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Protect your company from patent litigation with IP insurance



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The reality is intellectual property (IP) lawsuits are expensive and time consuming. More than ever, it is important that companies, regardless of size, recognize that there is an affordable and essential insurance solution available to help fund and manage the high cost of patent litigation.

Intellectual property infringement lawsuits can be a significant risk to companies and insurance can be an acceptable, affordable risk transfer mechanism. It is important to realize that companies do not have to own patents, trademarks, or copyrights to become involved in a costly and lengthy litigation battle involving intellectual property. In fact, all companies that make, use, sell, offer for sale, distribute, supply, or import products and/or services are at risk of being sued for IP infringement.

Get Help Now

Do



- protect your IP rights, products, and services
- know the current IP legal environment
- understand the costs and impact of IP infringement litigation
- know your competitors' IP, not just activity in the marketplace
- take the time to review your company's IP risk

Don't



- expect the U.S. Government to enforce your IP rights
- think that IP insurance is too expensive
- assume that you won't get sued
- assume you have IP-specific coverage with general liability insurance
- believe your company is without IP infringement risk

Do

Do protect your IP rights, products, and services

Companies—especially individual entrepreneurs, startups, and companies that are small to mid-sized—generally do not have the resources necessary to enforce their IP rights (patents, trademarks, copyrights, and trade secrets). Nor are they set up for defending against infringers trying to take market share or force them into unfavorable settlement terms and/or putting them out of business. IP-specific insurance policies help financially protect companies and entrepreneurs who are forced to defend their business activities and/or protect their intellectual property rights through the legal system.

Do know the current IP legal environment

A company's most important asset—more often than not—is its IP. Companies rely on IP rights, made up of patents, copyrights, trademarks, and trade secrets to gain a competitive advantage and to stay viable in an ever-changing, competitive economy. Even then, companies are faced with non-practicing entities (NPEs) or "patent trolls" filing the majority of all patent lawsuits in a predatory fashion. Patent trolls have been outpacing legitimate practicing entities in total damages awarded over the past several years.

No company is immune to charges of infringement brought by patent trolls. They used to primarily go after companies in patent-abundant industries of computer hardware, electronics, business and/or consumer industries. Now their reach is much greater, having infiltrated many other, non-technology sectors of the economy such as retailers, digital advertising agencies, restaurants, supermarkets, gaming industry and hotel chains.

Do understand the costs and impact of IP infringement litigation

IP infringement costs are expensive and time-consuming. It costs on average \$988,000 to merely get through the discovery phase of patent litigation. And the average cost to litigate a patent infringement case through trial, when the amount at stake is between \$1M and \$25M is \$2.8M—not including damages. To be forced into expensive and time consuming litigation often means a choice between diverting resources to litigation at the expense of manufacturing and/or marketing efforts or ceding IP rights away either by way of inaction or unfavorable grants of licenses.

Do know your competitors' IP, not just activity in the marketplace

Patent owners devote a significant amount of personal time, effort, and dedication into their invention. Additionally, the inventor has paid (usually out of their own pocket) for the prosecution of a patent. The rights afforded by insurance are particularly important to the individual inventor who lacks the corporate backing and financing of his or her potential competitors. The invention is usually regarded by the inventor as the basis for a successful licensing program or [new business](#) opportunity.

Do take the time to review your company's IP risk

Take the time to make sure the IP risk management plan is constantly meeting the needs of the company. Risk [Managers](#) will be cognizant of the fact that as the company evolves, so too will the plan potentially need to be altered to fit the company's current situation. Changes such as the following should prompt a re-assessment of the plan:

- New products and/or services are added or dropped from production
- Redesigned products and/or services are marketed
- Licensing deals are consummated
- Planned mergers or company acquisitions are completed
- Working with new suppliers or vendors begin
- Contractual indemnification changes
- Newly filed or issued patent and/or trademark applications are reported
- New competitors enter the market
- Monitoring the activities of patent trolls show how they are filing lawsuits which may involve the company's technology
- Trends in IP litigation are reported

When these and other changes occur, it's important to revisit your IP risk plan.

Don't

Do not expect the U.S. Government to enforce your IP rights

Because they just don't do that. The U.S. Patent and Trademark Office only grants patent rights after a thorough search of existing patent and non-patent art, analysis of the claimed

invention and determination that the invention is new, novel and unique (similar analyses are conducted for other types of IP). But that's where they stop being involved. It is the IP owners responsibility to enforce their issued patent, copyright, trademark and trade secrets through his own monitoring and policing of the activities of others.

Do not think that IP insurance is too expensive

Too many companies and entrepreneurs decide that an IP infringement insurance policy is too expensive, which can end up being a very costly decision. The decision shouldn't be about how much the policy costs, but rather how much it is worth to stay in business. For many small companies IP litigation is a "You bet the company" proposition.

When the average cost to litigate an IP case through trial is \$2.8 million dollars, the cost of IP insurance starts looking much more affordable. Don't inadvertently put a price on the cost of going out of business. Moreover choosing an insurance company that offers litigation management services to each policyholder can be very beneficial. These services can save the policyholder more than the amount paid in premium.

Do not assume that you won't get sued

Just because you are "too small" or you are not infringing doesn't mean that you won't get sued. Many times, it's the smaller companies that are the targets of IP infringement charges. They go after the "little guy" anticipating that they can run over them because they won't have the financial capacity to fight back on the merits of the case. In fact, most companies are defenseless against the larger companies who are better funded and able to bear the costs of an IP lawsuit to the end.

Do not assume you have IP-specific coverage with general liability insurance

The existence of IP insurance has become better-known over the past few years. However, many risk managers, and insurance and legal professionals are still unaware of the existence of IP insurance as a means to provide money to help fund an IP lawsuit. Though some in the insurance industry are beginning to recognize that a business opportunity exists.

Companies may turn to their CGL policies for coverage under the "Advertising Injury" provision, but such coverage is explicitly limited to the cases where "Advertising Injury"

involves the patent claims directly covering the act of advertising itself. But most insurance carriers exclude any coverage for IP, and patents are often specifically excluded. Any coverage for IP under a D&O or E&O policy is likewise extremely rare.

Companies are well advised to proactively obtain insurance coverage specifically tailored to address their most valuable asset: intellectual property rights. Instead of taking the chance on CGL coverage, a company should obtain a dedicated policy where patent infringement allegations can be explicitly litigated through trial and appeals courts without the need to fight for coverage.

Do not believe your company is without IP infringement risk

Any company that is making, using, selling, offering for sale, or importing goods and/or services is at risk of being sued for IP infringement. Many times, competitors simply sue as a business strategy to obtain market share or to hobble the defendant's business growth or to simply to impose onerous licensing terms as a predatory private tax.

Summary



IP infringement insurance is the best protection companies can have against intellectual property transgressions. Having such insurance gives them the financial means to enforce IP through infringement litigation, and protect against the potential financial hardship that attack-IP litigation can inflict. This insurance is as crucial, if not more so, than general liability, errors and omissions, and directors and officers insurance policies. Comprehensive risk management requires that IP risk be proactively managed with insurance before allegations arise.

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