

FICPI Conference
29 July 2017



Intellectual Property Insurance



IP Insurance

The purpose of this presentation is to address four main topics:

- **What is IP Insurance?**
- **IP Australia initiative**
- **Portfolio Cover**
- **How can IP Insurance assist FICPI member and your clients**

Presented by:

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What is IP Insurance?

Intellectual Property Insurance (IP Insurance) provides the ability for an organisation to protect one of its most important assets that is central to its ability to generate income, its Intellectual Property.

IP Insurance allows an insured to enforce its IP rights.

More particularly, IP Insurance can provide cover for:

- **Defence (Infringement Liability)**
- **Pursuit (Infringement Assertion/Enforcement)**
- **Defence/Pursuit combined**

Endorsement Options

- **Contractual Indemnities Extension (Distribution/Licencing agreements)**
- **Directors & Officers Extension**

IP Insurance Basics

Policy Limits and Deductibles

The policy limit will be determined by the potential cost of litigation that would ensure in connection with the insured intellectual property

Typical limits:

Australia	\$500,000 - \$2m
Asia	\$1m - \$3m
Europe	\$2m - \$5m
USA	\$5m – \$15m

Deductible

Amount the client will pay prior to the IP Insurance paying claims costs Typically range between \$2,500 - \$15,000

Co Contribution

The percentage the client will need to contribute for claims costs that exceed the Deductible. Typically range between 5% - 15%

Why IP Insurance?

- **Securing IP rights only provides you with the legal right to enforce your rights – it will not automatically stop someone infringing their IP**
- **IP Insurance protects what is the largest single asset that an organisation has and which underpins their entire operation, without which the organisation may be unable to continue operations**
- **IP Insurance can improve a clients position demonstrating the strength of a client's IP and enable contractual indemnity conditions to be met**
- **Can allow products/services to be taken into markets previously thought to be outside the immediate financial reach of the client**
- **Takes the initial and potential long term cost of IP litigation off the client's balance sheet**
- **Demonstrates to existing and potential investors the security behind a client's IP to safeguard their investment**
- **Consider your clients position within the supply chain and the potential for IP infringement**

Cost of Enforcing Your IP

Consider the cost implications of IP litigation:

- **Can be preventative for organisations with limited cash reserves**
- **May require ongoing research to be delayed from insufficient funding being diverted to the legal action**
- **Takes the focus of the company and senior management away from the primary purpose of the organisation**
- **Potential exposure of Directors & Officers**
- **Existing investors get nervous, prospective investors will stay away**
- **Infringing organisations know all of the above and can use it as a commercial negotiation tactic**

Sends a strong message to potential litigators and IP trolls that the size of the organisation and its balance sheet does not reflect its ability to mount a sustained legal defence of its legal IP rights

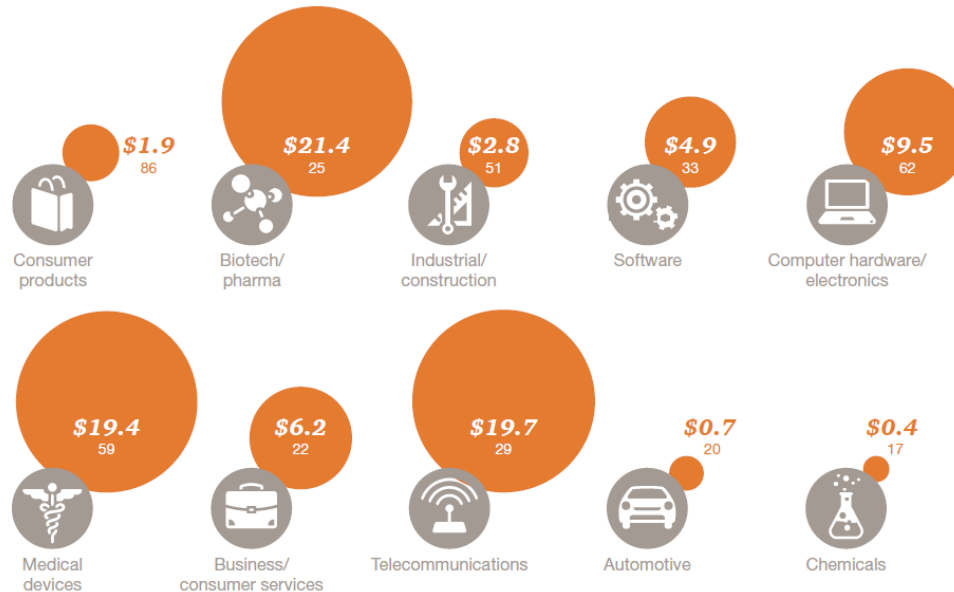
Cost of IP Litigation

Consider the 'average' cost of IP litigation and the protracted impact for an organisation v the financial security which IP Insurance provides

Median damages award: top ten industries, 1995–2014

Median damages award (in \$M)

Overall median damages award for all industries is about \$5.4M



The number of identified decisions is indicated within the respective circle.

Source: PWC 2015 Patent Litigation Study

IP Insurance – Claims Management

So who controls the management of an IP Insurance claim?

How are the commercial interests of the client taken into consideration?

When selecting legal counsel to manage an IP claim an underwriters primary requirement is that the client's preferred legal advisor has sufficient experience in dealing with IP litigation.

The conduct and management of the claim will be agreed upon between the underwriter and client's legal advisor. Any material change or settlement offer would be subject to a review by both the underwriter and independent legal counsel.

IP Australia Trade Mark Initiative

Brief Summary

- Request for Information issued in Nov 2016 by IP Australia
- Request for Application for a Trade Mark insurance program on 31 March 2017
- Willis Towers Watson response submitted
- Provides trade mark owners ability to defend their IP rights via an insurance solution
- Supports the Federal Governments National Innovation & Science Agenda (NISA)
- Reflects the position of many global governments to support innovation

- Will provide trade mark owners with a means to protect their assigned IP rights without the cost being incurred by the business

FICPI & IP Insurance

Portfolio Insurance

Portfolio IP Insurance for FICPI Members

Cover can be tailored to the scope of cover that the IP Attorney wishes to have in place for their clients such as the following:

Cover limit	\$100,000
Deductible/Excess:	\$2,500
Co Contribution:	10% in excess of costs following Deductible
Region:	Client's country of origin
Commercialisation:	Product with less than \$100,000 in turnover in an annual period
Industry:	All industries / or excluding some high risk industries
Intellectual Property:	Patent, Copyright, Design, Trade mark

Portfolio IP Insurance

Portfolio Cover

- **Clients of the IP Attorney would be covered by the Portfolio IP Insurance policy taken out by the IP Attorney**
- **Clients will most likely need to take out their own IP Insurance policy as they commercialise and expand their products/services beyond the scope of cover provided by the IP Attorneys Portfolio IP Insurance policy whilst still under the guidance of the FICPI member.**
- **Portfolio cover is not intended to be a replacement or long term solution for a client taking out their own IP Insurance policy, but it may be able to deliver to your clients 'bridging cover' whilst they are working with you to establish their IP rights.**
- **Portfolio Cover offers a key point of differentiation for IP attorneys with their competitors and provides a degree of security for their clients.**
- **Potential to offer on a national basis**
- **Operating model for quoting and placement of cover can be tailored to be direct to the IP attorney or a direct engagement with your clients**

Insurance & Risk Management Insurance Solutions

A full range of insurance solutions specific to IP attorneys and their clients can be offered including:

- Professional Indemnity (PI)
- Property and General Lines
- Public & Products Liability
- Management Liability
- Cyber Liability
- Personal Accident
- IP Insurance
- Product Recall
- Medical Trials and testing
- All insurance requirements of an organisation
- Workplace Risk Assessments

What role does IP Insurance have in managing a clients IP?

- **Intellectual Property insurance is a business enabler and a leveller.**
- **As an enabler, IP Insurance allows a client and their investors to invest time and technology with the safeguard that the investment together with their IP rights will be protected to the limit of the law.**
- **It also assist in the ability to commercialise the clients product/service through Distribution & Licencing agreements**
- **As a leveller IP Insurance allows large, SME or start up clients who may not have the liquid capital to fund IP litigation to enforce their IP rights against what may be a large cashed up competitor. This inequality is commonly cited as a reason why innovators elect not to obtain IP rights that require voluntary registration, and which in many cases forces an innovator to cease litigation or to accept a less optimal settlement.**

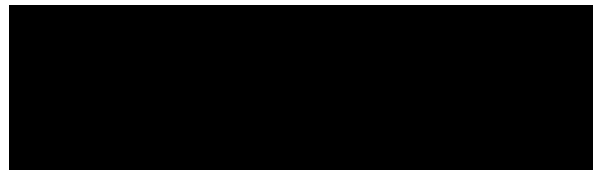
What can IP Insurance deliver for FICPI members and your clients

- **FICPI members will be given the opportunity to strengthen their point of differentiation with competitors by expanding upon their ability to protect and enforce a client's IP rights**
- **The purchasing strength of the national groups and individual members of FICPI can be brought to the insurance market to secure underwriting relationships and support which could not be achieved on an individual level**
- **Address FICPI members being challenged by their clients who are subject to IP infringement or litigation against the same IP rights which the FICPI member established, with what can be a costly exercise to secure their IP rights**
- **SME and start up clients who may have limited business acumen will be given access to specialists in insurance and risk management to protect not only their intellectual but physical assets**

Key Take Aways

- **We are entering a age of significant technological innovation and the ability to commercialise on a global scale**
- **FICPI members professional standards at held in high regard by underwriters when analysing potential risk exposure of a client**
- **IP Insurance allows a IP owner to exercise their assigned rights**
- **IP Insurance reduces the financial burden and disruption to business**
- **IP Insurance is a business enabler by providing security to the IP owner and investors**

Questions & Answers...



...Thank You