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CONSIDERATION OF INTELLECTUAL PROPERTY INSURANCE ESSENCE

The object of the current research is the insurance of intellectual property in the light of its very essence and the overall frame in which it exists and develops worldwide. There are two problematic issues on this topic, from which various other problems, with less importance but still existing, arise. The first thorough problematic aspect is the lack of unified rules for intellectual property insurance. This is the one side of the coin. On the one hand and the other side of the coin is the apparent fear of the insurance companies to commit to this type of policy, due to lack of security and the high risk. In the course of the research two main tools are used. The first and basic one is a brief overview and analysis of the theoretical foundations of the topic, which subsequently is used as a groundwork for assay of different companies' good practices in this field. As a result of the review of the framework of intellectual property insurance, it is concluded that its application as a parallel and additional method of protection of the intellectual property is very beneficial, useful, economically viable, and highly necessary, but only if a way to eliminate the difficulties and shortcomings of this type of insurance completely is found. In the future, in order to reach positive changes to take place and for intellectual property insurance to become an increasingly preferred method for supplementary protection of intellectual property, the proposed approach is to be worked in three directions. Those directions are intertwined with each other and they must be worked on simultaneously and in their interconnectedness. Namely, the directions are building a unified system, with a strict methodology and at the same time creating a legal basis which to bring in detail and unequivocal means and approaches the way in which intellectual property insurance is carried out.

Keywords: *intellectual property, insurance of intellectual property, intangible assets in business, valuable objects.*

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1. Introduction

Every business relies on its tangible and intangible assets while operating. A few decades before, the tangible assets held the advantage in contributing to business prosperity. Nowadays intangible assets are a key factor for achieving financial, economical, and overall success in business. This radical change and reorientation are caused by several factors, becoming more and more considerable in time. Precisely the high profitability of the intangible assets, often the insignificant financial investment they require, and the fact that, unlike the intangible assets, they are not characterized with physical restrictions. Among the intangible assets most valuable and significant are the objects of intellectual property such as trademarks, patents, industrial design, utility models. Being easily transferable, having a long economically useful life, and indispensability, they can either rise up the business level or completely crash it. This can hardly be done by another type of asset.

In particular, due to their complexity, intricacy, and value, the objects of intellectual property as an asset require more serious and careful attention, concentrating in terms of their protection, extension of their service life, generating maximum duration of a positive financial result and maximum deduction of related risks. Author of [1] presents the importance of intellectual property insurance such as «the seed that can blossom into an entire business empire», which companies have to «protect ... from the prying eyes of competitors». According to him, this is not the sole idea of intellectual property protection. There is another hidden, but more having a greater and deeper influence and namely, this is the litigation costs that can have «a substantial, material impact on a business, making risk». This thought is continued by author of [2], who says that «Most companies understand the importance of intellectual property» but yet, according to him, they do not realize the seriousness of the responsibility to make their best to protect it and to eliminate all possible risks associated with it.

A big part of these risks are covered by the legal rules concerning the objects of intellectual property and are directly involved with the defense conditions as well as the mechanisms of counter-reaction against law violations. But despite the severity of the law protection, there is not sufficient safeguard, necessary care, and attention for the intangible assets, precisely objects of intellectual property. Which in its turn raises the need of finding an alternative solution

for their protection and the preservation of their value and integrity. Such an alternative appears to be insurance.

The most significant publications on the subject of this research are researches [3, 4]. The work [3] published in 1999 lays the foundation for intellectual property insurance as it is today. In 2015 the work [4] becomes an important theoretical and practical work, a kind of a manual that reveals the problems associated with the subject, as well as ways to avoid and solve them.

Other works of great importance and based on current legislation and active practices are the publication of the Patent Office of the United Kingdom [5], the handbook of the European Intellectual Property Office [6]. These two publications of official institutions give a clearer practical view of the issue.

Thus, *the object of research* is the insurance of intellectual property in the light of its very essence and the overall frame in which it exists and develops worldwide. And *the aim of this research* is to present the essence of intellectual property insurance, its coverage, its advantages and the difficulties that lie ahead.

2. Research methodology

The methodology used to conduct the study is interdisciplinary. The complexity, specificity and breadth of the studied object of research determines the need for simultaneous application of different types and complexity of research methods. Among the methods used are the methods of study, analysis, synthesis, incl. analysis of business practices, synthesis of practical experience, study of positive world experience, induction, as well as standard theoretical methods of analysis.

3. Research results and discussion

3.1. The essence of the intellectual property insurance. In many aspects the insurance of intellectual property is similar to any standard insurance – there is existing insurance, an insurance event occurs, the expenses following this event are covered by the insurance. But due to the specification of the intellectual property objects, namely their intangible nature, the difficulty in defining their economical value, and their cost, the core of the intellectual property insurance is modified, so that it corresponds to this specification.

The insurance policies in this case often do not contain any territorial coverage limitations, as there are also no physical or territorial limitations regarding the objects of intellectual property and the violations against them. The damages, if we accept this conditional definition for the violations against the intellectual property, cover a wide range of events, such as:

– expenses for violation rights claims from a third party;
– expenses for decision revision, invalidity, the process of decision annulment, and so on;
– expenses for paying of compensations;
– covering of charges for cross-appeals and claims;
– expenses for technical analyses and expertise in order to prove guilt or non-guilt;
– expenses for defence against violation claims by third parties, including actions for annulment;
– expenses for cases in violation of the license and contractionary obligations, related to objects of intellectual property;
– expenses related to the professional responsibility of employees of low and high rank, in terms of violation of intellectual property rights;
– and all other kinds of responsibilities related to risk of violation of rights from the bearer of an insurance policy or to the bearer of the insurance policy.

The insurance of intellectual property can cover events in which the policy bearer is in the role of the affected party or violator. The cover includes illegal acts with and against business confidentiality, patents, copyrights, trademarks, and designs. The main two types of intellectual property insurance are:

– protective insurances, covering events related to violation of other people's rights on the intellectual property of the insurance policy bearer. The insurance covers lawyer expenses, judicial expenses, amounts awarded as compensations of the opposing party in case of trial loss;
– applying insurances that cover events related to violation of one own' rights by a third party. The insurance covers the expenses needed for trial claims as well as for lost profits due to rights violations.

This classification is as short and systematic as possible. Some authors give a broader classification. Author of [7] for example, makes classification which contains several groups. The first group includes intellectual property enforcement insurance and intellectual property infringement liability insurance. The second one involves voluntary intellectual property insurance and mandatory one. Another grouping is on the defensive type and offensive type intellectual property insurance. And the last part of the classification is separating the intellectual property insurances to trademark, patent, and copyright insurances.

Author of [8], on the other hand, systematizes the types of insurance in several groups. These are the pursuit of a third party for infringement on the insured's intellectual property; defense of infringement claims made by a third party, including counterclaims for invalidity; licensing and contractual obligations; cover for directors and officers if joined in an action анд business continuity and recall compliance expenses cover.

3.2. Intellectual property insurance as a method for additional protection. The insurance of intellectual property is so far the only alternative, amplifying the law protection, without limiting it, but by only supporting it. Each company that owns and/or uses intellectual property is in real danger of violating other parties' rights itself or having one own' rights violated. Never mind which of the above case scenarios occurs, the main impact on the company will be financial.

On whichever side of the barrier the company stands, when there is a violation of rights on intellectual property, the company always needs to pay – in order to defend itself, to defend its rights, its rightness, to prove its non-guilt, to pay its claim for committed violence, to compensate for the financially admitted mistake. Having in mind the extents of the cases involved in intellectual property violation rights are one of the most expensive, if any company has the bad luck to be in the losing position in such cases, it will bear huge financial responsibility. This might mean paying for violation rights claims or suffering losses in reply to the violation of its own rights. Regardless of the case scenario, this financial responsibility may reflect on the company in financial instability, failure, even bankruptcy, which may lead to a long-term negative outcome on its operation and stability.

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Opposing a financial shock like this is absolutely unacceptable and unprofitable in any case. Usually, the companies are unable to deal with unfortunate financial situations themselves. So intellectual property insurance plays an important role in undertaking the financial damage, compensating the company loss and bringing back its stability, as well as reducing the negative outcomes to a very minimum.

3.3. Financial compensation in case of intellectual property insurance event. Every right violation act against intellectual property, no matter if a private or legal entity is involved, may cause serious consequences for all three parties – the violator, the owner of intellectual property, and the object of the violation. The rights' owner experiences profit loss, and not only. The violator experiences losses in the name of violation compensations if proven guilty. The object of a violation, being an object of intellectual property, reduces its cost and value. Each one of these losses has to be supported or neutralized by one's own or third-party financial funds. If the funds are provided by a third party, the company is in debt, if the funds are one's own, the company has no longer free funds to continue its operation and development.

The best alternative for avoiding such negative financial scenarios is the insurance of the intellectual property. The insurance acts in the interest of covering the financial consequences, arising in the rights violation process for both or all three parties involved, depending on whoever has signed the insurance policy and whomever it is in favor. In cases of being taken out by the rights owner, the insurance covers the financial damage on his business and the violation object, thus object of intellectual property.

The insurance covers lost causes and damages, caused by the violation act, to the amount duly defined as necessary. When a rights' violator has taken out the insurance, it covers the financial losses that occurred for the insured party in terms of compensatory payment for the rights' owner and object of violation. The insurance covers the due to the respondent, and the indemnity and all other compensations for the violation act defined by the court after coming to an agreement.

3.4. Benefits of intellectual property insurance. In case there is no insurance of intellectual property, both parties rely only on their own financial assets to cover the financial risk following the occurrence of a rights violation event. These financial assets must be enough for:

- covering of the lawsuit expenses including the lawyer commission and collecting of evidence;
- covering of possible losses directly or indirectly related to violation of rights;
- possible compensation payments of the respondent;
- unfortunate trial consequences.

It must be said that in some cases the financial means and resources have a direct impact on the outcome of such strife. Especially the evidence collection is often expensive as well as hiring a highly qualified professional who will lead the case to a favorable payoff. Respectively when one of the involved parties, regardless if it represents an object or subject of rights violation, has weaker financial assets, but it faces a stronger financially opponent, this can predict the plea result without considering who is right. Being right needs proving and proving can cost money. Having intellectual property insurance allows «alignment of forces» between the parties and ensures financial resources for an equal standing fight in the name of dispute resolution. Author of [8] emphasizes that «in the absence of IP insurance and faced with an opponent with more financial resources to outspend them, this can become very difficult for the clients to handle financially – no matter how «in the right» they are». The same opinion is shared by author of [2], according to whom «defending or pursuing a claim against IP can be prohibitive and leave your business exposed».

The insurance of intellectual property has a range of other benefits for the business, which even being indirect, are relatable to protecting these intangible assets. With these so-called secondary advantages, intellectual property insurance becomes an important tool for protecting intellectual property and the functions, activities, and business results, related to it. Those benefits are concerning different risks. Authors of [9] group the risks into three main groups, with their constituent elements. The first group represented by them is risks related to loss or abridgement of intellectual property rights. The second group according to them includes risks related to possible losses, contingencies and half-received profits connected with commercialization of intellectual property objects. They represent the third group as risks of professional responsibility of participants of intellectual property market.

It then can be accepted that the benefits are directly relatable to the upcoming risks in the creation, use, and ownership of intellectual property. Also, the very fact that the company has an insurance policy with coverage related to its intellectual property can raise its financial stability, market share, and even value, as well as guarantee a favorable position for negotiating in various business operations, including business mergers, change of ownership and so on. In line with this, having intellectual property insurance can protect the company's monetary flow, keep the financial stability and reduce the risk of financial collapse due to the inability of expenses coverage related to violation of rights on intellectual property. The insurance puts a peculiar defensive barrier against potential unregulated acts by third parties. Its presence is an effective means for deterrence of possible violation and acts as a stopper for everyone aiming to violate others' rights. The violators rarely have the guts to face a company, which has an insurer with its whole instrumentation for opposing insurance events, and also a financial and legal force behind its back. Additionally, it must be noted that the insurance represents a further guarantee for creditors and investors. Because of the insurance, the intellectual property objects are more stable and have double protection – first by the law and second by the insurance policy itself. The last benefit of intellectual property insurance, just beginning to gain popularity, is using the policy as a tool for collateral in some credit transactions and investment intentions.

3.5. Challenges in front of the intellectual property insurance. Using the insurance as an alternative or additional protection of the intellectual property of a company seems like a good opportunity, but it also represents a huge challenge and at the same time has a range of challenges in front itself. This partly comes from the fact that the issue is not concerning only intellectual property, but «is considered as an essential part of the risk management strategy of a company», as author of [10] says. These challenges are caused by two factors – the essence and specification of the objects of intellectual property and the novelty of applying for insurance

on intangible objects worldwide. Namely pointed out, the challenges constitute one not quite shortlist in which each and every factor is related to another. This in its turn makes the task for successful insurance more challenging and complicated. The difficulties in this aspect come from:

– the intangible character of the objects of intellectual property. The main question is «Is there really an existing object of insurance/are there really violated rights against an object?»;

– the existence of two protection forms – formal and informal which leads to difficulties in defining the existence of law protection, and in some cases the existence of an object as well as an asset owner. Such a case is the know-how and trade secrets. The main question is «Is there really a right in the ownership of the insured party?»;

– difficulty in tracing the moment of occurrence of an insurance event, meaning violation. The main question is «When did the violation occur – before or after making the insurance?»;

– difficulty in defining the economical value and price of the insurance object which rarely match. The main question is «What is the cost and the value of the intellectual property?»;

– the indefiniteness and immeasurability of the damages. The main question is: «If there were no rights violated, what would really be the cost of this intellectual property?».

The inability of giving concrete and clear answers to the questions mentioned above puts a big question mark generally on the existence and application of the insurance receptions of an object of this complexity which is the intellectual property with its objects. And this issue should be solved, because as author of [11] says, the general liability insurance policy are not enough to fully protect the most valuable assets. And the risk is not worth.

3.6. Discussion of research results. The intellectual property is a valuable asset for its owner and in this role, it needs every possible means and resource for protection. To days the standard way for this, namely the legal norms, are insufficient as a method for qualitative and effective protection. This standard protection may and must be amplified by using a different type of protection providing the intellectual property with a different type of safety. The insurance of intellectual property is such a method, applicable despite the complicated essence of the intellectual property objects, hardly fitting in the standard insurance forms. One short definition that can be given is that Intellectual property insurance is a type of insurance that protects a natural or legal person in the events involving his intellectual property, or concerning another's intellectual property to which that person is related. It is also, as author of [12] mentions part of the «methods of maintaining the value of an intellectual property». Having on mind this, the above mentioned hardly fitting does not mean impossible. Intellectual property insurance can insure not only additional protection, but a proper aid in the financial aspect in case of an insurance event, whether the insured is a violator or a right owner. Perhaps the introduction of insurance policies for objects of intellectual property across the world will take some time. Perhaps the insurance process will be more complicated. But the approaching positive experience shows that indeed intellectual property insurance is a good supplemental shield for a valuable and significant business resource.

The limitations of this study are concerning the fact that depending on national law, the circumstances in which the object of study, namely intellectual property insurance, would exist or develop, would be different. For the purposes of this article, the considered postulates are generally accepted ones. However, it should be borne in mind that priority in specific cases and with specific issues may have some specific legal norms and requirements.

The topic can be continued with an in-depth examination of possible legislative or practical changes that eliminate the shortcomings and threats related to intellectual property insurance. Another direction of development of the topic is a detailed analysis of the current practice in the field of intellectual property insurance, with a proper comparison between the practice in developed and developing countries.

4. Conclusions

In the course of the research, the complex nature of intellectual property insurance is considered and the specifications, problems, and issues that arise concerning it are determined. The necessity, the ways, and the means of application of insurance of intellectual property as additional protection of the objects of intellectual property, as well as the advantages, which can have this kind of protection, are considered. A concise look at the main aspects of intellectual property insurance is presented, which provides a comprehensive basic picture of the issue.

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