

PROSPECTUS

INTELLECTUAL PROPERTY RIGHTS INSURANCE

for those

APPLYING FOR PATENTS

and for those

holding

EXISTING PATENTS

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PROTECTING YOUR PATENTS WITH INTELLECTUAL PROPERTY RIGHTS INSURANCE

This document describes the benefits of the insurance cover that is available for both patent applicants (patents pending) and patents that have been granted.

WHAT IS AN INTELLECTUAL PROPERTY RIGHT

The term Intellectual Property Right covers patents, registered trade marks, plant variety rights, copyright, and registered designs.

Insurance cover is available to assist with the protection of all intellectual property rights.

WHY PATENT HOLDERS NEED INTELLECTUAL PROPERTY RIGHTS INSURANCE

Insurance is essential for all but the largest of organisations that are holding cash reserves that can be used for spending on litigation and enforcing their patents.

Insurance will be required by all other patent holders who do not have cash reserves for without insurance those infringing their patent can do so without fear of the consequences and, in the event of a dispute, the patent holder will not have any “bargaining power” with which to negotiate a reasonable settlement.

As most patent disputes are resolved by out of Court settlements, it is vital that the patent holder has realistic “bargaining power”. Otherwise the money that has been spent on developing the invention and the fees paid for securing the patent will have been wasted.

If a potential infringer notices that the patent holder does not have funds to enforce their patent or does not have insurance to protect their patent then the infringer is likely to consider that the patent holder does not place any value on their patent.

A potential licensee is likely to devalue the true worth of the patent if they think the patent holder considers that it is not worth protecting by insuring it.

Intellectual Property which cannot be defended through the Courts is property without value!

Insurance provides a credible “deterrent” to discourage infringement. It provides “bargaining power” and a policy to indemnify the patent holder for legal costs and expenses that would be incurred in suing an infringer in a Court of Law.

HOW INTELLECTUAL PROPERTY RIGHTS INSURANCE POLICIES WORK

The aim is to produce a maximum “deterrent” and “bargaining power” at the lowest possible cost. This is achieved in the following ways:-

There are two insurance policies, one for **patent applicants** and one for **patent holders**.

The first, a separate **Patent Applicants** insurance policy, is necessary because, until a patent is granted, it is not possible to litigate (even though damages can be calculated from the date of publication of the patent application). So a patent applicant cannot sue for an infringement action. Therefore, any insurance policy covering legal costs and expenses for patent applicants is technically worthless. Nevertheless, a “deterrent” and “bargaining power” is vital for a patent applicant when they are testing the market or negotiating a licence/royalty agreement.

The special **Patent Applicants** insurance policy has been designed to provide insurance at a minimum cost. In return for the payment of a low annual premium for the Patent Applicants insurance it will allow the patent applicant to purchase an Intellectual Property Rights Enforcement policy as soon as the patent is granted. As an existing policyholder the patent applicant is, after grant of the patent, able to take up an Intellectual Property Rights Enforcement policy immediately, without the usual 6 month waiting period, providing the patent holder has held a continuous Patent Applicants policy.

Insurers would not normally give cover if a potential infringement occurs during the pending period. However the Patent Applicants insurance policy provides the funds to accelerate the granting of a patent so that, if it necessary, litigation can be commenced sooner.

The second, an **Intellectual Property Rights Enforcement** insurance policy, gives the patent holder the option of paying a low initial premium in exchange for an additional premium option, which only becomes due when legal proceedings are initiated. The additional premium is calculated on the value of the patent in accordance with the nominated Patent Valuation criteria.

If the litigation is lost the value of the patent drops dramatically so most of the additional premium is returned. If it is won, then the value of the patent will increase a lot more than the additional premium. Furthermore, if a settlement, with a good recovery of legal costs, is negotiated before a Court gives a decision, up to 80% of the additional premium is refunded. By structuring the premium rates this way a maximum “deterrent” and “bargaining power” is achieved at a minimum cost to patent holders.

HOW THESE INTELLECTUAL PROPERTY RIGHTS INSURANCE POLICIES DIFFER FROM OTHERS

- Separate policies are issued to patent applicants and patent holders.
- Policies provide an indemnity of up to \$1,000,000 to prevent an infringer from employing tactics to exhaust the indemnity.
- Policies can by choice, provide cover in all countries subscribing to the Berne Convention Participating Countries, E.U. Patent Cooperation Treaty Participating Countries and Patent Cooperation Treaty Participating Countries in which the patent is applied for/granted.
- Policies provide adequate “deterrent” and “bargaining power” cover at an initial premium that is much less than that required by other insurers.
- Policies can be extended to include cover for Registered Trademarks, Plant Variety Rights, Copyright, and Registered Designs.
- Policies include an advocacy negotiating help line service. Through this service a Liaison Officer, an independent patent attorney experienced in patent litigation is appointed by the insured patent holder with the approval of the insurers. The Liaison Officer liases between the patent holder and the insurer. This ensures that the risk of losing litigation is reduced to a minimum and it increases the chances of a realistic settlement out of Court. This service is vital for any patent holder, because the very worst scenario is lost patent litigation. If this happens the patent holder may have their patent revoked and they may lose their position in the market.

- Policies prioritise a “deterrent” and “bargaining power” as most patent disputes are settled out of Court. Other policies prioritise legal costs and expenses.

WHY THE POLICIES ARE EFFECTIVE

- Policies prioritise a “deterrent” and “bargaining power” that is credible.
- Policies provide an advocacy help line service, which pre-empts the investigations that would be carried out by the lawyer of the infringer. The appointment of a Liaison Officer increases substantially, the chances that litigation will be won rather than lost, and in doing so increases the value of the patent. It also enables the Liaison Officer to negotiate a settlement more easily, as the lawyer, acting for the infringer, will know that their investigations have been pre-empted.
- Policies provide a high indemnity limit, so any tactics employed by an infringer to erode that indemnity will simply rebound on the infringer, as the indemnity is too great to be exhausted by such tactics.
- The territorial limits of policies can, by choice, be virtually world wide as they embrace all countries subscribing to the Berne Convention Participating Countries, E.U. Patent Cooperation Treaty Participating Countries and Patent Cooperation Treaty Participating Countries in which the Patent is applied for/granted.

PATENT APPLICANTS INSURANCE

The Insurance is underwritten by underwriters at Lloyd's. It creates "bargaining power" and "deterrent" by providing the following;

1. An agreement to provide Intellectual Property Rights Enforcement insurance immediately after the patent has been granted.

Without such an agreement and in the event of a potential infringement during the patent pending period, the patent holder would be unable to purchase Intellectual Property Rights Enforcement insurance when the patent holder needs it.

2. Acceleration Fees Payment

The insurance pays for the extra cost incurred in accelerating the patent application to grant when a potential infringement occurs. It will catch out an infringer more quickly, thereby reducing the damage caused by his actions.

3. Territorial Limits

The territorial limits include all Berne Convention Participating Countries, E.U. Patent Cooperation Treaty Participating Countries and Patent Cooperation Treaty Participating Countries in which the patent is applied for/granted.

The patent applicant or the patent holder has the choice of selecting to insure in one of four nominated regions. They are:

- New Zealand
- New Zealand and Australia
- Worldwide excluding North America
- Worldwide including North America

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT INSURANCE

This is also underwritten by underwriters at Lloyd's. The insurance creates a credible “deterrent” and “bargaining power” by providing the following:

1. An Advocacy Help Line Service

The services of the “Liaison Officer” that is paid in full by the insurers. The Liaison Officer will check that when an alleged patent infringement occurs, a Court of Law will uphold the validity of the insured patent and agree that an infringement has occurred. In this way, the lawyer representing the infringer is pre-empted and a reputation for winning litigation has been earned, to boost the effect of the “deterrent” and “bargaining power” of the policy.

2. An Independent Negotiator

The Liaison Officer is also used to negotiate a settlement from a position of strength for whilst litigation is the ultimate action, a negotiated settlement is often the most satisfactory solution in the long run. Usually, a satisfactory settlement is the outcome, because the infringer will know that:

(a) The insured patent has been exposed to the advocacy help line service and therefore the patent holder has reasonable prospects of success.

(b) There is no shortage of cash, as there is up to \$1,000,000 available for litigation, so that delaying tactics will only rebound on the infringer.

3. Litigation fees and costs

Should negotiations fail, the insurers will pay up to 80% of the legal costs and expenses incurred in litigation up to \$1,000,000 and these may include costs awarded against the patent holder, in the unlikely event that the patent holder loses the litigation.

THE PREMIUMS

Annual premiums for both **Patent Applicants** and **Intellectual Property Rights Enforcement** insurance policies are based on:

- (a) The type of invention.
- (b) Sales turnover of products protected by the insured patent(s).
- (c) The territorial limits required.
- (d) Any additional premium options selected by the patent holder.

The premium for the **Intellectual Property Rights Enforcement** insurance is a low cost policy giving all the protection of a full cost contract of insurance. An initial low deposit premium is paid on the understanding that an additional top up premium will be paid only if it becomes necessary to go to court.

At the legal proceedings stage, there is the prospect of enhancing the value of the patent for collateral security or there is the prospect of receiving damages that can be used for funding purposes.

The additional premium is based on the value of the patent, which will vary proportionately with the damages sought and obtained.

If the action is lost, the patent may be valueless, particularly if it is revoked when there would be a full refund of the additional premium, subject to minimum retention.

There are also discounts or refunds of this additional premium (of up to 80%) for early settlements, involving the recovery of costs from the infringer.

COVER

Designed to indemnify those that are applying for a patent and those holding patents.

This Insurance only covers claims first made and notified to Underwriters during the Period of Insurance.

BENEFITS

The terms and conditions are all set out in the Certificate of Insurance. Some of the key benefits are as follows:

- Freedom to choose a representative Patent Attorney to act as the Liaison Officer;
- Competitive rates and terms;
- Convenient low cost access to insurance cover and advice;
- Independent investigation into validity and infringement.
- Inclusion of details of the Insured Patent in a Register of Insured Intellectual Property

EXCLUSIONS

Deliberate or criminal act or omission

War, civil war etc.

Damages

Infringement during the first six months of the Insurance only where Intellectual Property Rights Enforcement insurance is taken out on existing patents.

Security for Court Costs in legal proceedings.

GENERAL CONDITIONS

Governed by the laws of New Zealand

The patent holder will be required to maintain the validity and enforceability of the Insured Patent and to mark all products with the applicable registration number.

The patent holder will, in the event of a claim, pay an additional premium which will be determined by the Patent Valuation Criteria that is based on the value of the Insured Patent

The patent holder will be required to bear the uninsured percentage of all losses at their own risk and be uninsured for that percentage.

SECURITY

The cover is placed with Lloyd's, which has a security rating of **A+** (Strong) from Standard and Poor's and **A** (Excellent) ratings from AM Best, by HSBC Insurance Brokers Ltd.

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