


# Intellectual Property (IP) Insurance





IP rights (patents, trademarks/trade dress, copyrights, trade secrets) protect valuable intangible assets. However, along with those rights comes risk to company balance sheets. However, IP insurance is available to respond to this persistent and volatile risk and lessen the financial impact.

## Why should my company worry about intellectual property risk?

IP risk is increasing with technology convergence and the use of IP rights to protect technologies of all kinds.

 More IP, more IP litigation: Nearly 96 million in-force patents, trademarks and other IP worldwide in 2021<sup>1</sup>; top 3 countries for IP litigation are China, U.S., Germany; over 14,000 IP cases are filed annually in U.S. federal courts<sup>2</sup>

 IP litigation is expensive: U.S. median patent infringement damages \$9.2 million; U.S. average trade secret misappropriation damages over \$21 million<sup>3</sup>; for most patent cases, litigation expenses can be higher than the damages/settlement amount; median litigation costs to take \$1-10 million trade secret case through trial \$2.6 million<sup>4</sup>

 Legal challenges can cost \$100,000 per patent<sup>4</sup>

## What do you mean by “IP risk”?

IP exposures create balance sheet risk

**Cost to:**  
Enforce IP rights, defend IP against legal challenges, innovate



**Financial loss caused by:**  
Successful legal challenges to IP, IP misappropriation, IP ownership disputes

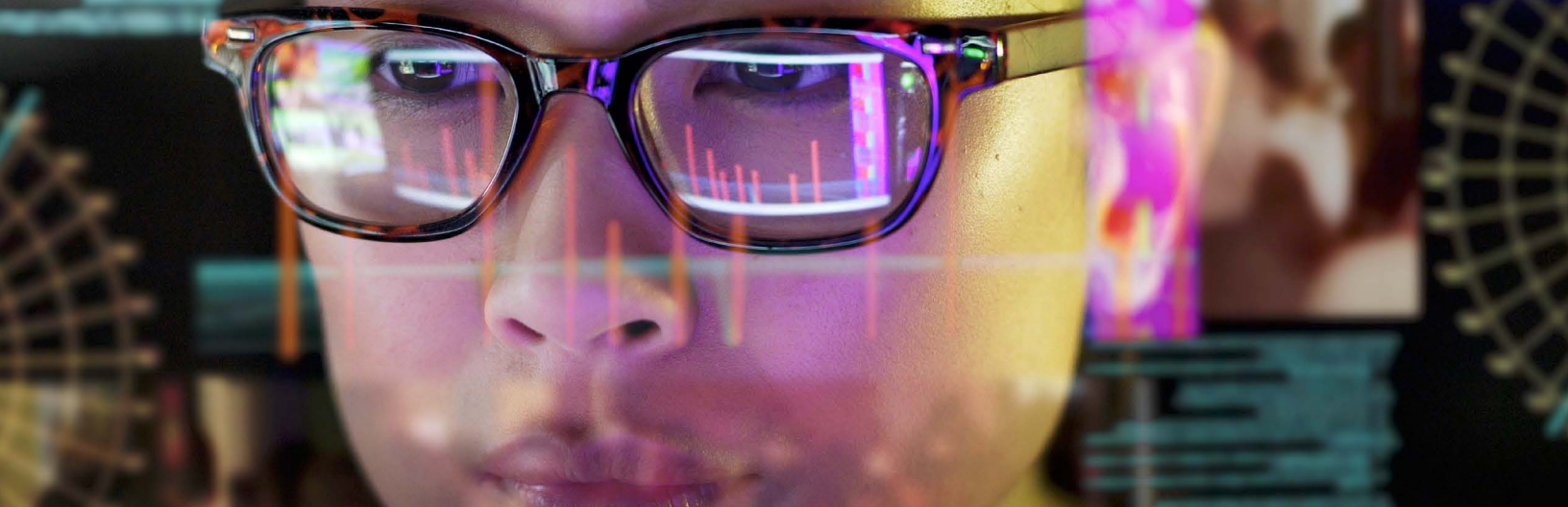


**Cost to:**  
Defend against infringement claims or misappropriation of IP claims, challenge asserted IP (as part of defense), defend IP infringement indemnitees



**Financial loss caused by:**  
Lost revenue, settlement/damages, licensing fees, IP infringement indemnification





## Don't I already have insurance to cover IP exposures?

Most IP exposures are either expressly excluded or only partially covered in standard lines of insurance.

General Liability, D&O, Cyber, Tech E&O, Media Liability, Reps & Warranties	
No coverage	Patent infringement, trade secret misappropriation, IP enforcement costs, costs to defend IP
Limited coverage	Trademark infringement (no product coverage), copyright infringement (typically no product coverage except software infringement claims)

## How can IP insurance help me manage the financial impact of IP risk?

IP insurance covers costs to defend against third party IP infringement claims, costs to sue infringers of your IP, costs to defend your IP against legal challenges, and settlement or damages. The IP insurance market is established but small, and IP insurance providers' risk appetites and coverages vary. Our IP insurance placement specialists work with you to understand your IP risk profile and determine the best fit, not only in terms of insurers but also in terms of coverage for: types of IP, activities/products/operations, and geographic scope. For smaller companies with no loss history, we can quickly and easily obtain quotes using your website address and annual revenue. For larger companies and companies with a loss history, we have a proprietary application that all the IP insurance markets will accept.

Form
<ul style="list-style-type: none"> <li>• Claims-made, annual</li> <li>• Defense costs inside the limit</li> <li>• Insured selects counsel subject to insurer approval</li> </ul>
Scope
<ul style="list-style-type: none"> <li>• Can tailor to specific types of IP infringement, entire business or specific products, certain geographies, and contractual IP infringement indemnities</li> </ul>
Coverage
<ul style="list-style-type: none"> <li>• Defense costs, damages/settlement, appeals</li> <li>• Declaratory judgment actions, counterclaims covered with advance insurer approval</li> <li>• May also include costs to defend against legal challenges to insured's covered IP</li> </ul>
Limits
<ul style="list-style-type: none"> <li>• Typically, \$1-10 million for primary; may require \$25-500 thousand retention and 5-20% co-insurance</li> </ul>
Exclusions
<ul style="list-style-type: none"> <li>• Undisclosed claims and circumstances</li> <li>• Retaliatory suits</li> <li>• Non-IP causes of action</li> </ul>
Cost
<ul style="list-style-type: none"> <li>• Premium typically 1-5% of limit; minimum \$5 thousand</li> <li>• Driven by: Revenue, technology and verticals, loss history, geographic sales, types of IP infringement covered</li> </ul>

<sup>1</sup>World Intellectual Property Organization (WIPO), World Intellectual Property Indicators 2022, 22.

<sup>2</sup>Lex Machina.

<sup>3</sup>Stout, Trends in Trade Secret Litigation Report, 2020, 36.

<sup>4</sup>American Intellectual Property Law Association, 2021 Report of the Economic Survey, 75.

## Contacts

**Kimberly K. Cauthorn, JD**  
IP Leader  
[kim.cauthorn@wtwco.com](mailto:kim.cauthorn@wtwco.com)

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