

A shield and a sword: when IP and insurance combine

You may not think of IP and insurance as being bedfellows, but their relationship is closer than it might appear, as WIPR reports.

Traditionally regarded as slow-moving and reluctant to use new technologies, the insurance industry is now gearing up for change. As disruptors move into the marketplace and technologies develop at breakneck speed, the industry has realised that innovation is the key to survival.

While insurers and brokers are quite innovative, they are more cautious than other financial sectors about publicly embracing technologies with unproven track records, says Alexander Urbelis, partner at Blackstone Law Group in New York.

“By contrast, the financial sector is expected to move at the pace of a great white shark, always hunting and moving in search of the most fertile feeding grounds. To stick with the marine biology metaphor, insurance companies are expected to operate with a speed more akin to that of a blue whale,” he claims.

Below the calm surface, however, is a rip tide of activity, with insurers and brokers testing, investigating and innovating, although, given the nature of the industry, they keep quiet about the innovation until tangible results are possible, Urbelis says. He warns that this may delay the patent application process, causing insurers to appear as though they are trailing behind other industries.

James Cooke, special counsel at Duane Morris in Washington, DC agrees. He notes that previously, many insurers and brokers embraced traditional underwriting processes and personal broker-to-customer interaction. This embrace likely contributed to a delay in transitioning to automated processing and mobile engagement, when compared to the transition from branch to mobile banking across the financial services industry.

But, according to Cooke, a transformation is now well under way.

“Insurers and brokers still enjoy significant opportunities to foster innovative activity within their organisations and, with the assistance of counsel, to develop robust IP programmes that protect innovative solutions to problems faced within the insurance industry,” he says.



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Alexander Urbelis,
Blackstone Law Group

Fact file

Number of insurance-related patents filed worldwide:

- 2017: **917**
- 2016: **657**

Of the 917 patents filed in 2017:

- **199** related to pricing
- **100** related to machine learning
- **78** related to telematics
- **62** related to peer-to-peer

According to a November 2018 report by RPC

Cooke states that the embrace of innovation, coupled with an adoption of technology, is essential for insurers to establish or enhance their position within an increasingly competitive and dynamic marketplace.

He adds: “The protection of the IP that supports this innovative activity is also essential for insurers to maintain their hard-won market position and to stay ahead of potential competitors in the marketplace.”

Through the adoption of technology, the industry can increase customer engagement with existing insurance products through mobile platforms and boost its competitive advantage by generating and delivering new and improved products to customers, notes Cooke.

Importance of IP

Urbelis looks at the importance of IP from two different viewpoints. First, he says, from a PR perspective, patent protection provides a public indication that a company is an innovator and has developed ideas worthy of protection. This increases the value and perception of these carriers to their insured parties, shareholders, and the public.

“From a practical perspective, securing patents for the innovative methodologies or algorithms of assessing risk is a practical way to secure a company’s investment in that innovation,” he explains. This is all the more important for insurers that may be publicly touting their novel ways of using technology and data.



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“The presence of a patent is likely to deter egregious would-be infringers and forces competitors seeking similar innovations to employ differing and often less efficient methodologies,” says Urbelis.

Patenting activity is on the rise. In 2016, 657 insurance-related patents were filed worldwide, according to a report from London-headquartered professional services firm RPC in November 2018. One year on, 917 insurance-related patents were filed, with telematics, artificial intelligence (AI) and machine learning, and peer-to-peer (P2P) insurance among the top patent trends.

The 40% jump in patent filing year on year comes as investment in insurtech is being stepped up, said RPC. In the report, RPC said that insurance patent filings globally per annum have jumped by 116% over five years, from just 435 in 2013.

What is driving this surge? The answer is simple: data, says Urbelis. He adds: “If the heart of insurance is underwriting, then the lifeblood of the insurance industry is—and always has been—data.”

With the amount of data available to underwriters increasing significantly over the past decade (“think of driving sensors, internet of things devices, telematics, digital health, social media, data brokers, and drones”, says Urbelis), the algorithms for and methodologies of interpreting, modelling, and assessing risk from these new repositories of data have evolved.

“That evolution required significant investment, and therefore it is no surprise that many insurance



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Ian Lewis, Tokio Marine Kiln

companies have sought to protect their investment through the patenting process,” he advises.

US insurers Allstate Insurance and State Farm led the way in 2017, filing 35 and 34 insurance patents respectively, according to RPC. They were followed by another US firm, Hartford Fire Insurance Company, with 26 patents, and China-based Ping An, which filed 23 patents.

Outside of traditional insurers, other active filers include China e-commerce company Alibaba, which filed eight patents last year.

According to Cooke: “These traditional insurers, along with tech giants such as Alibaba, possess certain structural and financial advantages crucial to developing and implementing robust programmes for identifying and protecting IP, supporting insurtech innovation, especially on a large scale and across multiple jurisdictions.”

Urbelis notes that the bigger players are active in the protection of flagship products and data analytics, especially with regard to the acquisition and use of driving-related data.

Cooke adds: “The patent portfolios of many big players in the insurance industry are often quite diverse, and can include pending applications and issued patents directed to many discrete or linked technologies, such as novel pricing or policy-selection algorithms.”

This doesn’t mean that startups are not enjoying their slice of the pie. For Cooke, startups represent

an important engine of innovation within the insurance industry and he expects the role played by these companies only to increase in time, especially given increasing collaborations with traditional insurers, such as through regulatory sandboxes, which allow companies to test innovative propositions in the market.

Urbelis and Cooke agree that the patent portfolios held by startups in the insurtech marketplace are often more limited in scope or number.

Cooke states that startups' patent applications and patents are often directed to innovative, technical solutions to specific problems faced by insurers and brokers. Urbelis adds that "as smaller fish in a large pond", they generally seek patents in their core areas of competence.

It's unsurprising that startups are active in the patent space, because IP protection is one of the primary methods of increasing and demonstrating value in a small business, adds Urbelis.

"Moreover, while patent filings certainly signal the technologies in which insurers and brokers have been investing, I believe that a great deal of insurtech innovation is being held internally as trade secrets, away from prying eyes of foreign and domestic companies who may have a 'devil-may-care' attitude to patents," adds Urbelis.



annual rise in insurance-related patents filed worldwide—from 657 in 2016 to 917 the following year

Protecting your protection

It is from those with such an attitude that IP insurance is looking to protect companies.

"Over the past 40 years the world economy has shifted dramatically from one based on tangible assets to a more intangible 'knowledge-based' economy," says Ian Lewis, IP underwriter at insurer Tokio Marine Kiln in London.

He adds: "Recognition of in-house IP professionals is definitely higher and one could say that IP has moved on from being the domain of 'middle-aged bald men in white lab coats' to that of 'modern professionals in senior management/board roles'."

Lewis says that as businesses look to insurance to support their trading exposures, such as product liability and business interruption, the need for IP insurance has grown dramatically.

IP risk exposures, especially patent and trade secret-related, have been excluded from many forms of policy for a host of reasons, says Lewis, including a general lack of understanding of IP rights *per se* and the substantial cost of litigation in these specialised areas of law.

"Some might say that patent litigation is a sport for kings, due to the high costs. It is not uncommon for legal defence costs to be greater (by multiples)

Insurtech startups provide their views on protecting their IP and insurance

Erik Abrahamsson is founder and CEO of Digital Fingerprint, a London-based startup that uses predictive analytics and AI to turn open data into insurance data.

Janthana Kaenprakhamroy is founder and CEO of Tapoly, a startup based in London that provides on-demand insurance for self-employed freelancers, sole traders, contractors, and small businesses.

Have you protected any of your IP? How important is that protection?

Abrahamsson: Yes, we have built our IP strategy, one part of which is to apply for patents where applicable. Since we are a technology-intensive company, the proprietary models, analytics solutions and other aspects of our IP are currently under 'patent pending' status.

Kaenprakhamroy: Yes, we have looked at this, and trademarked our Tapoly brand. I do think it is important to protect IP, although you do have to accept that good innovations will be copied. In general, I aim to use the IP to get a market lead rather than rely on protection.

Did you protect the IP yourself or use a lawyer?

Abrahamsson: We received help from our lawyers. It is definitely an investment worth pursuing, since our customers and investors all want to have clarity on the status of our IP. The time and complexity have



Erik Abrahamsson



Janthana Kaenprakhamroy

depended on the amount of technology we have sought to protect, but so far it has not been a big distraction for us.

Kaenprakhamroy: We briefly consulted a lawyer to make sure we weren't missing anything important, but the process of obtaining a trademark was quite straightforward so we did it ourselves. If we had been going for a patent then we would have needed more involvement from a skilled lawyer.

Did you know that insurers offer IP insurance? What are your thoughts on this?

Abrahamsson: Yes we have been in some discussions about IP insurance, although most offerings seem to relate to copyright infringements, trademark disputes and similar, and are not for the kind of enterprise-grade software that we have built. This kind of insurance definitely has a market, and many companies in creative industries would do well to make sure they are protected.

Kaenprakhamroy: Our IP is mostly data, tech and knowhow, which is all done in house, so it is somewhat protected anyway. Legally however it would be difficult for us as an insurtech company to put a patent on any part of our business. We have already consulted our lawyer about this topic and we decided it was not worth it. However we are building artificial intelligence, and this may warrant the need for IP insurance.

than the damages awarded or settlement amounts,” he says.

Other issues, according to Lewis, are the time required to understand the impact IP rights might have, and that the time and costs involved in undertaking a survey are substantial compared to their tangible world equivalents.

But, he advises, it should never be forgotten that IP rights are “strategic assets” and can be used to try to slow down or halt competitors providing competing solutions.

According to a May 2018 report from the European Observatory on Infringements of Intellectual Property Rights, rights owners in Europe are less aware of and interested in IP litigation insurance compared to those in the US, Asia and Australia.

The main reason for the lack of interest in, or awareness of, IP insurance is the cost, which is perceived to be financially high but with limited coverage, said the report. It also suggested that lowering the premiums is likely to make IP insurance products more attractive for rights owners in Europe.

Working together

Singapore is one country aiming to develop its IP insurance landscape—in September last year, the Intellectual Property Office of Singapore (IPOS) announced its plan to partner with specialist insurance market Lloyd’s Asia.

The two organisations are working together to introduce IP insurance products to the market and cater to the needs of enterprises in “attracting capital, averting business interruption and strengthening negotiating positions when they use IP in the course of their business”, said IPOS.

However, while the insurance industry has spent around 500 years developing and perfecting solutions to protect industry from loss to or caused by tangible assets, says Lewis, it has been slow to adapt to the shift to knowledge-based assets.

The origins of IP insurance as a standalone product can be traced back to the legal expenses market in the late 1980s, explains Lewis.

Tokio Marine Kiln (TMK) made the decision to invest in the development of the IP insurance market in 2014, after recognising the shifts in the assets of business and realising that customers required both first and third-party IP solutions.

Currently TMK provides a range of IP insurance solutions, including infringement liability, IP enforcement, invalidity/ownership, and first party financial loss coverage.

Lewis considers that the insurance industry has the skills, knowledge and capability to write these types of risks, but the challenge for a business is finding a broker that can successfully match them with a suitable carrier and assist them through the process.

“There is a small, but growing, number of brokers that have experience and knowledge of the IP insurance

market, which is perhaps in a similar position to the cyber market ten years ago,” he says.

One example of this is a partnership between TMK, insurance broker Aon, and Lloyd’s subsidiaries in efforts to build a \$100 million IP facility in London which offers tailored IP cover for businesses.

It has amassed considerable IP expertise in the form of Brian Hinman (former chief IP officer, Philips); Lewis Lee (former partner and co-founder of IP law firm Lee & Hays); Dan Crouse (formerly deputy general counsel for Microsoft); Po Chua (former chief IP counsel at the automotive group Zhejiang Geeley Holding Group, which owns Volvo and Lotus); and others.

Urmelis is less convinced. He doesn’t think anyone truly understands all the implications of risk as it relates to IP because a truly comprehensive risk assessment would entail an understanding of all the various angles of cyber risk facing an entity.

“While I believe that insurers may sometimes be in a better position to objectively assess cyber-related risk than a company itself, given the myriad of attacks and the evolution of these attacks that I see and investigate on a daily basis, I do not believe that companies should rely on insurance coverage to fully protect their IP,” he says.

This is due, in large part, to “liability limits and gaping holes” in the provision of coverage, such as when a cyber-related incident can be attributed to a nation-state actor.

He concludes that insurance policies should never be considered a substitute for a mature cyber security posture, a critical component of protecting any valuable IP.

Cooke considers that IP insurance coverage can be an attractive option for many innovative organisations, especially for “smaller startups operating within a competitive, troll-intensive marketplace”.

But he warns that for such coverage to be effective, close collaboration is needed. To underwrite an effective policy, Cooke suggests that the insurer will need to characterise the rationale for obtaining coverage, the products or services provided by the insured party and the strength of their patent portfolio, and what, if any, risk management processes are implemented by the insured.

Urmelis also believes that IP insurance coverage has several valuable purposes, particularly for smaller players in the technology field.

With the costs of enforcing patent rights continuing to grow, if an adversary is aware that a smaller player has the financial means to litigate, this could discourage unnecessary motion practice and encourage early settlement of a dispute, he explains.

Additionally, IP insurance coverage also “removes the qualms that a potential customer or partner may have about engaging in a licensing agreement for the technology at issue”, he says.

That’s what seems to unite these two industries—in some way, IP and insurance are both targeted at removing the concerns of companies and potential partners by providing a shield (and in some cases a sword). ●



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James Cooke, Duane Morris