

Intellectual property

Product fact sheet

Intellectual property is one of your most valuable assets. In today's business world, protecting those assets against third party infringement can be both complex and expensive. The same is true when it comes to protecting yourself against claims from others that you have infringed upon their patents, trademarks or other creations. Intellectual property insurance is a smart way of protecting these valuable assets. Vanbreda Risk and Benefits offers an insurance product that works as a business enabler for small en medium sized companies holding intellectual property.

What is intellectual property?

Intellectual property refers to "creations of the mind: inventions, literary and artistic works, and symbols, names, images and designs used in commerce".

It is "divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works."

(Source: World Intellectual Property Organisation).

Intellectual property insurance

Intellectual property insurance ensures that infringement allegations can be defended efficiently and without affecting your company unnecessarily. Furthermore, this policy protects innovation by affording the opportunity to pursue infringers of own rights as this course of action is sometimes necessary to retain the value of the business.

Optionally, if the insured is forced to stop selling a product due to infringement, this insurance pays the loss of profit for a period, allowing the company to recover its position and invest in its other products. If a right is lost through the course of an infringement action, the money invested in obtaining and maintaining that right can also be recovered under the policy.

Broad cover

Our innovative insurance product was developed based on the needs and risks of companies holding intellectual property. This uniquely broad policy provides excellent protection for all intellectual property including patents, trademarks, copyright and trade secrets. It covers all business activities of the insured but can also be tailored to requirements.

The basic covers include:

- costs of defending infringement allegations and the payment of damages or settlement awards. Cost of counterclaims and other loss mitigation measures;
- costs associated with enforcing rights if a third party infringes against you;
- cover for directors and officers as joined defendants
- worldwide cover as standard.

Optional covers are:

- cover for contractual obligations to indemnify licensees or customers
- cover for the costs incurred in obtaining and maintaining a registered right if the right is invalidated or revoked as a consequence of an infringement action
- cover for the loss of profit during a 12 month period if the insured is prevented from selling a product due to an infringement claim
- cover for elements of contract or employee disputes in relation to intellectual property
- cover for costs to avert or mitigate a loss of reputation caused by an infringement claim

Which sector is covered?

Any company who designs, manufactures, sells or supplies a product may infringe on third party intellectual property rights and incur liability. Even if they are only supplying a product that has been designed and/or manufactured by a third party, they can still incur liability for contributory infringement.

Typical industry sectors include:

- Automotive & Aviation
- Software & Hardware
- Pharmaceuticals & Life Sciences
- Engineering
- Energy
- Chemicals

Examples

Defence costs and damages

X, a manufacturer of sections for roof coverings, attended a UK trade fair to exhibit its products as part of expanding its international activities.

Competitor Y claimed that Party X's products violated its roofing sections patent and design rights. Party Y proceeded to summons Party X. As the analysis of likely costs for this procedure was extremely high, Party X made a conscious decision to settle the case amicably rather than go through the entire procedure. Consequently, Party X had to stop using certain sections within the United Kingdom.

Intellect Protect helps companies to make a clear analysis of their rights, so that their strategy on how to proceed does not depend solely on budget, but also takes into account the legal and commercial aspects. The following options are possible:

1. After evaluating the chances of success, Intellect Protect would have given party X the option of going through with the procedure and engaging in fair competition. The policy would have covered the costs of the legal procedure and any damages.
2. If the procedure's chances of success were not good, Party X could still reach an amicable settlement in consultation with the insurer. In this case, the policy would cover the incurred defence costs and the damages of the amicable settlement.

Costs of proceedings, defence costs and damages

The patent holder of a patio roof mechanism, X, discovers at a number of trade fairs that Party Y may be violating its patent.

Party X sends Party Y two cease and desist letters for two (different) models at two trade fairs.

In response to these letters, Party Y initiates a procedure to have Party X's patent cancelled. Party X now finds itself dragged into an expensive procedure.

After some initial steps of the procedure, Party X decides to sit down and discuss matters with Party Y to try and reach a settlement, simply to avoid any further costs in this court case.

Intellect Protect could assist Party X on various different levels:

1. Firstly, the policy would cover the costs of a cease and desist letter and a possible subsequent procedure started by party X with the insurer's approval.
2. The policy would also cover the defence fees for the patent cancellation procedure, which would mean party X is in a position to mount a strong defence.
3. If an amicable settlement still turned out to be the most attractive solution, this option could still be chosen in consultation with the insurer. Both the defence costs incurred and the damages under the amicable settlement would be covered by the policy.