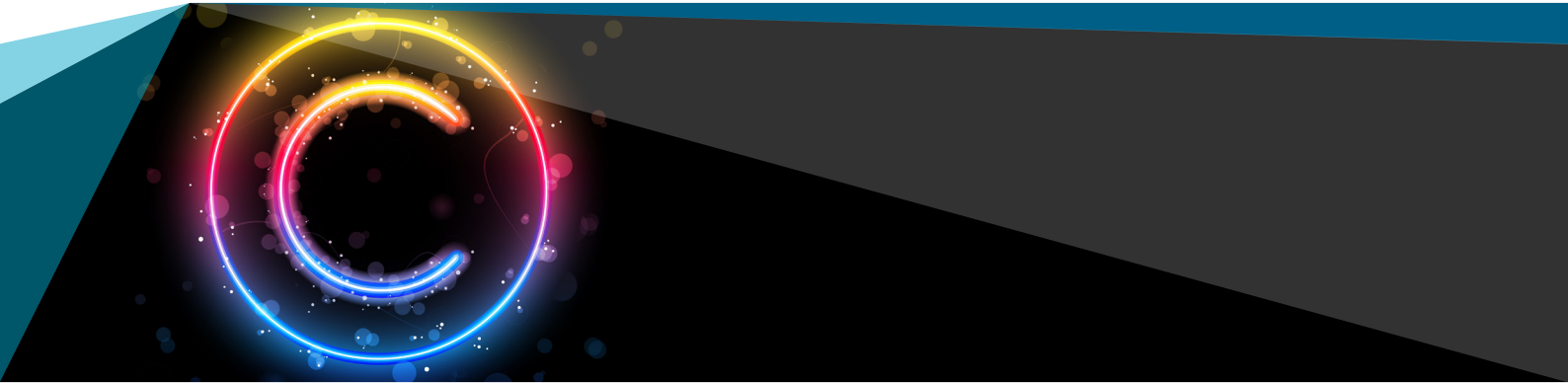


# AUTOMOTIVE INTELLECTUAL PROPERTY THEFT



## LITIGATION AND COST - OVERVIEW

Intellectual property (IP) theft is a growing global challenge that costs legitimate businesses worldwide US\$945bn in lost sales annually. The economic cost of IP theft extends well beyond lost business sales; counterfeiting and piracy cost G20 governments more than US\$135bn a year in lost tax revenues and place 2.5m legitimate jobs at risk.

Commercial litigation involving IP is increasing. For instance, between 2008 and 2009, there was a 142% increase in the number of IP disputes seen in the High Court. Despite talks about a Unified Patent Litigation System in Europe, which appears to be facing issues, the average cost of litigation is still high. A pan-European court would, however, potentially offer a more cost-effective and efficient system for litigation. The following outlines the costs of patent litigation in various jurisdictions:

- France - First Instance: US\$108,000-202,000
- United Kingdom - First Instance: US\$1-2m
- USA - First Instance: Up to US\$4m

Some countries are adopting other measures to settle and close IP litigation cases such as contingency fee arrangements which became standard practice in the US.

## AUTOMOTIVE RESEARCH AND DEVELOPMENT FOCUS AND INVESTMENT

With significant spending allocated to R&D -over US\$35bn investment per annum - and difficult economic conditions, companies are seeking to protect their IP assets. Most IP litigation was not driven by the possibility of winning substantial damages, but by the need to obtain a court injunction to bring the IP infringement to a halt and so prevent competitors stealing market share. However, a new enthusiasm for litigation as a revenue-raising tool comes as companies are slightly reducing their total legal spend and asking their in-house legal teams to do more.

In terms of R&D spend, the automotive industry ranked third with US\$85.2bn, behind computing and electronics, and healthcare in 2009. As clean technology develops, R&D will shift in focus towards ecological and efficient manufacturing of vehicles and their electrification. This may in turn affect how patent litigation develops in the auto industry.

## DISPUTE EXAMPLE IN THE AUTOMOTIVE INDUSTRY

Industrial espionage, data leakage, IP theft and internal spying are all incidents that mean companies lose one of their major assets: intellectual property.

| COMPANY                 | CASE  | LOSS   |
|-------------------------|---|--|
| Japanese OEM            | A hybrid technology developer company based in Florida accused the Japanese OEM of infringing patents for a high-voltage, low-current hybrid system in a particular car model                       | Estimates: US\$60m + US\$98 royalty per vehicle on sales of this car model |
| Two American OEMs       | Both OEMs were accused of patent infringement and had to settle litigation cases to the inventor of the intermittent windshield wiper systems   | Aggregated losses are estimated at: US\$40.2m                              |
| American OEM            | A technology developer company claimed IP theft over "Multi-sensor system" - "Method and apparatus for multiprocessor system" - "audio devices" - "Transferring information between vehicles", etc. | All complaints are estimated at US\$50m                                    |
| German parts supplier   | The German supplier filed a case against three other auto suppliers for infringement of wiper blades and technology patent for auto vehicles  | All complaints are estimated at US\$55m                                    |
| American parts supplier | The American supplier has won an IP infringement case against its rival in a dispute over automotive airbag systems   | No loss disclosed  |

## INSURANCE LEVEL IN THE AUTOMOTIVE SECTOR

The results of the 2011 Global State of Information Security Survey show that the level of uptake of insurance protection from theft or misuse of assets still only averages around 50%. The impact on business caused by theft or misuse of assets such as electronic data or customer records is rising. The table below suggests that respondents still see IP as having the most significant impact to business which has risen from 12% in 2009 to 24% in 2010.

| BUSINESS IMPACTS             | 2008 | 2009 | 2010 |
|------------------------------|------|------|------|
| Intellectual property theft  | 9%   | 12%  | 24%  |
| Financial losses             | 8%   | 15%  | 23%  |
| Brand/reputation compromised | 2%   | 13%  | 19%  |
| Loss of shareholder value    | 2%   | 4%   | 10%  |
| Fraud                        | 8%   | 3%   | 9%   |

\*All conversion rates are based on Marsh FX 2011

## MARSH SOLUTIONS

### INSURANCE SOLUTIONS

Together with internal procedures that a company can put in place to reduce IP theft, such as rigorous internal processes and continuous monitoring of information/technology control/patent registration, etc. insurance policies are also an option to consider. Traditional insurance policies designed to protect physical assets against perils are unlikely to protect information or reputation assets.

#### IP infringement insurance

- Defence coverage – insuring infringement/misappropriation liability, including reimbursement for defence expenses and/or legal damages or settlements
- Covers infringement of IPR, e.g. patents, trademarks, copyrights
- Can extend to cover licence agreements with third parties
- Available to companies domiciled and operating anywhere in the world

#### IP representations and warranties insurance

- Defence coverage as described for IP infringement insurance, but designed specifically to capture IP liabilities arising from the sale or purchase of a product or IP asset, or from a corporate merger or acquisition

#### IP infringement insurance for open source

- Defence coverage as described for IP infringement insurance, but designed to respond solely to IP liabilities arising from the creation, distribution or use of recognised Open Source software

#### IP enforcement insurance

- Enforcement indemnification – to cover the substantial litigation expenses incurred in enforcing an organisation's own IP rights against infringers
- Covers actions of most IP rights, including patents
- Can extend to cover licence agreement disputes

#### IP value insurance

- Insurance to indemnify for loss of revenue, royalties, R&D spend or value associated with invalidated IPR, ownership issues, other legal claims or discriminatory Governmental action against IP rights
- Operates along a similar reasoning to that of property or business interruption insurance, but for intangible assets

#### Open source compliance insurance

- Indemnifies for financial loss and costs associated with non-compliance with the General Public License (GPL) or over 50 other open source licenses. Noncompliance can lead to settlements or injunctions which require the removal or public distribution of open source code and proprietary code deemed to form part of a "derivative" work of the original licensed code
- The open source licenses can involve transferring patents and copyrights associated with the code
- Can insure representations and warranties associated with open source in M&A or licensing/service agreements, or on an annual renewable basis

## MARSH RISK CONSULTANCY APPROACH

Marsh Risk Consulting understands the complexity and challenges of the information supply chain and offers the resources necessary to execute tailored IP and information security solutions. By using process, qualitative, and quantitative analyses, Marsh Risk Consulting helps organisations to identify, value, prioritise, label, and secure their intellectual property and critical information. Our replicable strategy and approach can apply to a business, division, or process. Our six-step approach allows us quickly to identify value, prioritise, and secure your IP and critical information.

- Identify and define IP and critical information
- Value IP and critical information assets
- Identify macro processes
- Assess risk and analyse controls
- Map key resources to processes
- Determine risk mitigation and/or transfer solutions

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