

INSURANCE



Dear Jacqueline,

Thank you for the discussion this morning.

As stated, I don't think that there is a lot more that I can add from my previous submission, which appeared to have not been actioned?

However, I think that the following statement that you make is really to the point:

"Inquire into and report on issues relating to post-grant patent enforcement strategies to benefit the Australian economy by assisting patentees to effectively enforce their patent rights."

Your report ought to reflect on the following:

That there is no education available to patentees or insurance advisers on how to insure (OR *effectively enforce*) the rights of a patentee other than through:

1. Registration of the patent or
2. Litigation.

The words INSURE and EFFECTIVE ENFORCEMENT are synonymous.

My *solution to the post-grant patent enforcement strategy* would be to tell Patentees to purchase insurance which underpins any enforcement strategy.

Insurance assists patentees to effectively enforce their patent rights.

This is the message that we think should be promoted and the insurance sector will meet the demand.

As advisers to corporate insurance groups we are confident of delivering a suitable program that will meet the requirements of Patentees at all levels.

Yours sincerely,

Anthony M Saunders
Director

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INTRODUCTION

Why you need Patent Insurance

- L Intellectual Property like any other asset needs protection. The risk to Intellectual Property is not damage or loss but *infringement*.
- L Your Intellectual Property could represent your most valuable asset. Intellectual Property that cannot be legally enforced is a property without value.
- L It is a reality of the modern world that large predators with apparently infinite resources exist to circumvent protections. Patent insurance provides a powerful deterrent to potential infringers.
- L Substantial costs can be incurred in registering a patent, trademark or other Intellectual Property. Even greater costs can be involved in litigating against an infringer. Legal counsel specialising in this complex area of law is necessary. To incorporate the costs of enforcing your Intellectual Property within financial forecasts is difficult and for a small organisation to carry the costs itself can be financially *crippling*.
- L The legal costs for defending a case of infringement, where you are accused of infringement of another's Intellectual Property, can be beyond the means of all but the most financially sound.
- L Your financial credibility will be strengthened in the eyes of investors. Investors are more likely to support commercial development when they know steps have been taken to protect their investment.

COVER

Designed to indemnify clients for the following:

- (a) the extra cost of accelerating the Patent Application to issuance/grant during the Period of Insurance upon the occurrence of an act of infringement; and
- (b) on issuance/grant of the Patent effecting the Patent Enforcement insurance; and
- (c) the legal costs and expenses in respect of pursuit of any claim or Legal proceedings for infringement relating to Intellectual Property Rights; and

INSURANCE CHOICE PTY LTD Authorised Representative No : 269469, ADDRESS: P O Box 216 BALGOWLAH, NSW, 2093 Tel: 02 9949 1155 Fax: 02 9948 4681

INSURANCE



(d) payment of all fees and expenses incurred by the Liaison Officer in the performance of the Pre-Legal proceedings help line service.

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

PATENT APPLICANTS

Patent Applicants Insurance

The Insurance creates “bargaining power” and “deterrent” by providing:

1. An Agreement

An agreement that a Patent applicant can obtain Patent Enforcement insurance to pursue an infringer. Without such an agreement, you would be unable to purchase Patent Enforcement insurance when you need it after grant of the patent, in the event of a potential infringement during the pending period.

2. Acceleration Fees Payment

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

3. Territorial Limits

These relate to all Berne Convention Participating Countries, E.U. Patent Cooperation Treaty Participating Countries and Patent Cooperation Treaty Participating Countries in which applied/granted.

PATENT ENFORCEMENT

The Insurance creates a credible “deterrent” and “bargaining power” by providing the following:

1. An advocacy help line service

The services of an independent patent attorney, experienced in patent litigation, appointed by you with approval of insurers and known as a “Liaison Officer” are 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

INSURANCE



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

Whilst litigation is the ultimate action, a negotiated settlement is often the most satisfactory solution in the long run. To this end the liaison officer is also used to negotiate a settlement from a position of strength, his services being paid in full by the insurers. 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 you have reasonable prospects of success.
- (b) There is no shortage of funds so delaying tactics will only rebound on the infringer.

3. Legal Expenses

Should negotiations fail, insurers will pay up to 80% of the legal costs and expenses incurred in litigation, these may include costs awarded against you, in the unlikely event that you lose the litigation.

INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights include patents, copyright, registered design, or registered trade mark.

BENEFITS

The terms and conditions are as set out in the certificate of insurance. Some of the key benefits are as follows:

- Freedom to choose a representative Intellectual Property Lawyer;
- Competitive rates and terms;
- Convenient access to insurance cover and advice;
- Independent investigation into validity and infringement.

EXCLUSIONS

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Deliberate or criminal act or omission

War, civil war etc.

Damages

Infringement during the first six months of the Insurance (Patent Enforcement only)

Inclusion of details of the Insured Patent in a Register of Insured Intellectual Property

Security for Court Costs in legal proceedings.

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GENERAL CONDITIONS

Governed by the laws of England

Maintain the validity and enforceability of the Insured Patent and mark all products with the applicable registration number.

You will pay in the event of a claim an additional premium based on the value of the Insured Patent, which shall be determined by the Patent Valuation Criteria

You bear an uninsured percentage of all losses at your own risk and uninsured.

SECURITY

The insurance is underwritten by certain underwriters at Lloyd's. Lloyd's has a security rating of A (Strong) and A (Excellent) ratings from Standard and Poor's and AM Best respectively.

CONTACT

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