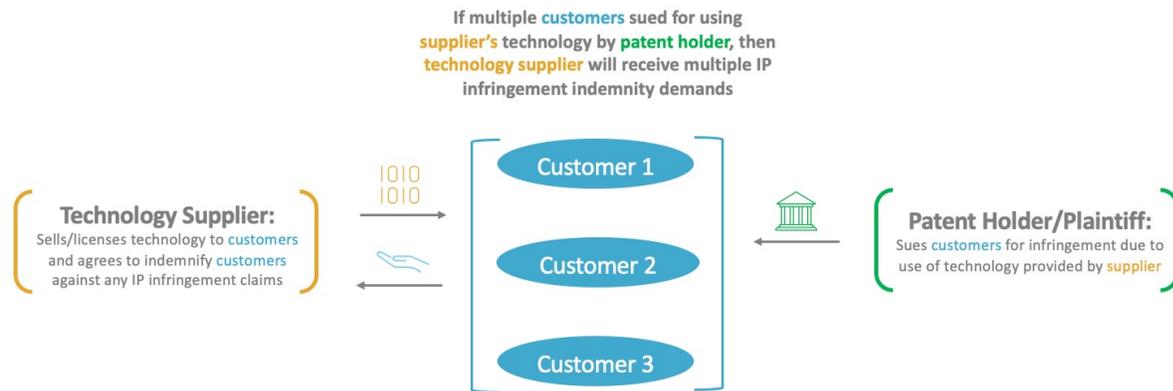


November 2020 IP Risk Intelligence Memo

How can you use IP insurance to protect your bottom line?

The background: For suppliers of any type of technology, intellectual property (“IP”, which includes patents, copyrights, trademarks, and trade secrets) infringement indemnities are often a sticking point in contract negotiations. That’s because under the patent laws of most countries, including the US, any user of technology can be directly sued for infringement, even though that technology is supplied by someone else. As a result, it is a supply chain risk and customers therefore often require their technology suppliers to indemnify them against IP infringement suits.

The problem: If a technology supplier has contractually agreed to indemnify its customers against IP infringement claims, and several of those customers are sued by the same patent holder, then the supplier is faced with a potentially large financial exposure. This is not a remote possibility. Well over half of US patent infringement cases are filed by non-competitors more likely to sue multiple users of widely adopted technologies. And, at the current rate, the number of US patent infringement cases filed in 2020 is expected to be the highest in several years.



The solution: While standard lines of insurance, including technology E&O, expressly exclude coverage for patent infringement liability, standalone IP infringement liability insurance covers patent infringement disputes against the technology supplier and backstops its contractual IP infringement indemnities. The cost for such coverage has decreased as more insurers have entered the market and are competing for your business. To maximize cost efficiency, you can purchase blanket coverage for all your contracts that include IP infringement indemnities and build the premium cost into your contract pricing. Better yet, growing technology suppliers can use the insurance as a selling point by assuring customers they have insurance supporting the IP infringement indemnities they are providing.

An example: A cloud-based software company was forced to agree to contractual IP infringement indemnities in order to sync with online banking portals and accounting software. By purchasing patent infringement liability insurance to cover itself and the IP infringement indemnities provided to key banks and accounting software providers, the company was able to purchase the insurance for a fraction of the value of the combined contracts and protect its balance sheet in the process.

PIUS partners with insurance brokers and risk advisors to provide insurance solutions that best address the financial impact of IP risk on your business. PIUS team members have 20+ years of experience placing IP insurance with all the major IP insurers.

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