

Briefing Note: IP Insurance

If you own any type of intellectual property you may wish to consider insurance to cover the legal costs involved in enforcing those rights against the possibility of someone else infringing upon those rights. Even if you do not own such rights you may want to consider obtaining insurance to cover the legal costs involved in defending yourself against any allegation that your product / process infringes intellectual property rights held by someone else.

Here are some other things you should know about IP insurance:-

1. It can act as a deterrent

IP insurance can act as an invaluable commercial tool for the policy holder in any dispute where IP rights are being enforced or defended. The message to the other side is "*be aware that, if required, I have significant funds in place to finance litigation*". This significantly increases the prospects of an out of court settlement and a positive outcome for the policy holder.

2. It can cover registered and unregistered IP

IP insurance can be used to insure against the cost of pursuing or defending claims relating to most types of intellectual property, e.g. patents, registered/unregistered designs, registered/unregistered trade marks, domain names, confidential information etc.

3. It can add value to your IP portfolio

Investors, lenders and licensees are often comforted that decisive legal action can be taken to protect IP assets. An IP portfolio with a potential financial pay-off in the event of infringement will typically be worth much more than one where there are concerns about whether there are sufficient resources in place to enforce the IP against third party infringers.

4. It costs less than it used to

As the popularity of IP insurance has grown in recent years, premiums have correspondingly reduced. Numerous brokers and underwriters - regulated by the Financial Conduct Authority - can provide bespoke policies matched to individual needs. Annual premiums can be as low as £1,000 for £100,000 of worldwide cover.

5. Do not rule out "after the event" insurance

The least costly form of insurance is "Before the Event" (BTE). This insures against costs arising from possible future claims whose existence or threat are not yet known about at the time the policy is taken out. However, even if a dispute has already arisen and there is a reasonable prospect of obtaining a positive outcome, it is often still possible to obtain "After the Event" (ATE) insurance. In assessing whether a reasonable prospect of success exists, most insurers will accept an opinion provided by the policy holder's own patent attorney.

6. It can be arranged quickly

Quotes can normally be provided within a couple of weeks.

The above information is provided for background information only and should not be considered as legal advice. This information is based on the situation within the UK only.