

Intellectual Property Insurance Guide



Introduction

In a competitive economy, individuals and businesses need to protect the value of their ideas and business models.

While it's easier to value tangible assets, the intangible assets within your business often hold the true or greatest value.

We see many people and businesses focus on insuring their physical property. However, the same doesn't always apply to their intellectual property.

In a recent survey by law firm Morrison & Foerster¹, the annual spend on intellectual property litigation increased year on year to reach more than \$3.3bn (£2.4bn) in 2019, almost doubling in 15 years.

While it is encouraging that people are taking steps to protect themselves, the increase in litigation spending shows the need for Intellectual Property (IP) Insurance.

But how do you insure an idea?

Our guide will walk you through:

- Defining what is intellectual property
- How to see if your idea or product is already protected
- The value of IP to your business
- Understanding IP risks
- How a policy works
- Common IP misconceptions

Whether your business is established or you are a start-up on the journey to developing your idea, protecting your intellectual property is a sensible route to take to protect your commercial interests.

Whilst it may be seen as a cost to the business, IP Insurance is an investment in the protection of the business's future.

Mark Philmore ACII
Client Director



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Client Director

Mark heads up our Science and Technology division, working with new start-ups and established businesses.

Having worked in the insurance industry across underwriting and sales for over 35 years, and with MFL since 2003, Mark's experience is invaluable in designing insurance programmes for technology, gaming, science and life-sciences throughout the different development stages of your idea, product or business.

He loves to see businesses that we have been involved with from their inception succeed and thrive, knowing that we have, in a small way, played a part in their success.

Mark also looks after our partnership with Medilink, who are a professional association and specialist consultancy for the life science sector in the North of England, where we support their members with their insurance requirements.

He is a qualified Chartered Insurance Broker and an Associate of Chartered Insurance Institute.

What is Intellectual Property?

The Intellectual Property Office (IPO) defines intellectual property (IP) as “creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce”².

This could be interpreted as a broad term used to describe the legal rights arising out of intangible creations and assets, like a product or process, a piece of software, a brand or even a customer database.

Principle types of Intellectual Property

Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

Patents

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes some technical information about the invention publicly available in the published patent document.

Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or “mark” on their products.

Industrial designs

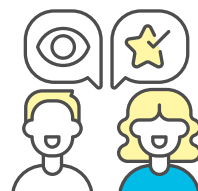
An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or colour.

Geographical indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

Trade secrets

Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.



How many Intellectual Property applications are made every year in the UK?

Whilst the number of Copyright is difficult to define, given there is no official method of registering your Copyright, the same can't be said for Patents, Trademarks and Designs.

In July 2021 the UK Government's Intellectual Property Office (IPO) issued its statistics for applications, grants and registrations.

Patents

The number of patent applications for the IPO has increased by 7.3% between 2019 and 2020. Trademark applications increased by 27.4% to record levels of 137,035 applications in 2020.

Trademarks

A record number of trademarks were registered in 2020, increasing 1.1% from 2019. Patent grants have increased by 64.3% between 2019 and 2020 due to a focus on the reduction of the backlog of examinations.

Designs

Design applications to the IPO have seen a dramatic increase since 2015, with the number of applications growing 386% between 2015 and 2020.

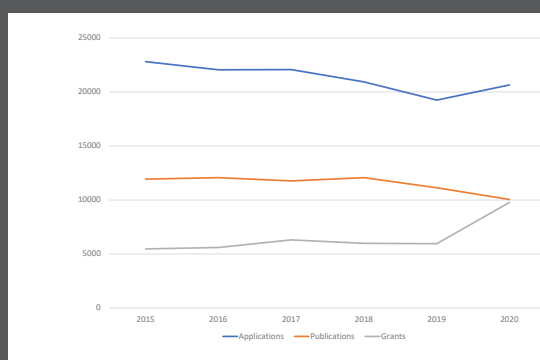
A total of 3,830 oppositions were filed in relation to trademarks (including Fast Track options) in 2020, forming the majority of disputes dealt with by the Intellectual Property Office.

Worldwide

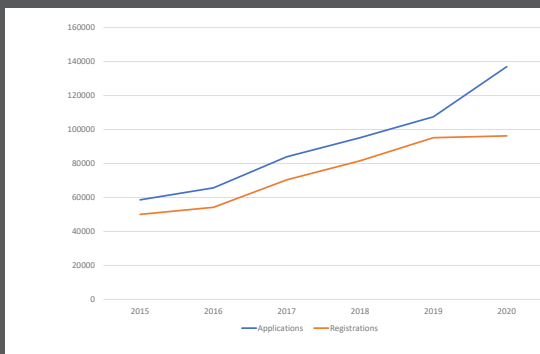
Across all intellectual property rights, the highest number of non-UK applications came from China, with the USA taking second place. The USA continue to represent the highest number of patent applications filed at the IPO by non-UK applicants.

UK Registered Intellectual Property Rights³

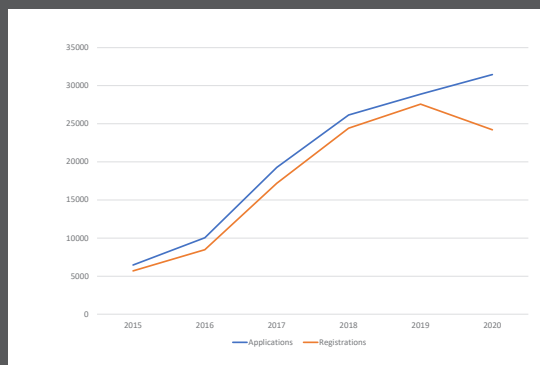
PATENTS



TRADEMARKS



DESIGNS



Mark says



It important to appreciate the amount of intellectual property being created every year.

The volume of applications and successful grants or registrations across the three categories of patents, trademarks and designs is increasing.

Whilst it would be easy to think that no one else is doing what you do, that might not be the case. Someone might already be developing a similar idea, and possibly looking to protect their IP. It is important to consider the risk of not protecting your IP.

Ultimately, when looking to protect your IP, you are doing so because you want to protect the commercial interests of your business and earn recognition or financial benefit from what you have invented or created. ”



How to see if your idea or product is already protected

There are numerous examples of companies getting the rug pulled from underneath their feet due to major infringement lawsuits. Marketing a product that infringes on others' Intellectual Property (IP) rights can lead to a temporary sales ban and mounting legal costs or even financial compensation claims.

The investment opportunity can become much more attractive if the IP has already been protected. For that very reason, ensuring you have an insurance policy in place is a sensible decision to make. It is also one of the reasons why investors and business partners looking to invest in your business/idea expect you to have researched whether your idea needs protection or not – before you pitch it.

Tips for researching your idea/business

Think of Pertinent Search Terms

Think of relevant search terms or keywords specific to your invention. When you search stay away from broad, general terms.

Research competitors

If you are entering a mature market, conduct your market research by looking at your competitors. Don't focus on the established businesses either; look at up and coming companies too – the chances are, similar minded people like you have been looking at ways to disrupt the market.

Use Google Patents Search

<https://patents.google.com/>, a free Google search engine that indexes patents and patent applications. It indexes information from 17 patent offices around the world, with English translations are available for non-English patents too.

Search the UK Government website

The UK Government website (<https://www.gov.uk/search-for-patent>) has a patent library that you can search. When registering your patent, you do so in the country you are based only. The UK Government website won't show patents from other countries.

Partner with a professional

Researching if your intellectual property is already protected can be a time consuming and complicated process. The last thing you want is to spend a long time researching only to find once you enter your IP submission, someone has beaten you to it.

Take professional advice

Partnering with a IP law firm can ensure your interests are best serviced in a timely and professional manner, allowing you to get on with what you are best at.

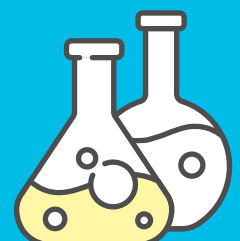
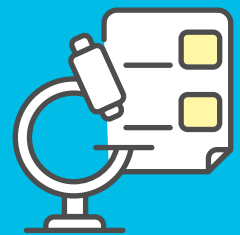
Mark recommends



It is imperative that you engage with an IP law firm to not only be by your side to protect and help you monetise your intellectual property, but also manage post-grant challenges.

The reality is that doing the work yourself could leave you exposed if you don't do it correctly.

We can put you in touch with an intellectual property law firm that will be able to guide you through the process. ”



The value of IP to your business

In business transactions, a business valuation, which would be needed if you are looking to raise finance, helps you determine the market value of your business. Two asset classes need to be considered:

- Tangible assets
- Intangible assets

Many jump to the assumption that their tangible assets create the most significant value in their business. This is easily done as we generally see value (as in monetary value) in things that we can see and touch. For example, physical assets or property owned by a company, such as computer equipment.

Intangible assets don't physically exist, yet they have a monetary value since they represent potential revenue.

IP assets would be classed as intangible assets. A type of intangible asset could be the copyright to a song.

According to a Lloyds KPMG report just a few years ago, 84% of the value in a modern business is in intangible assets⁴.

Why place a value on your Intellectual Property?

IP valuation improves the accuracy of a business's worth. IP assets form collateral; they can also be bought, licensed and sold. Knowing how much each trademark, patent or design is worth, alone and as part of the whole, helps businesses with their valuation.

Discerning the value of IP is not an easy task. How much is a brand name worth after years of marketing? Does a patent protect a high-value unique selling point of a product or is it redundant? A well-known brand or a vital patent can be the lifeblood of a business and losing IP protection for these can drastically reduce its value.

Moreover, intellectual property rights change in value for a variety of reasons. For example, A patent may begin its life as a unique solution to a problem, but in time, other solutions to the problem may be found thus reducing its worth.

Having a value for your IP assets and then protecting them as soon as possible, gives you time and flexibility to commercialise the idea or product before it comes under increased competition, or its value diminishes.

Mark says



IP in your business may constitute your single most valuable asset and could be the key to securing the investment you need to unlock business potential. ”

How a policy works

Intellectual Property Insurance provides cover for claims alleging infringement of IP rights, including patents, trademarks, copyright and trade secrets.

The costs of litigation can be significant in pursuing or defending a claim and often prohibit a business from fully enforcing its rights when a third party infringes their IP.

A policy can provide a valuable financial mechanism in either defending or pursuing an actual or alleged Intellectual Property infringement, effectively providing a "fighting fund" to assist the process.

What is covered under the Policy?

1. The defence of any claims brought against you for any infringement of another company's IP Rights, or any claim which threatens your own IP rights.
2. Any claim you may have against any third party for the infringement of your IP rights.
3. Any claim you may have against any third party for a breach of any contract, licence, non-disclosure, market or other agreement.

Example summary of cover

Cover for a wide range of intellectual property	Including patents, trade marks, service marks, business or trade names, (including internet domain names and email addresses), registered designs, utility models, copyrights (including copyrights in computer software), database rights, semi-conductor topography rights and rights in trade secrets and other confidential information, know-how, and other intellectual and industrial property rights.
Infringement Liability	Legal costs, expenses and damages awarded against your business following your infringement of third party property rights.
Director's Infringement	As above but where a Director is joined as a co-defendant.
Obligations to Contracting Parties	Automatic cover for a maximum of 3 claims arising from your contractual commitments as above.
Product Infringement Recall	Recall costs where recovery, destruction etc. ordered by a Relevant Court.
Infringement Assertion	Adverse costs and assertion costs incurred when enforcing your rights including contractual disputes.
Counterclaims	Made in direct response to a claim.

The above provides a brief summary of a Intellectual Property Insurance policy.

Mark says



Every insurance policy is different, so you must engage with someone who understands Intellectual Property Insurance.

For example, each insurer includes policy Excess, which is the first part of a claim for which you are responsible.

Intellectual Property Insurance is also subject to a co-insurance clause.

Co-insurance is when a business or insured person pays a share of the payment made against a claim, above the Excess.

Intellectual Property Insurance can provide a valuable financial mechanism in either defending or pursuing an actual or alleged Intellectual Property infringement, effectively providing a “fighting fund” to strengthen your position during the process.

For the policy to work for you, we recommend speaking to an insurance expert who understands how to navigate the IP market.”



Common IP myths

My name is protected by copyright

Many people confuse or misunderstand the difference between trademark registration and copyright protection. Names, titles or short phrases are not entitled to copyright protection. Copyright protection is only granted to works of a more substantial nature whereby sufficient skill and labour has been expended in their creation, such as a novel or poem.

If the name relates to a business name or a brand name for a product or service, then protection should be sought by way of trademark registration.

A patent will protect my invention 'world-wide'

There is no such thing as a "world-wide" patent. A patent application must be filed in each country or jurisdiction in which protection is sought (within 12 months of a first filing) and the examination and decision to grant will be subject to the relevant local patent laws. However, there are international filing systems known as the Patent Cooperation Treaty (PCT) and European Patent Convention which can assist in obtaining patent protection in multiple jurisdictions.

If something doesn't have a copyright notice, then it is not protected

Just because a work does not have a copyright notice, this does not mean that copyright does not exist as there is no legal requirement in the UK to use a copyright notice. Using a copyright notice is strongly recommended though, as it can help to deter infringement or plagiarism by others.

The TM symbol means that a trademark has been registered

This is incorrect. The TM symbol can be used by any trader at any time in order to alert others to the fact that the mark indicated is being used by them as a trademark in the course of trade. Only the ® symbol means that a trademark has been formally registered and it is an offence (under the Trade Marks Act 1994) to falsely represent that a trademark has been registered if it has not.

Only words or logo can be protected by trademarks

This is incorrect. In the UK, a trademark is defined as being 'any sign', but it must be capable of being represented graphically and it must be capable of distinguishing goods or services of one undertaking from those of other undertakings. In addition to words and logos, a trademark may therefore also consist of personal names, slogans, letters, numerals or the shape of goods or their packaging, providing that they meet the requirements above.

There are also a number of other unconventional types of marks that can, in theory, be capable of registration as trademarks, including: single colours or colour combinations, smell marks, sound marks (i.e. musical jingles) and movement marks and holograms.

You have to register your copyright to protect it

This is another very common misunderstanding that we frequently encounter. In the UK, copyright is an automatic right – this means that it comes into existence automatically upon the creation of a piece of work which meets certain conditions. For example, a work will only qualify for copyright protection if it is original and exhibits a degree of labour, skill and judgement. Unlike for registered trademarks and registered designs, there is no formal registration procedure to protect copyright.

If you have protected or are looking to protect your Intellectual Property Rights, then you should also invest in an insurance policy that will support you in either defending or pursuing an actual or alleged Intellectual Property infringement, effectively providing a “fighting fund” to strengthen your position during the process.

For further information please contact the team:

Mark Philmore ACII, Chartered Insurance Broker
0113 323 1042 | 07966 233287 | mp@mflinsurance.com

www.mflinsurance.com



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This guide does not present a complete or comprehensive statement of the law, nor does it constitute legal advice. It is intended only to highlight issues that may be of interest to in respect of intellectual property and intellectual property insurance. Specialist advice should always be sought in any particular case.. © MFL Insurance Group Ltd.

Sources 1. <https://www.cii.co.uk/media/10127670/cii-intellectual-property-gpg.pdf>. 2. <https://www.wipo.int/about-ip/en/>. 3. <https://www.gov.uk/government/statistics/facts-and-figures-patents-trade-marks-and-designs-data-2020/facts-and-figures-patent-trade-mark-design-and-hearing-data-2020>. 4. <https://assets.kpmg/content/dam/kpmg/uk/pdf/2020/08/lloyds-intangibles-6-aug-2020-.pdf>.

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