



Patent Litigation Insurance: A Critical Failsafe to Ensure Business Preservation

A quick Google search for “patent infringement” reveals pages and pages of news stories on patent disputes emanating from various technologies. High-profile disputes involve marquee-name brands and hundreds of millions of dollars. For example, Samsung was recently ordered to pay Apple \$539 million for infringing patented smartphone features in the conclusion of an epic years-long battle between the companies.

Technology titans like these may grab headlines, but it’s not just technology companies facing charges of patent infringement. Any business in any vertical and of any size can be named in a patent suit — hotels, banks, restaurants and bookstores included — and few get through it unscathed.

If your clients own a technology patent — or even make, use or sell products containing patented technology — odds are that they’re at risk too. As their broker, you can help protect your clients’ business by becoming educated about patent risk and the available solutions.

Patent Infringement: What You Need to Know

The technology patent landscape is vast and complex, with myriad patents that overlap. This makes it almost impossible for businesses to know if they're infringing on a patent. Many can become entangled in as much as three patent suits a year. Often, businesses are introduced to their patent risk through a letter asking them to license patents to avoid being sued. Without guidance from a professional well-versed in patent litigation, it's often unclear how to handle a letter like this.

Lawsuits in general are expensive, but patent lawsuits are particularly costly in terms of both time lost and dollars spent — legal fees alone can run into the millions of dollars. All in, the time and financial losses — not to mention the damage to reputation — are often too heavy to bear. This is especially true for smaller companies, as the costs and operational burden associated with these cases can bring productivity and growth to a halt.

Patent litigation has longer lasting implications as well: A company sued for patent infringement is even more vulnerable to additional patent suits in the future.

Patent Risk as Part of Operational Risk

As a broker, your job is to protect your clients against all types of operational risk — like fire, theft, flood or other disasters — with standard property insurance. But operational risk evolves: with new trends come new threats that require redefining operational risk and what constitutes standard coverage.

Cyber risk insurance is a perfect example of this. Two decades ago, cyber risk insurance was a luxury. Brokers had a difficult time convincing their clients to insure against this type of risk. But innovations in technology and a shift in consumer buying habits toward online transactions have made businesses vulnerable to countless cyberattacks. These breaches are pummeling businesses today, compromising the revenues and reputations of some of the most high-profile brands. As a result, more businesses demand cyber risk coverage, making it an easier sell for brokers.

Patent risk is following a similar trajectory. It's been around for a long time, but has grown in recent years thanks to the parallel rise in technology innovation. In 2017 alone, the U.S. Patent and Trademark Office issued 318,849 utility patents (those most often related to technology) — an increase of 5.2 percent over the previous year.¹ This means there are that many more opportunities for a business to unknowingly infringe on a patent and open itself up to risk.

Clearly, as technology becomes more central to business operation and as technology innovations explode, the definition of operational risk and standard coverage must evolve to protect against emerging threats.

Patent Litigation Insurance Is a Safety Net

Brokers are in an ideal position to help: Given the complex nature of technology patents and the high likelihood of risk associated for almost every modern business, the most logical step to take to protect against patent risk is to buy patent litigation insurance.

With an annual premium, patent litigation insurance offers security in an unpredictable world. Businesses can stem significant financial losses — millions of dollars in unanticipated legal and settlement fees — and avoid the corporate distraction that comes with any legal battle. In fact, patent litigation insurance can reduce per-case costs by up to 60 percent. This type of insurance can protect businesses that are at various stages and with various levels of risk, whether early-stage companies just beginning to face patent risk, or venture capital firms that must protect their entire portfolio of companies, or even organizations looking for indemnification to protect their own interests as well as their customers'.

To offer the most complete coverage for your clients at the best price, brokers must look to a patent litigation insurance product that takes an actuarial approach to assessing risk based on data. Every business has different attributes and requirements. Therefore, in order to accurately quantify patent risk and price a policy that covers only the risks a business is likely to face, insurers must be able to uncover more than just the baseline data points like a company's size, industry and number of customers. Indeed, additional information — like the type of technology a company makes, uses or sells; the company's history of patent litigation; and the company's plans for growth during the policy period — will ensure more customized coverage. Quality patent litigation products will also draw on key historical points from existing customers relating to their patent license costs, litigation and settlements.

Finally, while all this information may be gathered and curated using an automated system, the context may be lost if taken on its own. Best-of-breed products use specialized experts to interpret and analyze the data, and then make meaningful connections to further refine a policy.

Patent risk is an unfortunate reality today — a standard threat faced by almost every business. As the number of patent infringement suits rises, so too will the demand for patent litigation insurance. Savvy brokers that arm themselves with a data-driven patent litigation insurance product will play a pivotal role in preserving the success of their clients' business and in securing their roles as trusted risk advisors.

¹ U.S. Patent Statistics and Numbers for 2017, Patentlibrarian.com, December 28, 2017, <https://patentlibrarian.com/2017/12/28/u-s-patent-statistics-and-numbers-for-2017/>