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The Basics of Intellectual Property Insurance

Intellectual property (IP) refers to the intangible assets of a business, including patents, copyrights, trademarks and trade secrets. These assets are often the most valuable and least understood assets of a corporation.



What is a Patent?

A patent is a legal protection granted by the federal government to an inventor to encourage progress and prevent others from benefiting from the invention. Patents cover inventions new to the marketplace or improvements on existing inventions.

What does patent protection provide?

Patent protection involves the right to exclude others from making, using or selling anything that would fall under the claims of the issued patent. Canadian patents have a maximum life of 20 years from the date the patent application is filed.

What is a Copyright?

A copyright is the legal protection granted by the government to an author. In the case of works created by an employee during the course of his or her job, the copyright would belong to the employer.

What does copyright protection provide?

Copyright ownership grants the author or owner of the work the sole and exclusive right to reproduce the work in any form.

What is a Trademark?

A trademark is a mark that is used by a person for the purpose of distinguishing wares or services manufactured, sold, leased, hired, or otherwise entered into commerce from others in the marketplace. Canadian federal law and common law allows for the protection of trademarks.

What does trademark protection provide?

The scope of the protection can vary widely, depending on the strength and fame of a mark. The length of time that a mark can be protected is indefinite because it is based upon use—registered marks in Canada have an initial term of 15 years.

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What is a Trade secret?

A trade secret is any information that is or may be used in business that is not generally common knowledge in that trade or business.

The information must also have economic value because it is not common knowledge in the trade or business and the holder of the information must make efforts to keep it from becoming generally known.

Infringement Defense and Abatement Insurance

Intellectual property insurance provides coverage helping businesses defend themselves against claims of IP infringement, and can help businesses pursue those who are infringing on patents, copyrights or trademarks. There can also be coverage for things like contractual indemnities, loss of IP rights and loss of profit.

Insurers have developed policies specific to intellectual property, generally with patents in mind. In relation to patents, there are three basic policy types: defense and indemnity, defense only and offensive, or infringement, abatement insurance.

Defense & Indemnity Policy

A defense and indemnity policy provides defense coverage in a patent infringement suit and, if the party in question is found liable, pays for damages, including prejudgment interest.

Defense only Policy

A defense only policy, much like it sounds, covers only the cost of defense and does not cover damages awarded to the successful party.

Offensive or Infringement, Abatement Insurance

In addition, an offensive policy covers only the costs of pursuing an infringer. Certain insurers will amend some of the above-mentioned policies to include endorsements for trademark and copyright infringement.

The soaring costs of IP litigation

Defending infringement litigation can cost hundreds of thousands of dollars, not including the cost of damages and prejudgment interest. In patent infringement cases, attorney's fees can easily top \$1 million.

If your company could be sued by a competitor for infringement or intellectual property theft, or you do not have the funds to cover legal fees associated with defending your patent or trademark, it is vital that you purchase coverage.

Exclusions to Coverage

It is important to be aware of the exclusions to any policy that you purchase. The most common exclusions specified in intellectual property policies are for wilful infringement, anti-trust violations, infringement existing or known on the effective date of the policy and criminal acts.

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