



IP INSURANCE

Legal Defence Cover

This is usually the starting point in terms of the minimum level of cover considered by clients (although there are “opinion only” covers available, we are not aware of any being purchased). These Legal Defence policies will indemnify you, the policyholder for your legal costs in defending an alleged infringement action from a Third Party. The policy will also indemnify you for any court awards that may be made against you.

Within the UK insurance market, there is capacity to purchase upto £ 100m indemnity with further capacity available overseas. However, generally, an insured will purchase a maximum of £ 2m - £ 5m indemnity owing to the fact that they will often negotiate with the claimant and settle prior to the matter going to Court.

Benefits:

- A defensive cover giving peace of mind to Policy-Holders in the event of unforeseen infringement
- Variable cost to suit needs and expectations regarding risk of occurrence
- Instalment options available on terms
- Confidence in being able to engage with experienced professional advisers to resist or manage the claim
- Simple and easy to incept through Anthony Jones Insurance, professionals in IP risk protection
- Provides assurance on project funding where the IP is a key component
- A tactical advantage to the Insured in being able to notify cover to contending parties and their advisers often leading to weakened resolve



IP INSURANCE

Pursuit & Enforcement Cover

This policy covers the legal costs of pursuing a Third Party that is alleged to have infringed upon the Insured's IPR. The maximum Indemnity limits are far lower than for Defence cover for two reasons; a) this cover is for the legal costs only, not damages, and b) the existence of this IP insurance cover will often lead the Third Party to negotiate with the Insured, recognising that there is the financial ability to pursue the matter to its ultimate conclusion if necessary. Maximum indemnity is usually circa £ 5m.

If the Insured has IP in an area which may be difficult to identify because it is contained deep within other intellectual or tangible property, it can sometimes be very difficult for the Insured to know whether a Third Party is breaching their IP. For such circumstances, the Insured can purchase cover for "Discovery Costs". These are costs that are incurred to identify and ascertain whether a Third Party has been breaching the Insured's IP. For example, if the IP is a component within the inner workings of an engine, the Discovery Costs cover will indemnify the costs of dismantling an engine and its subsequent rebuild to establish if there was a breach of the IP.

Benefits:

- A pursuit policy giving confidence to Policy Holders and strengthening their arm in negotiating settlement
- The benefit of additional pro-active extra cover that helps root out possible misuse and saves time and trouble used in combination with court proceedings or otherwise and deflects early term costs
- Instalment options available on terms
- Confidence in being able to engage with experienced professional advisers from an early stage to pursue and resolve any claim
- Provides assurance on project funding where IP is a key component



IP INSURANCE

Both Pursuit & Defence, including Legal costs & Damages Awards

This is an amalgam of the two previous policies, providing both Defence and Pursuit coverage. For those companies that consider that they have a genuine financial exposure to IP defence and pursuit, this is a policy that gives them comfort for either eventuality, ensuring that clients can survive when an IP damages award is made against them, as well as enabling them to bring an IP action against a competitor..

Benefits:

- More rounded protection, particularly valuable if IP is at the “cutting edge”.
- Goes some way to relieving potential insolvency if infringement established
- Major improvements to bottom line can be achieved
- Cash-Flow can be improved by using the financial support available
- Can give comfort and reassurance when trying to attract new investment into the business



IP INSURANCE

Breach of Agreements

Agreements can comprise any license, confidentiality, non disclosure, marketing or other agreement which controls the exploitation of declared and insured intellectual property. This can cover both the pursuit by the Insured and also the defence of an action against the Insured for an alleged breach of a contractual Agreement. This cover can include non-payment of milestones and royalties. If Agreements cover is purchased, then the Insured will need to specify or declare to the insurer the Agreements to be insured.

If there are likely to be a number of new Agreements negotiated by the Insured on a regular basis, then insurers will often provide automatic cover for these new Agreements, subject to declaration. This means that insurers will make it a condition on the policy that the Insured make a periodic declaration of all new Agreements and IP, typically every 3 or 6 months, so that insurers can evaluate the changing risk and charge an appropriate adjustment of premium.

Benefits:

- Provides some assurance against consequences of breach of often complex agreements
- Delivers swift relief by obtaining access to specialist advisers to achieve resolution
- Assists Cash Flow by resort to policy support
- Particularly useful when licensing in / out with overseas partners, where the due diligence in the IP management and protection may not be as robust



IP INSURANCE

Business Interruption and R&D Costs

Many start-up firms have their whole business plan dependent upon realising the commercial value of their IP. This often involves extensive funding to invest in premises, machinery, marketing etc to bring their IP to the market. In addition, the costs of registering and maintaining IP registration, patent, trademark etc, can quickly accumulate and be substantial. So, there is considerable up-front financing required to develop and commercialise the IP.

Then, there is also the projected income derived from the commercialisation. This income could take the form of revenues from sales, licensing income, royalties or milestone payments.

Both the initial financing outlay and the projected revenue income figures can be very substantial. Any allegation of IP infringement, court injunction and court awards can quickly have major impact on the financial viability of the business. This scenario is also true for established firms that are seeking major investment and development of new IP.

It is possible to insure both the historic and committed R&D expenditure as well as insure the future Income that will be derived from the IP. The historic IP registration costs can also be insured if the IP is later declared invalid.

This type of policy seeks to indemnify the insured for their loss of incurred / committed development costs and also their future income following a successful claim for infringement of IPR brought by a Third Party. Where the Courts adjudge that the insured has infringed another's IPR or that the insured's IP is invalid, leading to an injunction, then insurers will indemnify the Insured's loss.

The losses can be both incurred and committed research and development costs and also loss of future income had the court injunction not been applied.

As one might expect, the sums at risk here can be substantial and this is also reflected in the typical premium levels and excesses applied.

Benefits:

- Gives major assurance to start-up entities and funders with costly R&D
- Gives assurance and security during the development phases
- Can insure future revenue stream
- Enhances value of the business
- Provides assurance on project funding where the IP is a key component



IP INSURANCE

After-the-Event (“ATE”) Insurance and Litigation Funding

This option may be available for clients who have not purchased IP cover or have purchased the “Opinion Only” Policy, and have a case with good prospects of success. The Insured will, however, require a case where there are good (usually a minimum of 60%) prospects of success. Additionally, the damages that they are seeking must be high enough to allow for the risks which the insurer, or litigation funder, will take. For these reasons, the premium cost of After the Event (ATE) insurance is relatively high with insurers sometimes charging upto 40% of the damages being sought.

Benefits:

- No need for insurance to be purchased at the outset or prior to a potential loss
- If a sizeable potential claim and a good chance of success, then you can obtain insurance for your legal costs in the event that your legal case proves unsuccessful
- ATE insurance can enable an insured to obtain Litigation Funding if they are unable to pay their legal fees on an ongoing basis