

Intellectual Property



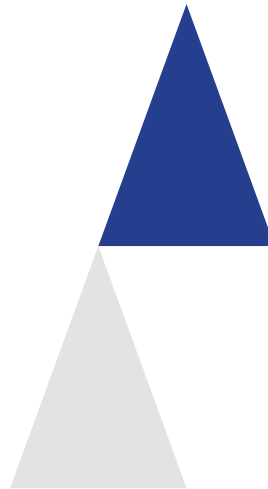
Liberty
Specialty Markets

We Insure. You Prosper.

What is Intellectual Property (IP)?

Intellectual property, as defined by the WIPO (World Intellectual Property Organisation), refers to 'creations of the mind: invention and artistic works, symbols, names, images and designs used in commerce'. It is 'divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and copyright, which includes literary and artistic works such as drawings, paintings, photographs, sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.'

Liberty Specialty Markets has two products to cover exposures relating to Intellectual Property (IP): a first party (IP value) and a third party (IP infringement) product.



Intellectual property infringement insurance

What are intellectual property infringement liability risks?

Intellectual property infringement risks include the risk of infringing any patent, mark, copyright, design, domain name, or miscellaneous intellectual property rights.

This third party cover is provided on a modular basis across the following sections (subject to policy terms, conditions and exclusions):

Intellectual property defence

Cover is provided for the legal fees and expenses or damages (including settlements), or both, incurred in defending any judicial proceedings brought against the Insured:

- ▶ Alleging that the Insured has infringed a third party's intellectual property through dealing in any of their products or services, or through their use or licensing of any of their own intellectual property
- ▶ Alleging that through dealing in any of their products or services they have directly justified the imposition of an injunction
- ▶ Alleging that the Insured has made groundless allegations of infringement against a third party in writing relating to any patent, copyright, design or mark
- ▶ Directly disputing or threatening the Insured's rights in or ownership of their intellectual property
- ▶ The bringing of any counterclaim by the Insured to a judicial proceeding listed above.

Intellectual property contractual liability

Cover is provided for the legal fees and expenses or damages (including settlements), or both, incurred in defending any judicial proceedings brought by a third party (e.g. distributor, supplier, manufacturer, retailer or licensee) against the Insured for indemnification as a result of any indemnity agreement or hold-harmless provisions in a contract, relating to infringement by a product or service or any invalidity of the Insured's intellectual property.

Contractual intellectual property disputes

Whilst not strictly third party, we cover legal fees and expenses incurred in judicial proceedings brought by the Insured against a third party for payment of licence fees due to the Insured under an agreement or under an indemnity or hold-harmless provision in an agreement.

Cover is also provided for judicial proceedings brought against the Insured for payment of licence fees under an agreement and the making or defence of any counterclaim by the Insured directly relating to a judicial proceeding.

D&O intellectual property liability

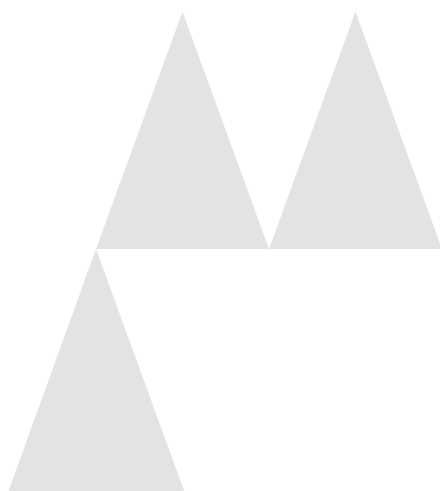
Cover is provided for the legal fees and expenses or damages incurred in defending any judicial proceedings brought against the Directors or Officers of the Insured for personal liability in the infringement of third party intellectual rights through the Insured's products or services. Even where a Directors and Officers insurance policy has been purchased separately, these often have intellectual property exclusions.

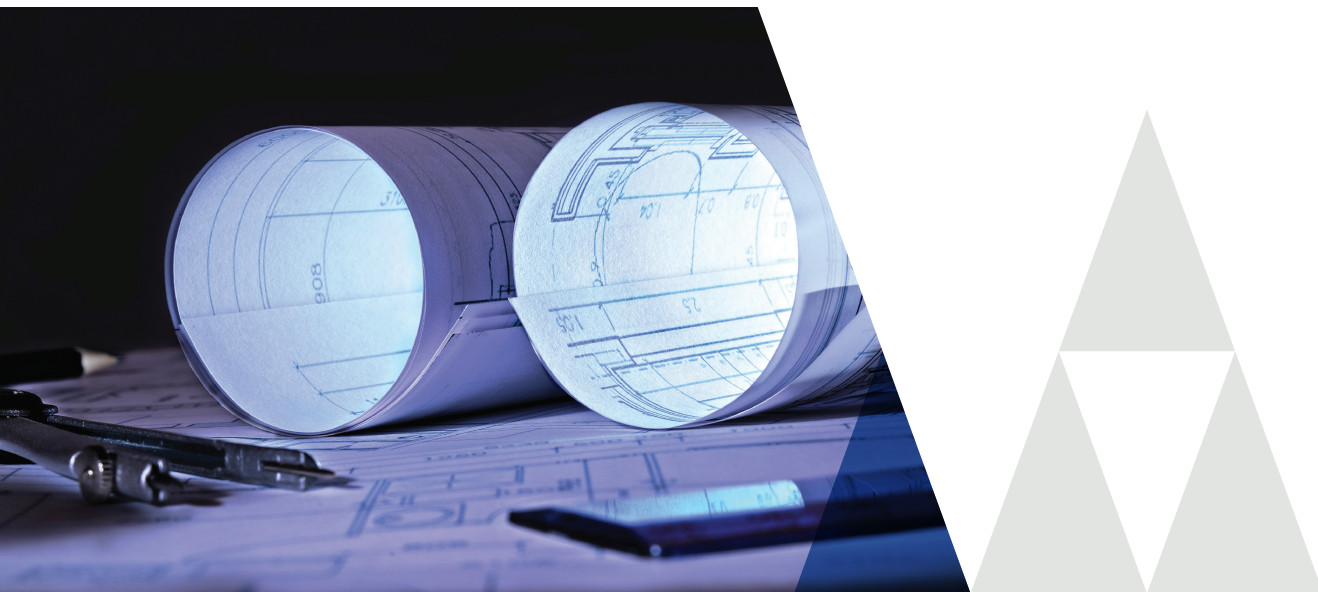
Who should be buying this coverage?

Any company who designs, manufactures, sells or supplies a product may inadvertently infringe on third party intellectual property rights and incur liability. Even if they are only supplying a product that has been designed and/or manufactured by a third party, they can still incur liability for contributory infringement. Those entities with a US exposure could find their legal expenses and court awards are significantly higher.

▶ Typical industry sectors seeking cover include:

- Software & hardware
- Consumer electronics
- Pharmaceuticals & life sciences
- Engineering
- Aviation & automotive
- Retail
- Utilities
- Chemicals





Intellectual property statistics

A UK Federation of Small Businesses survey carried out in 2015 made the following findings:

- ▶ 30% of small firms with IP are reliant on those rights for at least 75% of their turnover
- ▶ 25% of FSB members who hold IP rights have experienced infringement
- ▶ 29% of those affected had not used any methods to combat infringement. Some of the more common reasons for this included the costs involved, the resources required and a lack of awareness of the appropriate routes
- ▶ 23.9% of respondents saw their likelihood of commencing a legal action for intellectual property infringement as medium or high.

In the AIPLA (The American International Patent Law Association) Report of the Economic Survey conducted in 2015, average patent litigation costs (excluding judgements and damages awarded) for the population were:

- ▶ \$2m when the amount in controversy was between \$1m and \$10m
- ▶ \$3.1m when the amount at risk was between \$10m and \$25m
- ▶ \$5m when the amount exceeded \$25m

Statistics released by the Federal Judicial Center reported the following in relation to litigation filed in 2014–2015:

- ▶ 7.2% increase in IP case filings in the US federal courts
- ▶ Copyright litigations were up 25% on the previous year.

The 2015 PWC Patent Litigation Study reported that the median time-to-trial is about 2.4 years.



Do I already have some cover for IP infringement or IP value under my other insurance policies?

Professional Indemnity (PI)

Whilst PI policies often do have some cover for breach of intellectual property, patents and trade secrets are nearly always specifically excluded. There is no real appetite for offering full IP infringement cover within the PI market. Patent litigation is more costly than other IP litigation and the economic value of patents can lead to large awards and settlements.

Most PI policies will also exclude claims arising out of the sale or supply of a product and will restrict cover to the 'professional services' provided, which may not be deemed to include the relevant product to be insured. As PI is a liability insurance, it provides no first party cover, unlike the PI Value insurance.

General Liability (GL)

A GL policy will generally only cover you for bodily injury and property damage losses and, although it may also include cover for IP infringement arising out of advertising injury, cover under this is limited. This is because under most jurisdictions the courts do not deem the advertising of the product as the cause of the injury, but rather the sale of the patented product as the infringement.

Cover for advertising injury does not therefore respond and so cover for patent infringement under general liability policies is rare. There may be some cover for breach of copyright or trademark where the actual advertising includes copyrighted material belonging to the plaintiff, or if the actual method of advertising was patented.

Legal expenses

Whilst a legal expenses policy may provide some cover for defence costs and/or litigation expenses on pursuit claims, no cover will usually be provided for the substantial damages that can be awarded against an infringer or any agreed settlements.

Property

Your property insurance will typically only cover you for damage to your tangible property. As intellectual property is an intangible form of property, no coverage would be provided for damage to this.

Intellectual property value insurance

We also have a separate IP Value insurance product, which provides first party coverage for the loss of net profit and increased cost of working incurred by the Insured as a result of:

1. 'Legal claims'

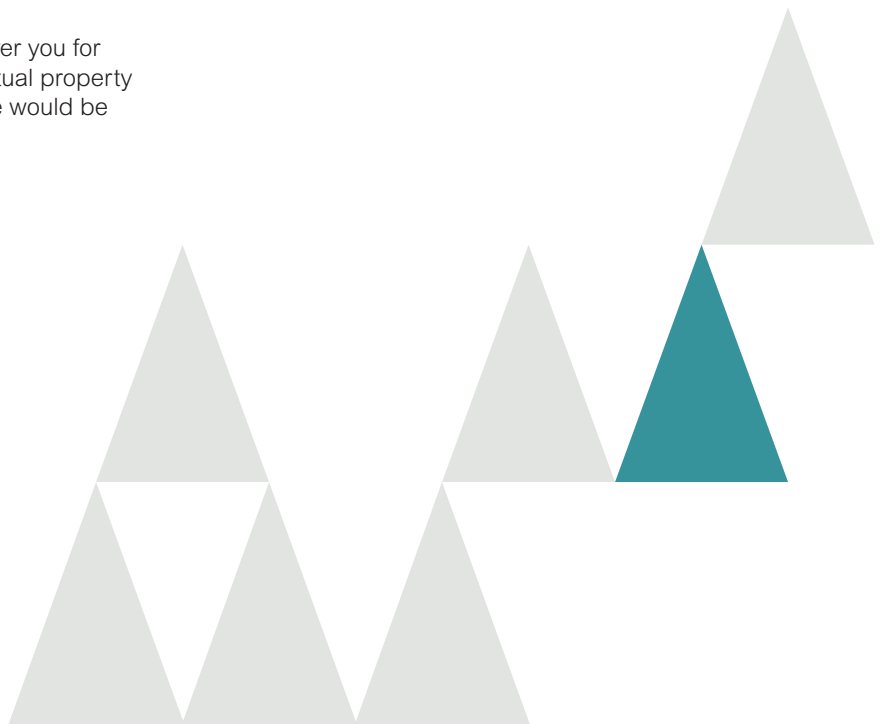
Cover is provided where a legal claim is made against the Insured alleging that any of the Insured's intellectual property rights are invalid or that they have infringed the claimant's intellectual property rights, as well as for claims by employees for ownership of intellectual property that they have been involved in the creation of.

2. 'Actions by governments and states'

Cover is provided where any law, order, decree or regulation prevents or restricts the Insured from enforcing or exploiting their intellectual property rights. This could occur, for example, where a competitor was granted identical intellectual property rights or where the government decided to cancel the Insured's authority to export or import their product.

Typically interested insurance industry sectors are the same as for the Infringement product, as are limits available and minimum premiums.

Cover is subject to policy terms, conditions and exclusions.



Litigation case studies

The majority of intellectual property disputes are settled out of court with the terms not released to the public. Here are some typical litigation case studies:

- ▶ A jury in a patent case awarded a large pharmaceuticals company \$1.67bn against a healthcare company. The jury found that the healthcare company wilfully infringed a patent licensed by the pharmaceutical company to produce its arthritis drug, costing them \$1.17bn in lost profits and \$504m in royalties.
- ▶ A leading aviation engineering company has received \$25m from a competitor as a partial settlement in a patent infringement suit related to turbochargers the competitor made and sold in Germany.
- ▶ In a globally escalating patent dispute a large electronics manufacturer has been granted a temporary injunction against a competitor selling its product, claiming that it has 'slavishly' copied its tablet smart phone design. This has delayed the launch of the product resulting in loss of income to the manufacturer, as well as extensive defence costs.
- ▶ A small gaming developer has obtained a \$21m verdict against a console manufacturer for patent infringement regarding various console gaming controllers. The lawsuit alleged infringement of 'sixteen patents' and sought damages, attorney's fees, and a permanent injunction. A settlement was reached prior to the start of the trial.
- ▶ The UK Patents Court awarded £1.5m to two inventors of a drug as compensation for their contribution to patents of outstanding benefit to their employer, given their rights under section 40 of the Patents Act 1977.

Questions and answers

What are the benefits of standalone IP cover?

Obviously it is better to have specifically tailored cover for IP that will respond in the event of a claim. Standalone IP policies also provide specific ring-fenced limits for your IP exposure, which will not erode or be eroded by other risks. An Insured also benefits from the claims handling experience of the Insurer.

Is there any cover offered for pursuit?

No cover is offered for pursuit. We have concentrated on bringing to market a product that provides a full package of cover for the defence of judicial proceedings relating to IP infringement and an IP Value product.

How much does it cost?

Our minimum premiums on transactional business are £10,000, €12,500 or \$15,000.

Lower premiums may be considered for scheme/ binder opportunities.

What limit can I buy from Liberty?

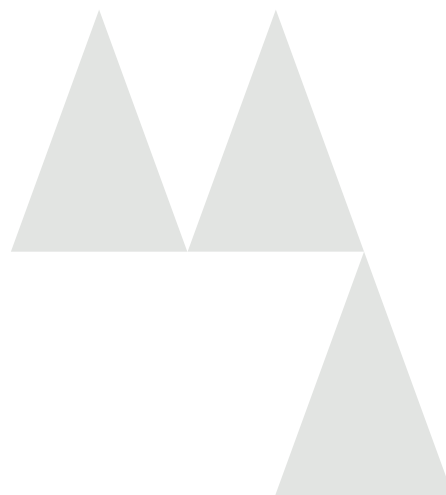
We can quote up to £10m, €15m or \$15m, either 100% or as co-insurance.

We can write primary or excess layers.

What do we need to get a quotation?

For the IP Infringement product we will initially require completion of the Liberty Intellectual Property Infringement Proposal Form which can be downloaded from the web address below. This will be used in conjunction with our own IP analytics software and indications can usually be offered at this stage. Depending on the complexity of the risk, a conference call may sometimes be required with the Insured in order to gain a greater understanding of their exposures.

For the IP value product please contact us to discuss.



About Liberty

Liberty Mutual Insurance Group (LMIG), founded in 1912, is a Boston based diversified insurer with operations in 30 countries and economies around the world. Liberty Specialty Markets, part of LMIG offers specialty and commercial insurance and reinsurance products across key UK, European, Middle East, US and other international locations.

We provide underwriting expertise in intellectual property in addition to our offering of intellectual property insurance. For a full range of products, please visit: libertyspecialtymarkets.com



Contact us

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