



Facades of Intellectual Property Rights in Insurance Protection^{1*2}

Abhishek.T, Assistant Professor, Koneru Lakshmaiah Education Foundation, tabhishek@kluniversity.in ORCID: 0000-0001-8322-2773

Surabhi Srivastava, Assistant Professor, Koneru Lakshmaiah Education Foundation, msrcl.surabhi@gmail.com ORCID: 0000-0002-6171-1741

Abstract : This paper examines the purpose of granting the Intellectual Property Rights is fully serving the purpose or not. The concept of granting the IPR is not developed over one day and it is a gradual development that took centuries to come up to this stage. The awareness to protect the Intellectual Property Rights is still in the nascent stage and only knows to the highly literate persons. The persons having basic knowledge is also having difficulties in getting the intellectual property rights. After beating all the odds and able to become the owner of the rights, the holder of the rights will be expecting in a comfort zone. In fact getting the rights itself is not the end of the game and considered to enjoy the benefits. As we all know the purpose of the Intellectual Property Rights is to safeguard against infringements, and owner of the rights should be able to fight against the infringer legally. Even otherwise the person who is the real owner will file suit against the person who had taken the intellectual property rights wrongfully or dishonestly. Does the rightful owner are ready to safeguard their interest and fight the litigation in the Indian Courts and International Courts is the real question and is there any remedy available to protect and safeguard the Intellectual Property Rights of the person.

Keywords: Intellectual Property Rights, Insurance, IP Insurance coverage, Protection, Litigation

I. INTRODUCTION OF INTELLECTUAL PROPERTY RIGHT INSURANCE

Insurance is a contract that pledges payment of an amount on the happening of the event insured against (Sinha, 2012). Many intellectual property rights transfer agreements will explicate IPR in detail. "Intellectual Property Rights" expedient to all patents, trade-marks, trade secrets, trade names, service marks, internet domain names, design rights, database rights, rights in confidential information, rights in the invention, and all other similar rights which may subsist anywhere in the whole world but not limited to, any renewals or extensions thereof (Sec.gov, 2007).

1.1. Legal nature of IPRs

Intellectual Property Rights are of 'incorporeal' nature as they are neither seen nor touched and they are of personal moveable property form. They will attain legal authority with these special rights and remedies are available for breach or infringement. These rights are on par with any other civil rights through a private civil action against infringers. Even there are criminal remedies for some of these rights such as trademarks and copyrights against infringers (Squirepattonboggs.com, 2013).

1.2. The Cost of IPR Litigation:

The appropriate forum is the civil court and this litigation needs a high technical knowledge and expertise and due to expenses incurred either by the claimant and defendant is huge. The claimant should recover as costs and the defendant generally have to bear the expenses. Most of the major industries are having the intellectual property rights as the main contributor of litigation.

Industry	Litigation type
Energy	Intellectual Property
Finance	Employment
Health Care	Contracts
Insurance	Employment
Manufacturing	Intellectual Property
Real Estate	Personal Injury
Real/Wholesale	Intellectual Property
Technology/Communications	Intellectual Property

Table1: Most costly types of litigation by industry (Litigation Trends Survey, 2005).

Among the risk management techniques insurance emerged as a successful mode and provide time and again in several sectors. In simple, "Insurance risk is coverage for exposures that have the potential for financial loss. Court has given different interpretation and in Griffin Systems Vs Washburn case is focused on the legal elements necessary for an enforceable contract (Williams, 2006). In India cost of patent

litigation depends on the senior counsel engagement and an average it is estimated from INR 1.2 million to INR 2.5 million (\$22,000 to \$47,000) (Vartak, 2012). It is also possible to recover some part of expenses from the losing party if the Court award which was done in “*Merck Sharpe and Dohme Corporation v Glenmark*” and sometimes costs will also be imposed as done in “*F Hoffman La Roche v Cipla Ltd*,” RFA by imposing INR 500,000 on the losing party (Pravin and Aasish, 2018). Dollars spent on some of the important cases of Intellectual Property Rights are *DCS Communications v. General Instruments, Honeywell v. Litton, Honeywell v. Minolta, Fonar v. General Electric, Polaroid v. Kodak and Stac Electronics v. Microsoft* and the amount involved as expenses are around \$ 2.4 Billion (Warren, 2001) and average cost for IP cases is \$ 2.8 Million and with 6% Compound annual growth in IP lawsuits in USA.

1.3 Cost of litigation in USA:

Amount spent on some of the important cases of Intellectual Property Rights are *DCS Communications v. General Instruments, Honeywell v. Litton, Honeywell v. Minolta, Fonar v. General Electric, Polaroid v. Kodak and Stac Electronics v. Microsoft* and the amount involved as expenses are around \$ 2.4 Billion (Warren, 2001) and the average cost for IP cases is \$ 2.8 Million and with 6% Compound annual growth in IP lawsuits in USA (Sinha, 2012). The 10 most litigious counties of Patent Litigation are USA, UK, Germany, France, Italy, China, Japan, Canada, Netherlands and Australia (Will, 2012).

According to a survey conducted by American Intellectual Property Law Association annually, there is huge amount spent in the litigation in court for patent infringement cases. According to 2015 report, a table is prepared to mention the median costs of Patent Litigation.

Table 2: Median Costs of Patent Litigation

	Through discovery	Through trial, appeal
<\$1M AT RISK	\$400K	\$600K
\$1M-\$10M AT RISK	\$950K	\$2M
\$10M-\$25M AT RISK	\$1.9M	\$3.1M
>\$25M AT RISK	\$3M	\$5M

The owners of the intellectual property rights who have spent lot of money in procuring the intellectual property rights have consider intellectual property insurance. Intellectual property insurance is a mode available to minimise the commercial risk to the extent of protecting its IPR's (Sople, 2012). This IP insurance can be offensive or defensive are even both and will fill the gap that is not taken care of by the “Standard” policies.

1.4 Several Big Companies faced problems due to IPR Litigation:

Some of such important organisations are Napster, The Globe, Kodak, Path etc. Napster is an organisation that is a pioneer in sharing digital files and song through the internet ran into legal technical difficulties over matters of copyright infringement resulting in the closing of the company. TheGlobe.com a social networking service that had the first-day proceeds of gains in any IPO subject to history till date was hit by several lawsuits, one patent infringement suit, six putative shareholder class-action lawsuits and others that resulted in the closing of the Company in 2008. Even the famous Kodak also had done a “Patent Peace” with super consortium through a deal that discouraged high-profile courtroom battles. The path that established in 2010 and raised over \$70 million, fined around \$800,000 for securing & storing data from specific underage users without their permission (Willings, 2019).

1.5 Different Scenarios where IP Insurance is necessary

The increase in the grant of Intellectual Property Rights is proportional to the rise in the case IP Litigation and a graph showing the comparison is available. The main factors based on which the courts award are Attorney fees, Interest assessments, Lost profits, Punitive enhancement, Royalties, etc. Intellectual property rights are covered by insurance companies for the pursuing or raising defending claims for infringement, loss of protection or finding of infringement, cost of enforcement, validity or ownership, or fighting for contractual claims with third parties affected by such events. Even there is few litigation funding options that gives scope for the cash flow support necessary in handling proceedings or even for dealing against the applications for security for costs (Cipa.org.uk. n.d.).

1.6 “Is IP legal expenses insurance the same as other types of insurance?”

Similar to the other products where there is high risk, then obviously there will be higher premium to be paid by the policy holders. Even most of the insurers avoid underwriting policies as sometime the legal

expenses will be so huge and even there will not be available re-insurers in the market. In IP insurance policies there will be several exclusions and excesses is determined. Generally excesses will start around £1000. Co-insurance is also a form of “excess” and it will be borne by the insured based on the percentage of the cost of any claim (Gov.uk, 2020).

Even though, if there are lawyers who agree for less cost but cost of enforcing patents and litigating should be accounted from the litigant end only (Handy, 2020). These expenses include deposition costs, travel expenses, filing fees etc, during the initial phase and during the discovery phase the expert’s fee for the validity, necessary infringement and damages will be high and in addition to that local counsel fee is also must. There is an alternative in the form of a Patent Assertion Entity (PAE) that monetise through litigation against the alleged infringers, licensing or sale to third parties by acquiring the rights from the IPR holders and keep percentage as a fee. Even you can directly participate in litigation as Pro Se, if you have sound technical and legal knowledge, but it has its own disadvantage. In view of the huge financial risk involved, one should be well-equipped to take proper choice in dealing with the infringers.

1.7 Proper care of IP in Merges and Acquisitions:

In view of advancement of technology, many companies products once flourished will fade in no time with new technology advancement and lead to the bankrupt or get merged or acquired by the other companies. So, the consultants of merger and acquisition will give lot of importance and priority will be given in their due diligence check list.

1.8 IP Indemnity policy:

If a supplier (Licensor’s) intellectual property is sold to a company (Licensee) and then if a third party claims that the subject property is infringing his rights then, the licensor should indemnify the loss borne by the licensee and this is called intellectual property indemnification (IP Indemnity). Licensee should check the financial capacity of the licensor and whether there is substantial insurance coverage in the form of special IP insurance and insist for the same (Marell, 2020).

1.8.1 A typical IP indemnity coverage includes:

(1) indemnify by the licensor (2) defend the suit by licensor; and (3) hold the buyer harmless from losses are associated with such certain claims.

Other factors that impact coverage and liability are Limitations of use, Limitations on liability, Geographic limitations, Multiple indemnitors, Remedial measures, Pre-existing threats and Choice of law.

1.9 Consequence of non-coverage of IP Insurance

If there is no proper Intellectual property insurance coverage, the general risks faced by the organisations or individuals are:

1. Brings bad reputation about the products that are accused and brings down the claims.
2. The court litigation puts pushes from strong position to weak and due to that there will be a situation where the license will also be sold.
3. The reserves will be used for defending or in pursuit of the rights.

II. NEED FOR SPECIFIC INTELLECTUAL PROPERTY RIGHT INSURANCE

In the last decade, there is an increase of over 300 per cent in Intellectual Property Insurance Policies. Among them “abatement” or “enforcement”, “defence” and although “pursuit” policies are gaining popularity.

2.1 Defence only Policy:

Defence only policy which is also called as defense cost reimbursement insurance gives protection to the policy holders against the judgments and settlements from lawsuits. This will not cover the damages and cover only against the suing party. This is a type of indemnity insurance that can be more useful for establishments with \$500,000 to \$25 million revenue.

2.2 Defence and Indemnity Policy:

This cover is similar to the defensive only policy and also in addition, it covers to pay against the suing party, if any damages were awarded and in addition pre-judgment interest. This policy covers the cost of the litigation for defending for the infringement of the patent, trademark or copyright infringement etc. The policy reimburses the cost of re-examination of proceedings which is a defence strategy for patent infringement cases.

One of the pre-condition in these claims satisfaction is that there is a need to have an opinion from one of the attorneys that there is no infringement to the existing intellectual property rights by searching and verify at the United States Patent & Trademark Office (USPTO).

2.3 Pursuit, Abatement, Enforcement Policy:

The name of these policies is interchangeable and can be called with any of the names and give scope to sue against infringers of intellectual property rights and cover all the legal expenses of the lawsuit. It is also called infringement abatement insurance. It releases the personal liability of the executives and deters infringement while encouraging the other companies also to get the licensing of their products.

If the companies are not having this policy the alternative available is to settle the matter in the court of court, totally abandon the intellectual property rights, accept to pay royalty forcibly or enter into a licensing agreement, depending on the commercial general liability policy or file a cross suit on the plaintiff.

Most insures are provide tailor-made policies depending on the need of the insured. These policies are based on the design and concept of the individual policy. Even larger companies are using their money power to ensure the smaller companies to come for the out of court settlement.

This is a kind of "pursuit" policies", that reimburse the policyholder in case of litigation for taking affirmative action against the intellectual property rights owned. Pursuit policies doesn't reimburse for the acts before the policy period and litigation should be authorised by the insurance company for its coverage. Litigation in the foreign jurisdictions is not covered unless an "add-on" cover is passed through an endorsement.

III. TYPES OF IP INSURANCE COVERAGES:

Each product of insurance will cover different IP Risks and Rights such as:

Opinion only: It covers that provide the cost incurred in getting opinion about the litigation in enforcing or defending the claim.

Defence and enforcement: It covers legal expenses to file a suit for enforcement of the right and also defending allegations of breach. This can be of either one or both i.e, for enforcement or defence or both.

Damages: It covers to amount payable in the form of damages in case of losing an infringement action.

Validity: It covers legal expenses in defending challenges to validity of the rights.

Forms of Insurance covering Intellectual Property

The forms of insurance that cover IP: their costs, benefits, and limitations.

Standard Policies

○ **General Liability:** The businesses establishments are covered against the bodily injury and about property damage and also cover advertising and personal injury. Advertising activities that are under the intellectual property such as trademark right breach against advertising content. "Advertising" means a point of attracting the attention of others by any means for the purpose of seeking customers or supporters; or increase sale or business (Gauntlett, 2010).

○ **Media Liability:** Publishing companies are excluded in General Liability policies and the same is covered through Media liability and will come along with the cyber liability insurance or errors and omission insurance. While taking the coverage, there is need consider the stage of growth and also assessment of the unique dangers to be done that can be experienced to the specific e-commerce landscape (Gauntlett, 2010).

Standard policies will not give specific protection of patent and even will not cover expense for suing against the infringers.

Specialty Policies

Specialty policies are broadly under Patent Insurance, Trade Mark Insurance and Copyright Insurance (Niedbala, 2014)

There are very few insurance companies that give these coverages and even the prohibitive cost is also huge.

Patent Insurance: It gives coverage against patent infringement law suits brought against a company.

Patent Infringement Insurance: This product covers expenses to file suit against companies that is infringing the holder of IPR.

Businesses and companies are exposed to electronic intellectual property issues and even the individuals are at risk due to the advanced technologies and practices. Some person who know the risks involved are taking cyber-intellectual property insurance for his personal blog also. When the server is hacked due which the network is interrupted there will be a stoppage of production and will not get the traditional insurance coverage as there is no tangible property damaged but if there is cyber insurance property or liability insurance the loss will be indemnified (Cavanaugh , 2006). India is a hub for pharmaceutical manufacturing companies and its Patent Act specifies several issues and one among them is the Compulsory Licencing (Mullaicharam & Umamaheswari, 2018), the companies can take special add-on with specific covers in case of default to cover the losses incurred.

Underwriting process of IP Insurance by Insurance Companies

Generally, the underwriting of intellectual property rights is very cumbersome and so they are excluded in several package policies. Even the specific IP policies also every insurance company have their own strategies like keeping, the limit of indemnity, co-insurance, self-insured retention etc. Most intellectual property infringement liability policies have the deductible and self-insured retention that to be satisfied first. Apart from that co-insurance percentage if the legal opinion indicates more claims are prone to proposer/insured products. Most of the companies take the legal opinion based on that inputs only the underwriting is done.

Having specific insurance policies will help the companies with the contractual liability protection, balance sheet protection and deal felicitation.

IV. IP INSURANCE IS DIFFERENT FROM OTHER FORMS OF INSURANCE POLICES

4.1 Coverage under the CGL Policy:

“Standard commercial general liability (CGL) insurance policy covers physical injury claims and advertising injury.” If the infringement is intentionally done by the insured those claims are not admitted by the insurers. Companies rather than depending on standard CGL insurance policy for the claims not in the preview of “advertising injuries” need to take specialised insurance coverages.

IP insurance protection may not be relevant to all the companies but for small companies that are having innovative products or entering into the market aggressively there is every need for the IP insurance protection and that means the difference between survival and mortality (Warren, 2001). Compared to the small defendant, a small plaintiff will be in a better position as they will be having valid patent, unlike the defendant who infringes knowingly or unknowingly. Even small plaintiff can settle on many inferior terms without appropriate IP coverage.

Table 3: Comparison of the CGL and Specific IP Policies

Coverages/Exclusions	Commercial General Liability Insurance Policy	Intellectual Property Insurance Policy
Losses or expenses arising from bodily injury	Covered	Not covered
Personal injury	Covered	Not covered
Liability arising out of Property damage	Covered	Not covered

Personal or advertising injury liability	Covered	Not covered But depends on the terms and conditions clarity without being ambiguous or courts takes adverse view.
Medical payments of those injured on the premises of the insured	Covered	Not Covered
Intentional injury	Not covered	Not Covered
Employment-related liability	Not covered	Not Covered
Contractual liability	Not covered	Covered
Any unlawful acts by the insured	Not covered	Not covered
Libel or slander	Not covered	Not covered
Civil rights violation	Not covered	Not covered
Publishing, broadcasting, advertising offences	Not covered	Covered
Advertising product liability	Not covered	Not covered But depends on the terms and conditions clarity without being ambiguous or courts takes adverse view.
Infringement of intellectual rights such as copyright, patent etc	Not covered	Covered
Intentional Infringement of intellectual rights such as copyright, patent etc	Not covered	Not covered
Defence against patent and IP infringement claim	Not covered	Covered
Loss of future profit In case of injunction there is loss of profit policy covers for 12 months	Not covered	Can be Covered
Loss of an Intellectual Property Right	Not covered	Can be Covered
Money for any judgments/settlements	Not covered	Covered
Cost for the litigation against the party who will infringe and also to recoup the lost income	Not covered	Covered
Abatement Enforcement Coverage	Not covered	Covered
Infringement Defense Cost Reimbursement	Not covered	Covered
Defence of counterclaims	Not covered	Covered
Contractual indemnities Cover	Not covered	Covered
Loss of IP Right Cover Based on the infringement action if the IP right is invalidated the insurer will repay the number of	Not Covered	Covered

investments thereby allowing the insured to move to the next project.		
Declaratory judgment actions		Not covered
Allegations of antitrust		Not covered
Allegations of anti-competitive conduct		Not covered

Note: The Companies can create customised policies covering the exclusions also as add on covers. The above-mentioned coverages are only general coverages and exclusion found in general in the CGL and IP Insurance Policies.

Generally, the CGL policies will cover only infringement directly results of the advertisement itself. Most of the claims were arising out of the sale of a patented product or insured's unauthorised use and less chance that they are due to the advertisements. So, the claims were not covered under CGL policies.

In some jurisdictions, the term damages are not defined in detail or not defined and also will not include attorneys' fees, punitive damages and disgorgement due to this the amount incurred by the insured will not come under the coverage of CGL policy. Most of the CGL policies doesn't afford the pursuit cost for the cross-claims or claims for the insured affirmative prosecution against the third party.

4.1.1 Liability insurance policies:

Intellectual property rights infringements are generally under the exclusions in liability insurance policies. Policyholders will be disappointed by these exclusions as in the present commercial litigation there will be some kind of connection to IP Rights (Johnson and Larson, 2020).

4.1.2 Professional Indemnity Insurance:

There is a strong connection between Professional indemnity insurance and intellectual property rights. The main reason behind it is that even though allegations of IP theft are covered under the PI Insurance, there is no coverage for all the infringements of Intellectual property rights (PolicyBee, 2020).

4.1.3 Directors and Officers (D&O) and Errors and Omissions (E&O) Policies:

Most of the IP litigation matters put the directors and officers of a Company under the scanner and so there is a need to assess the Directors and Officers (D&O) and Errors and Omissions (E&O) have intellectual property coverage. But the fact is that generally most of these policies exclude these IP claims. So, companies should be ready to consider taking IP Insurance as a backup.

"In *Sentinel Insurance Company, LTD v. Yorktown Industries, Inc.*, 2017 U.S. Dist. LEXIS 14439, 2017 WL 446044 (N.D. Ill. Feb. 2, 2017), case insurance company denied defending and indemnifying in the trade secrets misappropriation case under the coverage of the "personal and advertising injury." But there is a specific and express exclusion for claims predicated on the alleged misappropriation of a trade secret. D & O" policy is raised in instances where there is a breach of fiduciary duty is alleged, claim is raised on officer or director etc, in trade secret disputes. The necessary sept needed to be carried out by the insured is to notify the insurance company about the claim and also while taking the policy to know exact coverages under the policy.

4.2 "IP Insurance and other IP litigation funding arrangements"

There are limited standard risk management practices of IP risks which are difficult too to transfer to the other third parties. Even though IP Insurance is an available option but due to the higher premium, the time-consuming underwriting process and inadequate coverages with the number of exclusions, it has become not viable. Apart from the IP Insurance other IP litigation arrangements include Litigation Funding Agreements, Conditional Fee Arrangements (CFA), "Before the event" insurance, "After the Event" insurance etc.

4.2.1 Conditional Fee Arrangement

A conditional fee arrangement (CFA) is an agreement between the legal advisors and client where the successful outcome of the litigation linked to the fee payable as the legal services.

4.2.2 Before the event IP legal expenses insurance

'Before the event' or 'BTE' legal expenses insurance (LEI) policies provide coverage against legal costs incurred by one as claimant or defendant. These risks are covered only when the claim is made or it is identified that there is a scope of a claim. So, alleged infringement has not occurred is a precondition to claim coverage in BTE LEI (Gov.uk, 2020).

4.2.3 "After the Event" insurance

Generally, insurance covers only uncertain events and not certain events. But "After the Event" insurance is kind of insurance that covers the risk already known and the threat is already known. The premium depends on several factors and it changes for the defence or in case of affirmative action or on a combination etc. Even there is excess and cap to the indemnity limit of the liability.

4.2.4 Litigation funding agreements

Litigation funding agreements are not like the insurance contracts and they help in a way by providing fund necessary for the case and not pay in the end or as upfront premiums. The assurance on the probability of success and also the scope of damages going to be incurred will be taken from the lawyers of claimants.

IP insurance and the IP Litigation Funding model are more common. But there are some prominent differences between the same and the same as mentioned in the table below.

Table 4: IP Insurance Vs IP Litigation Funding:

	IP Insurance	Litigation Funding
Contract/Agreement	Before the occurrence of risk	After risk occurred
Consideration	Premium	Legal cost is funded in exchange for the share in any proceeds
Time of monetary assistance	Before litigation and during the trail	After the litigation is started
Type of litigation interested	No insurance companies control	Enforcement cases
Control to final say on the settlement	Insurance Companies	No say

There are several cases settled as of now, still pending in the courts and even can be expected on the clause of the "Intellectual Property Exclusion" contained in the CGL policies all over the world.

Unless there is a specific mention of the exclusion courts are taking adverse inference to the insurance companies and awarding judgments in favour of claimants/insured. Again it is being on the case to case basis.

Need to Read Insurance Policies Carefully

After going through the clauses in detail and case of Standard CGL policies, Courts are barring the coverage where the claims are arising out of the infringement of the intellectual property rights and trade secrets and even specify if the allegations are close to the specific exclusionary language.

So, just by taking a CGL policy, the intellectual property rights related issues are not covered which comes close to its interpretation and so there is a need for the specific policy to cover those exclusions if they are important if the insured is working related to that area of IP rights.

4.3 Express exclusion of Advertising Injury:

Express exclusion is given more weightage even though there is implied coverage that falls within the Advertising Injury that can allow the insurers to repudiate the claim. Generally, most of the insurance policies are having these common exclusions in the Advertising Injury coverage:

- Act of falsity is within the knowledge of the insured done orally, written or electronic publication of material mode.
- Act of publication was done before the policy inception done orally, written or electronic publication of material mode.
- An act was done by the insured himself or on the direction of the insured either wilfully, dishonestly, fraudulently or with criminal intent.
- Act resulting in a breach of contract, excluding an implied contract that will make your “advertisement” using another’s “advertising idea”.
- Act in failing to maintain the standard of goods, products and services that conform with your “advertisement”.
- Act allowing having description wrongly made concerning the price of the products, goods or services (Hock, 2014).

Intentional Trademark Infringement Test

Sun-Fun Products, Inc. v Suntan Research & Development Inc., 656 F2d 186 (5th Cir 1981) given some guidelines on the whether the trademark looks like or not:

- Trademark type
- Design Similarity
- Product Similarity
- Purchaser and retail outlet identity
- The similarity in the usage of advertising
- The intention of the defendant
- Evidence of confusion in realty

In Wynn Oil Company v American Way Service Corporation, 943 F2d 595 (6th Cir 1991), it is held that there is need to go with the timeline, intention, knowledge etc, for circumstantial evidence and not just the credible witness. In Piper Aircraft Corporation v Wag-Aero, Inc., 741 F2d 925 (7th Cir 1984) case it is held that deliberate copying will attract the intentional trademark infringement.

From the insurance point of view basic aspects that are being verified by the claims department are:

- Whether trademark search was performed?
- Whether there is knowledge about the trademark issued to the others?
- Whether there is an intention that defendant goods are being sold as if they are plaintiff ones?

Having a basic investigation by the insurance company will have an idea on direct denial of the claim the initial stages of the notice given by the insured. But generally in insurance companies will deny the claim under CGL policy and that is the reason for having a better Intellectual Property Insurance. IP Insurance gives a fair chance at least to defend the case if a specific Defence IP Policy is taken.

Key industries that require IP Insurance:

Key sectors that directly affected by the IP insurance claims are Pharma Sector, advertising sector, software industry etc.

Software License Agreements

As many of the software vendor and developers are undercapitalised, the customers should insist for the vendors to have contractual indemnification obligations and also the insurance programs. Standard CGL policies can provide inadequate protection and the scope of insurance claims denial is more.

IP Insurance in IP Supply Chain:

IP Insurance covers for the claims of regular IP Rights and very useful for insuring IP infringement indemnities. Contractual indemnities are a way of allocating risk within a contract to define. Both the marketing agency and the manufacturing company are at risk to settle the third-party infringement claims. There are three type of the covers through the contractual obligations:

1. **‘Blanket’ contractual obligations cover-** This covers all the contracts on which the insured provides indemnity are insured.

- 2. **'Specified' contract coverage**- This covers all the business activities and also any contractual parties specified by endorsement
- 3. **'Specified' contract coverage -Contract only**- Covers the insured only for their work performed under the contracts specified by endorsement, plus any contractual parties specified by endorsement

Fig 1: Blanket' contractual obligations cover

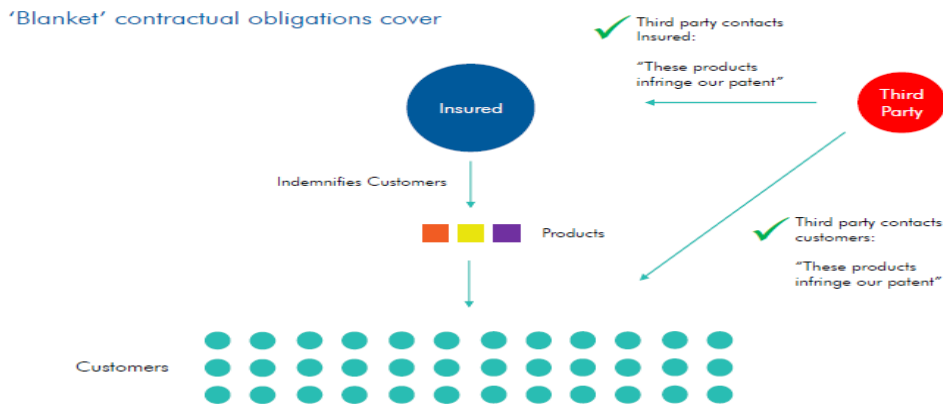


Fig 2: Specified' contract coverage

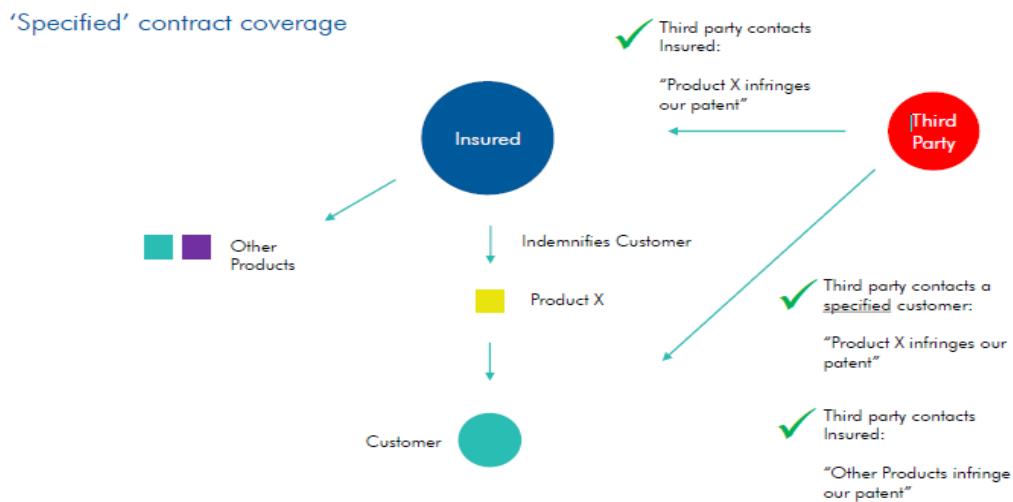
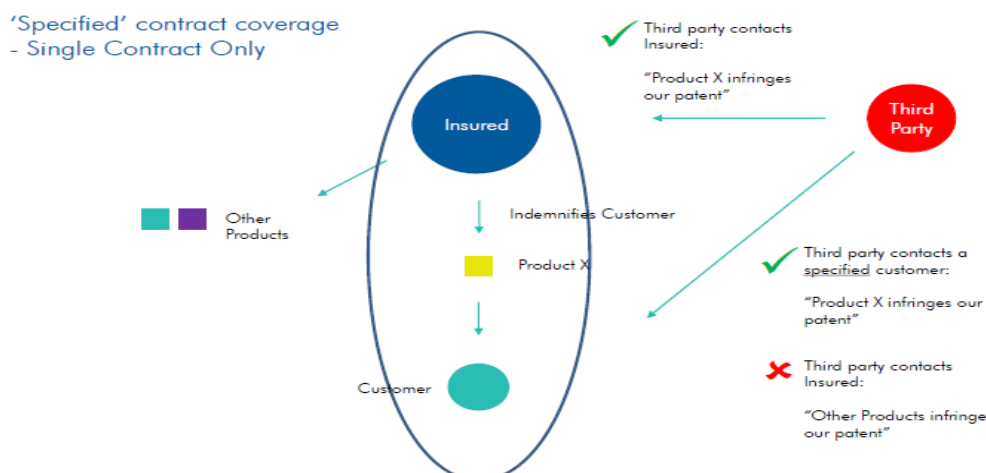


Fig 3: 'Specified' contract coverage -Single Contract only



Worldwide scenarios on IP Insurance:

In developed countries like Australia, China, Japan and the USA IP insurance Products are popular. Even

Japanese and Chinese Patent Offices are offering subsidies to SMEs to take IP Insurance. In USA the numbers of IPR cases are 13,257 pending as on 2016 (US Courts, 2017). As per IP India Annual Report 2017-18, the total number of IP application filed in one year are 3,50,546 (CGPDTM, 2018). But any of the Indian Insurance Companies are not willing to file the IP Insurance Products approvals from the IRDA. There might be several reasons higher risk, complex terminology of patent agreements, some part of the risk is mitigated by some relevant insurance policies etc.

V. CONCLUSION

Intellectual property rights without Intellectual Property Insurance are of no value and even the IP holder will not have funds that are sufficient to stop infringers and to defend against infringers or competitors of relevant IP. IP insurance provides necessary funds to get the merits of the case where enforcement and defense will get expenses and cover the potential settlements and damages and fill the gap left by their CGL Policy.

Surprisingly, most business owners are not having knowledge of these IP policies and it is utter disappointing that insurance companies in developing countries like India are not issuing IP insurance policies. Worldwide the level of IP Insurance popularity is changing depending on the size and territory of IP rights holder. If the premiums are made less and use worldwide trends on deciding the premiums there is scope to attract the IPR holders to take IP Insurance. Insurance Companies in their IP Insurance, rather than confining to the one specific IP Right, if able to encompass all relevant IP rights in one product line that can be easy for the IPR holders to choose the product and this will encourage them to take proper insurance coverage to the risk they face.

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