

Intellectual Property (IP) infringement, especially patent infringement, and counterfeit parts plague the Automotive industry across the world. One of the ways the Automotive industry is fighting back is through legal recourse – which is, however, very costly. IP lawsuits are among the most expensive events that can affect a company. The average patent lawsuit costs each side approximately US\$2.5 million in legal fees and expenses to litigate through trial, not including damages and/or settlements.

“Whether it’s defending their products against predatory business practices of others, maintaining their place in the market, or enforcing their IP rights to prevent others from copying their ideas, making it their own and taking precious market share away, IP litigation is expensive and time-consuming,” says Robert Fletcher, President of Intellectual Property Insurance Services Corporation (IPISC), the industry leader and expert in intellectual property insurance.

IPISC has been in the business of managing risk and protecting the value of IP assets for over 23 years, using advanced strategies to remain the market leaders in the field of IP insurance. Fletcher says, “It is important for this industry in particular to understand that IP exposure can be a significant risk, yet many are not proactively advising or being advised about the availability of IP insurance. Assessing IP risk and ensuring that the right insurance protection is in place for this potentially devastating and costly exposure is essential to any company’s overall financial survival.”

“Given its established track record of success, only IPISC has been able to offer the market a full scope of IP-specific coverage including Defense, Abatement, Multi-Peril and Unauthorized Disclosure policies on a worldwide basis. IPISC has helped ensure that the funds and the litigation support have been available for the policyholder to get through the litigation process,” says Fletcher.

Companies face intellectual property infringement litigation risk from start-up, and must be able to protect their IP rights or risk burdensome royalty payments, unappealing license agreements, being forced into a settlement or going out of business.

**Automotive Industries (AI) asked Fletcher how big the problem of intellectual property violations for the automotive sector is.**

**Fletcher:** Intellectual Property infringement is wide-spread in the Automotive sector. According to the most recent PricewaterhouseCoopers 2013 Patent Litigation Study, the Automotive/Transportation industry has trended upward from 1995 through 2012, continually ranking in the top 10 of the number of patent cases filed by industry. Given the rise in non-practicing entity (NPE) or “patent troll”-generated IP litigation, the Automotive sector has fared moderately well as the industry is overall more successful than the patent trolls in litigation, having a success rate of approximately 33% opposed to 17% success rate of the patent trolls. Nearly 62% of all patent lawsuits are filed by patent trolls, 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.

**AI: What are some of the areas in which this issue is most rampant?**

**Fletcher:** The Automotive industry is replete with innovative technology, which can easily be included in rapidly emerging technology. The industry continues to invest heavily in new product development and continues to rely significantly upon the value and importance of its intellectual property.

**AI: How does an automotive manufacturer get redress when IP violations occur in an overseas country – for example China?**

**Fletcher:** The Automotive manufacturer must have filed and been issued patent rights in China, for example, to receive any redress in the event of an IP violation. While seemingly the odds are stacked against the non-resident, there is a shift beginning to take place in developing nations such as China. Since their own people are becoming innovators, the Chinese are paying more attention to enforcing their IP laws. IP protection is thus becoming important to them. The fundamental IP laws enacted in the early to mid-1980s are quite well done in many ways, but enforcement has been lax.

**AI: What are some of the international solutions IPISC offers auto firms?**

**Fletcher:** IPISC offers coverage on a worldwide basis, which is the solution for international IP risks. IP insurance enables the policyholder to fund the litigation to enforce IP rights and/or defend against charges of IP infringement. This insurance ensures the policyholder can get through an IP lawsuit on the merits of the case, not on who has the deeper pockets to fund a lawsuit.

IP insurance is the only risk management solution that offers an alternative source for litigation expense, given the unwillingness of litigating firms to accept an IP litigation case on a contingency, whether offensively or defensively, without the certainty of high damages to their client. It is also the only risk management solution that fills the coverage gap left as a result of restrictive changes in commercial insurance policy forms over the past couple of decades.

**AI: How successful has your firm been in prosecuting IP violations? Especially outside of the United States?**

**Fletcher:** IPISC has been very successful at helping policyholders successfully litigate through, and fund expensive and time-consuming IP lawsuits. IPISC offers litigation management services to assist and help manage policyholders' legal fees and costs associated with IP litigation. These services alone often save a policyholder more money than they paid for their insurance policy. Professionals are available to help monitor and ensure that counsel adhere to pre-negotiated billing rates and guidelines while making certain that legal expenses are case-driven. This collaboration significantly contributes to the efficiency of the litigation and money savings to the policyholder. Litigation management services also facilitate reliable and expedient payments to litigating counsel. IPISC also offers Early Intervention (EI) Services, which provide non-threatening letters, sent by IPISC's litigation management department, advising a suspected infringer of the existence of the policyholder's IP rights and the fact that they have insurance.

**AI: What needs to be done to minimize IP infringement across the world?**

**Fletcher:** Better examination of the applications seeking these rights is the key. There is no debate as to the value of an IP protection system since there is no stronger stimulant to an economy than innovation fueled by the promise of individual reward. The problems typically arise when overly-broad or simplistic rights are granted to applicants whose real contributions are minimal and, never-the-less, the grantees are given all of the powers of protection that are afforded to true contributors to science and the useful arts. The most promising fact is that NPEs primarily are indigenous to the U.S., and possibly Japan, and that the supply of poorly issued patents is beginning to diminish through expiration.

**AI: What in your mind will be the result if effective steps are not taken to tackle this menace?**

**Fletcher:** If the NPE problem is not addressed, the cost of production of goods and services will increase to the extent that demand will diminish and; consequently, original research and development will suffer. Also, the incentives of individuals will be dampened. Unless rectified, the troll problem will lead to a diminished role of the U.S. as a world, technology leader.