

Intellectual Property Risk Management

Organizations across all industries are leveraging technology at an increasing rate. Patents, trademarks, copyrights, and trade secrets (intellectual property/IP) provide legal protection for technological innovations. As a result, greater use of technology means higher risk of infringing others' IP. Patent infringement presents unique issues.

Situation



Anyone making, using, selling, offering to sell, or importing the technology covered in a third party's patent is an infringer.



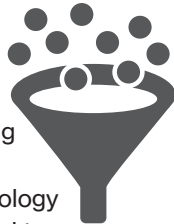
Therefore, even companies that did not make but are using the technology can be directly sued for patent infringement.



Consequently, technology users typically require their technology suppliers to indemnify them against patent infringement claims. These indemnities are often uncapped or have high caps.

Challenges

A patent holder may target multiple users of a technology, creating a risk aggregation issue for the technology provider that agreed to indemnify those users.



It can be difficult to determine which technologies allegedly caused the infringement. This means indemnification disputes between the technology users and their technology suppliers can arise.



Increasingly, companies are developing their own technology and are both the technology supplier and user. As a result, they cannot shift IP infringement liability risk to technology suppliers through indemnities.



Solutions



Standard lines of insurance do not cover patent infringement liability. However, technology suppliers can purchase IP infringement liability insurance that covers IP infringement disputes involving themselves and backstops the IP infringement indemnities they provide to their customers.



Many companies have a hybrid model where they make some of their own technology as well as use supplied technology. IP infringement liability policies cover them regardless of whether they are indemnified. Additionally, for their technology suppliers, they can set up a vendor IP insurance program.