition.
- **Low-relevance countries:** Patents in markets not in line with critical business interests.

By using variations and combinations of these screening criteria, it is possible to generate a short-list of pruning candidates with the potential for sizable near-future cost savings.

Exhibit 3

Example screening criteria for identifying pruning candidates in unstructured portfolios



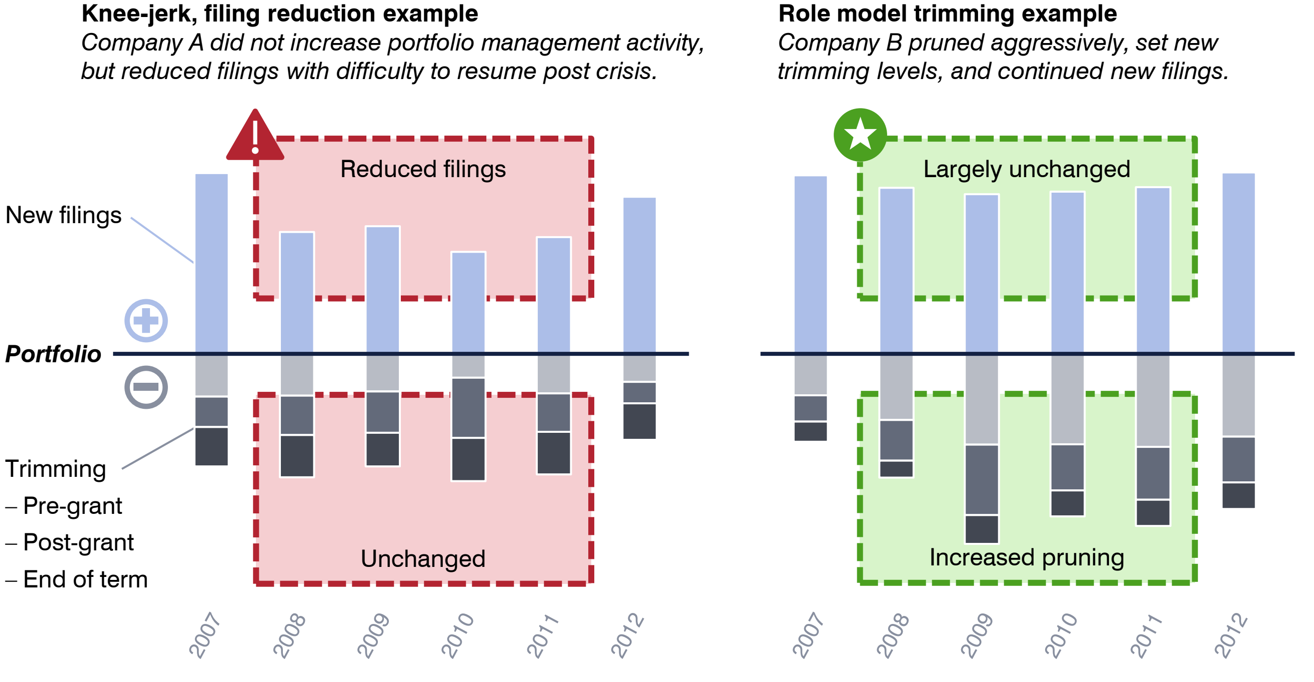
Lasting effects: Continuous business-aligned portfolio trimming

Portfolio pruning should not be seen as a one-off activity. Recurring trimming of your portfolio is an effective way to keep it lean and useful, which lets you continuously free up funds to rejuvenate your portfolio in areas of new business value. If the portfolio structure is business-aligned, this lowers the threshold and simplifies the work of identifying candidates to cut with minimum business risk. Best practice among leading IP organizations is to trim the patent portfolio size at a rate of approximately 10% annually.

A good example of how different IP professionals respond to a crisis can be found in Figure 4, showing how two companies responded to the 2008-2010 worldwide recession, and how they adjusted (or didn't adjust) their IP pruning activities from that point on. At the time, Company A did not have IP cost transparency, had no alignment of their IP portfolio with companywide business priorities, and thus had no easy way of identifying pruning opportunities or cost drivers. They temporarily reduced their patent output, to hold off on incurring g new filing costs, but did not fundamentally change their cost control or pruning practice. Company A lost ground to competitors who were maintaining their rate of portfolio growth, and to this day, a large percentage of patents are still allowed to lapse without active pruning. Company B, on the other hand, ramped-up their portfolio management activity by abandoning low-value or low-potential patents both before and post grant during the financial crisis. Even when the pressure lessened, they didn't fall back into old habits but continued to actively manage and trim the portfolio to keep it lean and business contribution-focused.

Exhibit 4

Comparative portfolio activity examples from 2008-2010 recession *



** Numbers have been normalized to the same scale*

2. External agents

Quick win: Reallocate and resource external work smartly

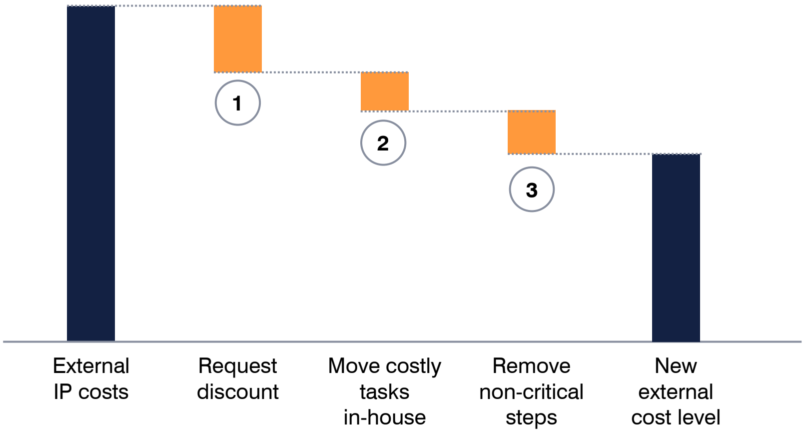
For many technology intensive companies, the external agent costs for drafting, filing, prosecution, maintenance and related services are substantial. Reducing external service fees is usually the second most likely area where you'll find potential for quick-win cost cutting. However, you should be careful. The decrease in external agent capacity should not be so large that it reduces your innovation and patenting rate below acceptable levels or injures important external agent relationships you have spent years of building up.

When wanting to reduce external agent costs, start with these three actions:

1. Request a discount. A crisis is a good foundation for negotiation, and it becomes much easier to argue that there is a real need for compromise if there is an objective financial reality such as a recession that a service provider cannot deny.
2. In-house the more costly tasks, if they don't require unique competences or professional qualifications. For this to be effective, it is recommended to first adapt your internal IP operations to temporarily focus on the most essential activities, and free up internal capacity to take on more critical tasks otherwise outsourced (see chapter 5).
3. Remove non-critical external agent services. For example, if external agents normally perform novelty searches and patentability assessments, instruct them only to do quick searches and instead rely on your organization's expertise based on previous cases for the time being.

Exhibit 5

Three steps to quickly reduce external costs



Lasting effects: Service item-based collaboration model and procurement

During difficult times your true allies are often revealed and relationships with external agents can come out on the other side stronger than before. A financial downturn is typically a good time to re-evaluate your external agent services and collaboration model.

This re-evaluation effort should focus on processes with clear service items to create a shared and easy-to-communicate collaboration model for external agents. This help you to find the right balance between in-house work and outsourced work, assess the cost and quality of different external agents based on comparable service items, procure services with structured fee arrangements to ensure right cost levels and reduce volatility, and to consolidate external work to fewer external agents and leverage economies of scale.

Your primary obstacle in trying to get a grip on the cost of external agents will be 'black box' practices by external service providers who have not been sufficiently motivated to demonstrate the value of their services. Our experience is that due to unclarity in roles and responsibilities and lack of proper quality and cost control, external IP service costs are typically 20-30% higher than necessary, while quality issues and redundancy in work affect in-house personnel negatively. A service item-based collaboration model is an important part of business continuity planning to quickly be able to adjust costs in tougher financial times.

Moving tasks in-house and removing non-critical external agent services also provides an opportunity to assess if these tasks are performed in an optimal way and if there are new tools and software-based services available.

3. IP operations

Quick win: Shift IP processes to cost saving mode

Process streamlining and harmonization will not reduce costs in the short term. But if you have done your IP cost transparency analysis properly you will have identified process steps that hold untapped cost reduction potential. Typical cost drivers are new patent filings and prosecution, including novelty searches and patentability assessments.

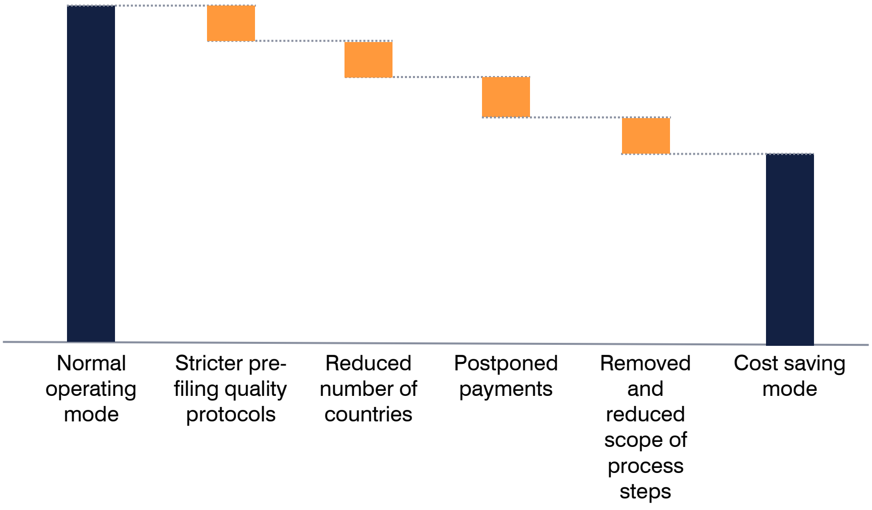
A natural first step is to temporarily put your filing and prosecution processes in cost saving mode. This can for example mean implementing stricter pre-filing quality assessment protocols to limit passive decision making and ensure focus on high-quality applications. While it can be tempting to reduce the number of filings, remember that activities of stimulating innovation and invention disclosures are difficult to revive and get back to the right levels after the crises. First focus on finding cost savings in your existing portfolio before considering to 'turn off the tap' (see chapter 2).

Cost saving mode can also include changing filing strategies. One way is to limit the number of countries for patent applications and the number of classes for trademark applications. Another way is to postpone filing and prosecution costs by for example using the PCT filing route to defer national phase fees. In times of crisis, patent and trademark offices may also allow payment deadline extensions such us the USPTO did in light of the economic impact of the Covid-19 pandemic.

To reduce short-term costs, if your liquidity is low, you can remove or reduce the scope of costly steps such as novelty searches and preliminary examinations (PCT Chapter II). If you apply these type of measures, you need to be selective in order to not accumulate higher costs further down the line. Not performing novelty searches in areas where you do not have deep knowledge of the prior art may lead to wasted filing efforts, and costs of preliminary examinations may be gained back in form of fewer office actions and shorter examination times.

Exhibit 6

Patent filing and prosecution processes in cost saving mode



Lasting effects: Streamlined processes supported by right tools

Having put your IP operations to the test during a financial recession will likely also let you identify additional changes that are not possible to make during a crisis, but which will be needed for the IP operations to be cost-efficient in the long term. Keep this in mind while responding to the immediate crisis and prepare for a full review of the IP operating model once you have the opportunity, to understand the current state, your wanted state, and how to address the gaps in between.

In addition, leveraging artificial intelligence (AI) can make IP processes more cost-effective. AI-powered tools can offer a faster way of working and generate more qualitative outcomes while conserving resources. Integrating AI into IP operations can provide immediate financial relief but also lay the foundation for sustained efficiency over the long term. Furthermore, by automating mundane tasks, professionals can shift their focus from daily operations to broader and more stimulating strategic activities.

When reviewing your IP operations, the following principles should be kept in mind to guide your evaluation and upgrade:

- Improve productivity – remove bottlenecks by redesigning and streamlining IP processes;
- Reduce wasted time – minimize time spent on the wrong things and shift from fire-fighting operational issues to spending more time on strategic and value-adding activities;
- Harmonize working practices – remove variations in ways of working that reduce certainty or accountability, while still maintaining flexibility for professionals to exercise their skills and judgment;
- Improve satisfaction – remove operational annoyances and headaches, make sure people's opinions are heard, improve visibility of the business impact of their work;

For each of the bullets above you should also explore how to make use of the right software tools and artificial intelligence.

4. IP organization

Quick win: Do more with what you have

The most obvious impact of tough economic times is the scarcity of resources and bandwidth for non-essential activities, and the resulting need to focus on the activities and initiatives that matter most. IP initiatives that are less time-critical should be put off. This can for example be costly litigation actions that can be deferred, training initiatives, or ‘nice-to-have’ monitoring of the external IP landscape. It is important to continue activities that will ensure you emerge from the crisis stronger. Accelerating your strategic momentum can be greatly facilitated by e.g. applying an IP Jobs-To-Be-Done approach.

Related topic

Link to read *IP Jobs-to-be-done*

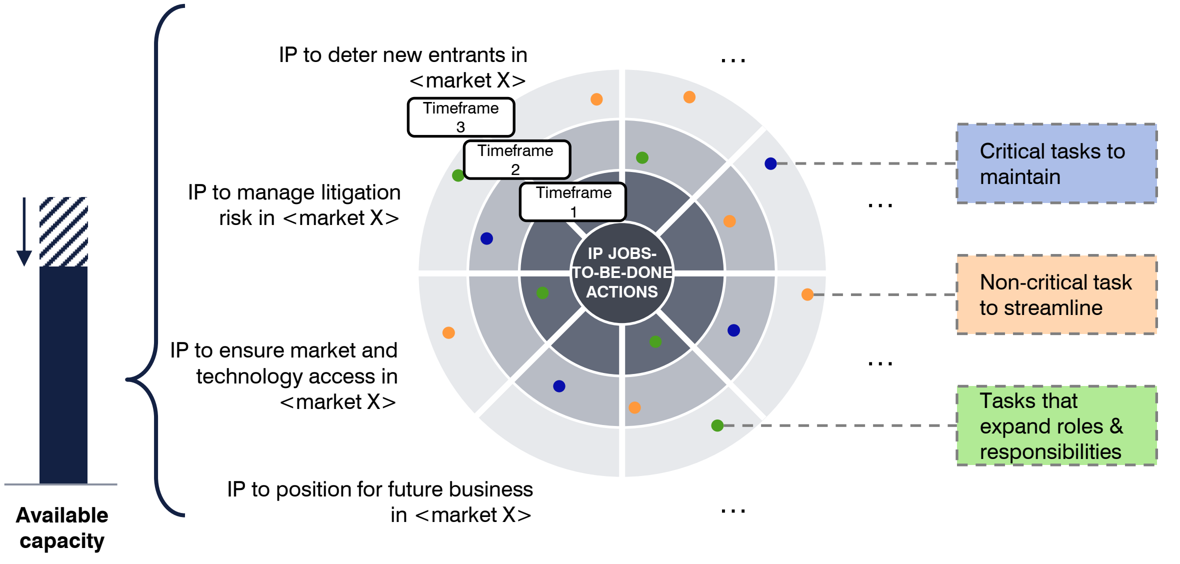
https://www.konsert.com/insight/ip-jobs-to-be-done/

Refocusing staff activities frees up capacity for critical tasks that may need to be handled in-house if you’re reducing the engagement of external agents (see chapter 3). Switching gears to this type of all-hands-on-deck mode will force people out of their comfort zones and broaden the scope of their responsibilities, including both less prestigious activities but also stepping up to take on more challenging tasks. Management has to carefully monitor and motivate the workforce in these activities, and it helps to communicate the strategic prioritizations that are being made, rather than just focusing on cost cutting.

In terms of employment adjustments, the same tools are available for IP organizations as for any type of organization. Utilize the flexibility of your workforce if you have external resourcing consultants, look at the timing and necessity of recruitments, and, if necessary, consider options to let select people go. While terminating certain positions should be part of your toolbox, this should of course be used sparingly – layoffs are never a good signal to the workforce, and finding and keeping good IP professionals is a challenging task.

Exhibit 7

Refocusing IP professionals to business-critical activities



Lasting effects: Value-focused and business-effective IP organization

Once the crisis is over, it is time to boost the IP organization to become the best possible version of itself. Most likely, if you have weathered the crisis successfully you will also have a very clear view of the activities that are essential and generate the most value for the business.

An organization that has only focused on cost cutting is likely to be slow to restore the resources it has cut, leading to an anemic or understaffed IP organization, but if your organization focuses on strategic value creation it should be possible to make the business case for investing further in IP once a downturn is reversed. At the same time the lessons learned will be useful to keep the organization lean and focused; coming out of a crisis should not a be a signal to fall back into bad habits or lose focus.

When starting to look ahead after a recession, the acceptance of change can be high and it is beneficial to start transformative initiatives. Make sure to seize the opportunity that comes out of having operated in a very lean manner to design and implement an organization that is geared for both business-effectiveness and cost-efficiency.

Conclusion

By systematically working with business continuity in five IP cost saving areas it is possible to create significant cost reductions fast, without putting the business at risk or damaging innovativeness, and at the same time set the foundation for lasting cost saving effects.

1. Start with and IP cost transparency analysis to know where to focus your cost reduction efforts.
2. Look for large cost saving potential in the IP portfolio, e.g. using geography and time screening criteria.
3. Reallocate and resource external work smartly to reduce service fees and improve quality control.
4. Identify process steps that hold untapped potential and put them in cost saving mode.
5. Refocus the IP organization to get more out of what you have.