

Protect what is yours

Why IP insurance is a good way to secure what drives your business

INTERVIEWED BY MARK SCOTT

Intellectual property (IP) insurance can be expensive, but the cost of not protecting the unique thoughts and ideas that give your company its identity could cost you even more.

“If you knowingly let someone infringe on your intellectual property, it becomes valueless,” says Michael Craig, an attorney in the Intellectual Property Group at Brouse McDowell. “If you let someone infringe on your trademark and you do nothing about it, your trademark may no longer be protectable because you let someone else use that trademark for the same thing. You have to actively manage this process to protect what you’ve worked hard to build.”

One of the reasons IP insurance is expensive is the litigation process that unfolds when the question of infringement comes about.

“When you have a personal injury, it’s very easy to understand,” Craig says. “Did the car hit the guy and what were his injuries? When you talk about patents, you are sometimes talking about manufacturing processes or electronic techniques that the lay person doesn’t understand, making trials more difficult.”

Smart Business spoke with Craig about why IP insurance is critical to achieving long-term success.

Why do you need IP insurance?

There are non-practicing entities, commonly known as ‘trolls,’ that don’t actually make any products or services. They just own patents and try to enforce them against people. These entities are often companies that understand the cost of going through this kind of litigation, so they can more easily pressure a target into settling. However, if they find out you have IP insurance to defend yourself and are willing

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to do so, they may go away in search of low-hanging fruit.

Proper IP management can also help you with your own insurers. If they see that you have an active IP management system in place and you’re trying to avoid infringement and do the things necessary to protect your IP internally, your IP insurance costs are going to be lower.

You have to weigh the cost of IP insurance versus the cost of what you think the ultimate outcome will be through litigation and how often you may experience this type of potential business interruption. Is it going to help you with market share? Is it going to lead you toward profit?

How do you find the right IP insurance policy?

The first step is to sit down with your IP attorney, who can take a look at your IP portfolio and develop a specific roadmap as to what you need. You can use that to bargain with your insurance broker.

There are a number of different types of coverage. Defensive protection helps you against third-party IP claims for patent, copyright and/or trademark infringement. Offensive protection is for costs related to enforcing IP rights against potential infringers. First-party loss of value coverage is meant to protect the value of IP against a negative ruling in court.

A lot depends on the industry you are in and the size of your patent portfolio. If you are in the software realm, there is a higher likelihood of some type of infringement claim, particularly if your business is successful. So you might want to look at defensive coverage in this area. If you have some valuable trademarks, you may find some people who recognize the value and want to ride on your coattails. In that case, you would want to look at first-person offensive coverage.

You will pay anywhere from 1 to 10 percent of the coverage, so if you want a \$2 million policy, you could be paying \$200,000 a year. If, however, you’re a well-run, well-managed company and you use your IP assets properly – and you’re not in a very litigious area – you may end up on the lower end.

What if your claim is denied?

An insurance recovery attorney can review a claim to see if your existing coverage protects you against IP claims made against you when an insurance company turns down your claim. You could accidentally infringe on a trademark, which could be covered under your existing business insurance or general liability policy. It’s always a good practice if you are denied a claim to do another check to see if you can get a different result. ●