



Intellectual Property— Do You Need to Insure What May Be Your Most Valuable Asset?

By Marjorie Young



Intellectual property is often the most valuable thing an industrial company owns. Core IP is most often the company's inventions—patented machinery, devices and technology. But it could be something as seemingly simple as the copyrighted graphics and designs on a wildly popular designer handbag or a top-selling toy. And trademarks can be invaluable IP—for instance, Coca-Cola's trademark is recognized worldwide.

Since IP is intangible it can be easily stolen—though the proper term, infringement, sounds politer—theft is often what it is. An engineer can walk out the door with knowledge about your patented technology and trade secrets. A counterfeiter can copy your designs and trademarks as fast as a computer or photocopier works. The Web, of course, is paradise for infringers.

On the other hand, your company can stand accused of infringing someone else's intellectual property. Let's say it's a series of patents on complex machinery. You're convinced the suit is groundless, but nevertheless you still have to hire an expensive law firm and bring in expert witnesses. In the end, you win. Congratulations. You're still out a few million dollars in legal fees.

While manufacturers always insure their physical plants, they rarely insure their IP. Your general liability policy gives you very

limited coverage for your liability for your alleged infringements against others. (It's generally restricted to infringing copyrighted advertising materials.) And it gives you no coverage to sue infringers. If you want significant coverage, you have to get a special policy.

Given the amount of litigation—for example, 2,830 patent cases in 2006—IP insurance is well worth considering.

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these policies.**

Since there are two potential money pits—someone else ripping off your IP and someone else accusing you of ripping off theirs—there are two distinct types of IP insurance.

Defensive IP policies take effect when someone sues you for infringing their intellectual property. Even if your company is very scrupulous, inadvertent infringement can happen. These policies are also sometimes called "IP Infringement Defense Insurance," or "IP Liability Insurance." They cover both your legal costs and the cost of the judgment if lose your case. Judgments can run into the millions, and besides paying out damages, you'll be forced to stop making, or utilizing

the infringing product for profit.

A defensive policy kicks in if and when another party demands either money from your company or non-monetary relief, such as an injunction.

Only a handful of insurers offer these policies. Depending on the carriers, you can buy coverage limits of anywhere from \$5 million to \$15 million. Minimum deductibles vary, and some insurers also insist on coinsurance, meaning you would pay a larger out-of-pocket cost.

Offensive IP policies take effect when someone else infringes your intellectual property. That is, the policy will provide money so your company can hire a law firm to sue the company that infringed your patent, trademark or copyright or stole your trade secrets. You have to get permission from the insurer to hire a law firm and start litigation.

Why do you need an offensive policy? Unlike personal liability lawyers, who get paid by taking a percentage of the settlement if they win, IP law firms generally demand cash on the barrelhead for their services. If your company is a startup or a small organization without a lot of money in the bank, you might not be able to afford to hire a topnotch IP litigator to go after the bad guys. If it's a trademark or copyright case, the legal fees might be manageable, but going after a patent infringer takes millions. Your IP could be stolen by a bigger company, and there'd be little you could do about it. If the infringed patents are your competitive advantage, your company might even be forced out of business eventually.

There's only one known insurer that underwrites offensive IP insurance.

Do you need IP insurance, and, how much of what kind?

There are no cut-and-dry answers.

If your company manufactures generic goods like plywood, you may not need it, unless your manufacturing process is a trade secret. But if your company's inventions, designs and trademarks are crucial to your company's success, you may. Start by assessing how important your company's IP is, and how vulnerable it is to being infringed by someone else or having someone claim that you're the infringer. Once you have a clearer idea of the risks and potential consequences, you can start to investigate IP insurance systematically and determine if it's worth the course.

Ultimately, you may decide you don't need IP insurance. But the time to investigate is now. Once you have been sued or your IP has been infringed, it will be too late.

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