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RESEARCH ARTICLE

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INTELLECTUAL PROPERTY RIGHTS IN INSURENCE SECTOR

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Manuscript Info

Abstract

Life insurance business in Indian started in the year 1818 and the general insurance business is more than 160 years old. At present, the products offered by Indian insurance companies can broadly be divided into three categories, namely, life insurance, general insurance and health insurance. Despite the long duration of the existence of the insurance industry and the wide range of products offered by them, no Indian insurance company has tried to protect the innovative products designed by them. The constitution of Insurance Regulatory and Development Authority (IRDA) in 1999 and the subsequent opening of the insurance sector for private companies, following the recommendations of the Malhotra committee.

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Introduction:-

Life insurance business in Indian started in the year 1818 and the general insurance business is more than 160 years old. At present, the products offered by Indian insurance companies can broadly be divided into three categories, namely, life insurance, general insurance and health insurance. Despite the long duration of the existence of the insurance industry and the wide range of products offered by them, no Indian insurance company has tried to protect the innovative products designed by them. The constitution of Insurance Regulatory and Development Authority (IRDA) in 1999 and the subsequent opening of the insurance sector for private companies, following the recommendations of the Malhotra committee, have not brought about any major changes in this aspect. One of the various objectives of IRDA is to promote competition among insurance companies, so as to enhance customer satisfaction through increased consumer choice and lower premiums. It seems that IRDA, too, like the Indian insurance companies, is unaware of what intellectual property can do in promoting competition, else some kind of protection would definitely have been sought for by insurance companies to protect their innovative products and effectively protect them, squarely falls on its shoulders. Innovation is a key component in insurance market, be it through designing completely new products, or re-engineering existing products. Focus on innovation indirectly benefits conventional classes of business and brings in more business with better and more stable results. Importantly, it brings higher satisfaction to customers. The Indian insurance industry has long been serving millions

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of people. Now, they have the onus of protecting their intellectual property, as it will encourage them to produce more advanced products. The Indian liberalized insurance companies, including the ECGE and Agriculture Insurance Corporation of India, and 24 life insurance companies with are yet to understand that their business shall be complemented by intellectual property. In general, IP insurance will only cover IP that is specifically identified. This means that if you have started a new business and would like protection for that brand name, you will need to purchase a new policy or extend your existing coverage since the protection does not apply automatically.

Intellectual Property in the Insurance Sector

Intellectual property is no longer an unfamiliar term, but for the Indian insurance industry. While the economic benefits of a strong IP are well –known and, beyond any doubt; strong IP promotes innovation, forms an important part of a company’s portfolio and helps in acquisitions and mergers. But, the Indian insurance industry appears to be oblivious. The Indian insurance industry, in general, has never placed much value o ingenuity or invention. It can be quite costly to register your particular form of IP, but that cost may increase even more when it comes to the point where you have to enforce the IP because someone has infringed your rights. IP insurance policies cover the costs of legal proceedings for IP disputes. This can be for:

1. Legal costs for enforcing claims against infringers – including damages for loss of profits or reputation, and can apply to any IP right locally or internationally; or
2. Legal costs for defending yourself against infringement claims – including any claims made against your clients, customers or licensees

IP Insurance will cover the costs of either defending clams you have infringed third party rights or enforcing your rights against infringers. Policies are purchased annually, and cover court fees, own-side and your opponent’s costs. Here’s how purchasing intellectual property insurance through a trusted intellectual property insurance broker can add real value to your business:

Protecting cash flow

Intellectual property litigation is hugely expensive and can have a devastating impact on the value of a company. Right-holders often cannot afford to take decisive action which reduces the value of the intellectual property and the business itself as infringers know they will get away scot free. Our policies will meet the cost of the litigation allowing you to take swift and decisive action without affecting the financial position of your company.

Providing a deterrent

Once you have purchased a policy with us we will provide you with a Safeguard IP logo to add to your marketing literature. This logo confirms that intellectual property insurance is in place and will make potential infringers think twice about copying your brand, design, technology or creative works.

Improving your negotiating position

If you are involved in litigation and your opponent knows you have the benefit of an insurance policy you are less likely to have to settle on unfavourable terms, thereby limiting the risk of unsuccessful litigation. Litigating from a position of strength can also generate licensing opportunities.

Giving you the ability to indemnify large licensees

It is often the case that larger customers/licensees demand indemnification against the costs of intellectual property disputes. In many cases it would be unwise to give such indemnities without the benefit of an insurance policy to protect against these sizeable risks.

Adding value when licensing or assigning your rights

Having an insurance policy for intellectual property in place will give comfort to a licensee that if an issue does arise, you, as the licensor, have the resources to take decisive action. Similarly, having insurance in place makes your intellectual property more attractive to a purchaser if you are looking to sell your rights.

Reassures lenders and investors

In the modern economy most business value does not lie in tangible assets. Nowadays, a business’s real value lies in its intellectual property. Having IP insurance in place gives lenders comfort that resources are available to maintain the value of the right if it is infringed. It also shows prudent planning and an understanding of the importance of intellectual property to your business.

Forms of IP Protection

A patent is the best is the best form of IP to protect insurance products. Copyrights protect the expression of ideas rather than the idea itself. Although obtaining a copyright is less stringent than a patent, it is advisable to obtain a patent rather than a copyright for an insurance product because the claims are well defined in a patent.

Trademarks identify the source of the goods or services, rather than the goods or services themselves. A trademark is any word, name, symbol, sound, etc., that one uses in commerce to identify and distinguish one's goods from that of others. For instance "LIC" is synonymous with the trademark of Life Insurance Corporation of India. A trademark is ideal to generate goodwill to the supplier.

Trade secrets are similar to patents in the type of material covered, but only last so long as the material or concept is secret. A trade secret is a formula, pattern, device or compilation of information used in business that gives one an opportunity to get an edge over competitors. Trade secrets can be of unlimited duration but their essence is secrecy.

Patent Insurance Vs Insurance Patent

Patent insurance is an insurance policy provided by insurance companies to protect or insure a patent. Patent insurance is of two types: "Patent liability insurance" and "patent pursuance insurance". Patent liability insurance is a defensive instrument, which helps the insured fight an infringement lawsuit filed by a rival company. It is also called "patent infringement defence insurance". In this case, the insurance company pays a part of the legal expenses incurred and/or the damages imposed. Patent pursuance insurance, on the other hand, is an offensive instrument, which aids the insured fight against a patent infringing company. This is also called the "patent enforcement insurance" or "offensive patent insurance". In this case, the insurer pays a portion of the legal expenses incurred by the insured company.

Insurance patent on the other hand is patenting an insurance product. It is just another kind of patent obtained for an insurance product. Insurance patents largely comprise of business method patents. Patenting insurance policies and other financial vehicles is a growing trend world-wide. Insurers, investment bankers and money managers patent aspects of policies and their administration, pricing and underwriting, as well as innovative financial products and services.. A patent can be obtained in various areas of insurance, like reversionary annuity, loan repayments in the event of disability, better methods to market insurance product, methods for insurance underwriting, new methods of calculating premium, etc., Such a trend could transform the Indian insurance industry, which has traditionally been a "follow-the leader" market. Both patent insurance and insurance patents are largely unknown in India.

Dearth of Patents in the Indian Insurance Sector

The Indian insurance companies for lack of patents are that patenting insurance products is not allowed by the Patents Act of India. But nowhere in the Patents Act 1970, or its various amendments, is there a reference to insurance products as being non-patentable subject matter. The companies cite Section 3(k) of the patents Act, which prescribes that 'a mathematical or business method or a computer program per se or algorithms' are not patentable. In the world of insurance, innovation leading to a patentable invention almost always involves what is called a "business method". A business method is an abstract idea of a new or better way to do business. But, an abstract idea alone is not patentable. Typically in the insurance sector, the abstract idea is made practical as a computer implemented business method. Nevertheless, patents cannot be filed under business method category in India as the Patents Act does not recognize business methods as invention. The only option left for insurance companies is to file the patents under the computer programs category. Needless to say, patenting of computer programs per se is not allowed, but their application may be patented and hence the computer implemented business method can be patented under the application category of computer programs. Since most of the innovation in the insurance sector involve computer programs, this may be a viable solution for patenting insurance products, yet it must be clarified that insurance patents need not be necessarily associated with a computer.

Conclusion:-

As technology advances in leaps and bounds, the business world including insurance business, takes rapid strides. New product development requires investment of manpower and capital and there is always a need to ensure that the fruits of development go as far and as long as possible to maximize return on investment. Innovations need to be protected at any cost and the current laws or regulations should not come in the way of innovative spirit. In the highly regulated insurance sector, companies might resort to the idea of insurance development labs which shall focus only on developing insurance products. With the establishment of insurance development labs, and insurance

company might become a pure product manufacturer by getting rid of its product development function and costs and buying or licensing products from others. It is well known that a patent adds value to an invention. It is for Indian insurance companies to stop neglecting intellectual property in product development. Intellectual property will be protected by more than just the traditional trademark or a copyright.

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