



Intellectual Property Scenarios

Patent Dispute

Organisations now recognise the significance of their intangible assets, of which Intellectual Property (IP) is often considered the most important as it underpins the most valuable elements of a business.

The investment in building a new product/service can easily run into millions of dollars and the ongoing spend on maintaining and marketing can be significant. Competitor patent infringement analysis can often be the last thing to be considered. TMK's IP insurance solutions are designed to protect an enterprise, when an unforeseen patent dispute arises.

This scenario looks at how some of these disputes can arise and the different outcomes you could see.

Case Example

Head to head with a competitor: patents dispute

Ashcorn Inc is a successful investment broker generating revenues circa CAD75m. The innovative firm has developed a platform which they provide to clients alongside account management services. They do not have any registered patents as development of the software has been ongoing as clients' needs and requirements evolve. Ashcorn has recently received notice that they are being sued by a competitor which is alleging that Ashcorn is infringing 5 patents and has applied for an injunction and damages. The estimated cost of defending the case is CAD4m and potential damages are estimated to be around CAD9m.

Scenario 1 – Ashcorn is uninsured and loses the case

Ashcorn appoints a representative for its defence, goes to trial but unfortunately loses the case. The cost of defence and damages awarded by the court run to approximately CAD13m causing considerable harm to the company's balance sheet and forcing them to issue a profit warning.

Scenario 2 – Ashcorn has purchased Intellectual Property insurance – Wins Case

Sample policy**

Coverage:	Infringement Defence
Limits of Indemnity:	CAD15,000,000 any one claim and in the aggregate – Representatives Fees & Liability
Excess:	CAD75,000
Co-Insurance:	10%

Ashcorn notifies the insurer and agrees on the appointment of a representative to fight the legal case.

Ashton successfully defends the suit, incurring CAD4.5m in representatives Fees & Expenses which are reimbursed by insurer.*

Scenario 3 – Ashcorn has purchased Intellectual Property Insurance – Loses Case

Sample policy**

Coverage:	Infringement Defence
Limits of Indemnity:	CAD15,000,000 any one claim and in the aggregate – Representatives Fees & Liability
Excess:	CAD75,000
Co-Insurance:	10%

Ashcorn notifies the insurer and agree on the appointment of a representative to fight the legal case. The appointed representative is reimbursed by the insurer.

Unfortunately, the Court finds that Ashcorn's in-house developed platform is infringing 3 of the 5 disputed patents and orders damages of CAD7,500,000 to be paid, which are also reimbursed by the insurer.

Scenario 3 – Costs

Representatives Fees & Expenses	CAD4,500,000
Damages	CAD7,500,000
Total reimbursed by insurers	CAD12,000,000*

* Less any applicable self-insured retention and coinsurance

** These coverage scenarios are hypothetical only and do not increase or limit your coverage, the nature and extent of which will depend on the specific circumstances of each case, which remains subject to all policy terms, conditions, limitations and exclusions.

Tokio Marine Kiln

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