

# IP is Important to Any Effective Enterprise Risk Management Plan

It is crucial to any effective Enterprise Risk Management (ERM) plan that the right manager has a comprehensive understanding of every significant exposure of the company, so these exposures are properly managed. Insurance products covering companies' obvious or perceived "popular risks" do not completely solve companies' potential risk issues. A proper ERM plan should ensure that a company is not taking on unnecessary, additional risk.

Some companies choose to effectively manage risk; while others tend to expose themselves based upon a misconception of that risk, thus jeopardizing the company. One potentially costly exposure in particular is intellectual property (IP) infringement. If a company is sued for IP infringement, or is compelled to enforce their rights, such actions endanger its profitability and sustainability if it does not have the funds to successfully litigate.

As part of constructing an ERM plan, it is important to understand what the company's IP portfolio looks like and address any concerns or potential exposures. IP is often a company's most valuable asset, yet it is often seriously neglected during risk management reviews. Companies who knowingly or unknowingly self-insure their IP portfolios are potentially risking the future viability of the company. Patent lawsuits in particular average \$2.8 million in litigation expenses alone, when the amount in controversy is \$1 million - \$25 million.

Virtually every company has IP risk. Any company that is making, using, selling or offering for sale goods or services in commerce has IP risk. Likewise, many companies have established rights in patents, trademarks, copyrights or hold trade secrets, making IP risk management a critical part of constructing an effective ERM plan. By following ERM's five step process, IP risk can be identified, and a plan can be put into place that makes the most sense for the exposure.

## **Identify the risk:**

Companies must proactively identify any potential IP risk. It does no good to ignore or discount the costs and consequences surrounding IP litigation.

## **Determine the projected impact of the risk:**

Bottom line- determine if the company can, in fact, afford to self-insure an IP lawsuit if it is sued for infringement or forced to pursue an infringer.

## **Proper risk evaluation:**

Intellectual Property risk can be a significant threat to a company's survival. The lack of properly evaluating and mitigating IP risk through specific IP insurance products could lead to the company losing its IP rights, incurring burdensome royalty payments under licensing agreements, being forced to settle or going out of business.

## **Steps to mitigating IP risk:**

Get an IP plan together by determining which IP insurance policies are right for the company. If the company has patents, trademarks or copyrights, they should consider an IP Enforcement insurance policy. All companies have the potential to be sued for IP infringement. A company is vulnerable if it is simply making, using or selling a product and/or service, especially if it holds sought-after technology on products and/or processes. These risks can be managed through the IP Defense insurance policy. As part of IP risk mitigation, companies must plan for the unexpected event of the loss of an insured IP lawsuit. If that lawsuit is lost, companies must already know if there are additional funds available to make it whole again through a Multi-Peril Insurance policy.

## **Take the time to monitor the plan:**

Take the time to ensure the plan is constantly meeting the needs of the company. 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. It is crucial to any effective ERM plan to have a comprehensive understanding of every exposure to the company, as well as the certainty that these exposures are properly managed through appropriate risk management products. Properly evaluating risk by including IP in the company's ERM plan ensures the resources will be available to fund the high cost and consequences of IP litigation.