

Key Terms & Concepts

Intellectual Property (IP) includes creations of the human mind or intellect. IP is essential to a company's product/service profitability, economic growth, and success. Businesses leverage IP as invaluable business assets to achieve/maintain a competitive advantage, and improve market share/value, in a global market. Examples of IP include the following:

Patent: A patent is issued by a government authority (e.g., United States Patent & Trademark Office) granting the patent owner a legal right to exclude others from making, using, selling, offering to sell, and importing the claimed invention for a limited period of time. Patentable subject matter includes inventive processes, machines, articles of manufacture, and compositions of matter.

Copyright: Copyright gives the owner exclusive rights to make copies of a creative work (i.e., an original work of authorship) for a limited period of time. The creative work may be in a literary (e.g., software code), educational, artistic, or musical form. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea or information itself. The copyright owner has the exclusive right to authorize or prohibit reproducing (e.g., printed publications, sound recordings), distributing copies, publicly performing, broadcasting, and translating the work.

Trademark: A trademark is a name, word, phrase, logo, symbol, design, image, or a combination thereof that identifies and distinguishes products or services of a particular source from those of others.

Trade Secret: A trade secret is information that: (1) is not generally known to the public or readily/legitimately ascertainable through proper means by others; (2) confers economic value or provides a competitive advantage to the owner; and 3) the owner has taken reasonable measures to keep such information secret. Examples of trade secrets include confidential/proprietary business, financial/economic, scientific/technical/engineering information, such as formulas, prototypes, methods, processes, procedures, techniques, practices, programs, or codes. Trade secret protection can theoretically continue indefinitely to create a perpetual monopoly.

Patent Infringement is the unauthorized making, using, selling, offering for sell, or importing of a claimed invention without permission/license from the patentee during the patent term within the country that issued the patent.

IMPORTANT: Please note that a person/business can be sued for patent infringement even if the person/business does not have a patent.

Copyright Infringement is the unauthorized reproduction, distribution, public display or performance of a protected work without permission from the copyright owner.

Trademark Infringement is the unauthorized use of a mark that is identical, or confusingly similar, to a trademark owned by another on, or in relation to, products and/or services in a manner that is likely to cause consumer confusion as to the source of the products and/or services.

Trade Secret Misappropriation involves acquiring or misappropriating another's trade secret information via an improper means, such as industrial espionage or from a former employee who is under a nondisclosure agreement.

Patent Troll: A patent troll is a negative term referring to a non-practicing entity (NPE) who acquires patents for the sole purpose of asserting patent rights against companies that allegedly infringe on the patented product or process. Trolls also exist in the areas of copyrights and trademarks.

IP Enforcement: The legal process of pursuing those who infringe on your clients' IP rights.

IP Defense: The legal process of defending against a claim of infringing on another's IP rights.

IP Insurance: The exorbitant financial costs associated with IP enforcement/defense can help be mitigated by an IP Enforcement/Defense policy from IPISC.

As a broker/agent, have I satisfied my duty to inform my client of the exorbitant financial costs associated with Intellectual Property enforcement/defense litigation and how to mitigate such risk with IP enforcement/defense insurance?

Does my client make, use, sell, offer to sell, and/or import products or services?

Enforcement Risk

Defensive Risk

Does my client have enforceable Intellectual Property (e.g., patent, copyright, trademark, trade secret) rights?

Does my client have Intellectual Property (e.g., patent, copyright, trademark, trade secret) that is under development and/or the subject of a pending application filed with a government entity?

Can my client bear the full financial burden of litigation to enforce its Intellectual Property rights against an infringer, and withstand the impact of business interruptions associated therewith?

Below is the mean/average cost of litigation for infringement/misappropriation of the following Intellectual Property with only \$1-\$10 Million at Risk:¹

Patent:	\$1,868,000
Copyright:	\$1,287,000
Trademark:	\$1,051,000
Trade Secret:	\$1,644,000

¹ AIPLA 2019 Report of the Economic Survey

Are competitors in my client's industry litigious (e.g., issue cease and desist letters, file or threaten to file lawsuits alleging IP infringement) in an attempt to stifle competition and/or regain lost market share?

Are patent, trademark, and/or copyright Trolls/Non-Practicing Entities active in my client's industry?

Are there gaps and/or explicit exclusions in Intellectual Property coverage in my client's Commercial General Liability (CGL), Professional Liability (PL), Professional Indemnity (PI), Errors & Omissions (E&O), Directors & Officers (D&O), and/or Cyber Insurance Policies?

Is my client under a contractual obligation to indemnify a third party for litigation expenses associated with allegations of Intellectual Property infringement?

Can my client bear the full financial burden of litigation to defend itself against a claim of infringement of a competitor's IP rights, and withstand the impact of business interruptions associated therewith?

Target Entities include: *Companies* (e.g., start-ups, small-, mid-, and large-size privately owned and publicly traded high-technology companies, manufacturers, suppliers, distributors, publishing companies); and *Individuals* (e.g., business owners, executives, entrepreneurs, inventors, scientists, artists, authors).

Target Industries include: 3D Printing; Aerospace/Aviation/Unmanned Aerial Systems (UAS); Agriculture; Artificial Intelligence (AI) and Machine Learning (ML); Augmented Reality/Virtual Reality (AR/VR); Automotive; Batteries; Biologics/Biosimilars; Biotechnology; Business Systems/Methods; Chemicals; Clean Energy and Renewables; Communications; Computers; Consumer Products; Devices; Diagnostics; Digital Health; Electrical; Electronics; Energy; Financial Systems/Processes; Food and Beverage; Gaming; Industrial Manufacturing; Internet of Things; IT; Materials; Media; Medical Devices; Military; Nanotechnology; Nutraceuticals; Oil & Gas; Optoelectronics; Pharmaceuticals/Therapeutics; Robotics; Space; Sports/Fitness/Outdoor Recreation; Textiles.

Intellectual Property Insurance Services Corporation (IPISC) is the industry leader in intellectual property insurance since 1990. IPISC provides companies/individuals with insurance policies that help manage risk associated with the enforcement and defense of intellectual property rights, including patents, copyrights, trademarks, and trade secrets.

For IPISC policy information, please email info@ipisc.com or call **1-800-537-7863**.

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