

Solutions for the Financial Protection of IP Assets



CPA Global – Webinar – 02 Dec 2008

Agenda

- ❑ Introduction to SAMIAN
- ❑ Risk and Solutions
 - ❑ Liability
 - ❑ Ownership
 - ❑ Known Disputes
 - ❑ Financial
- ❑ Underwriting Considerations
- ❑ Case Examples
- ❑ Underwriters preferences



Introduction to SAMIAN

About SAMIAN

- ❑ A specialist MGA focused solely on Intangible Assets
- ❑ Formed in 2007
- ❑ Based in London, plus Copenhagen & Houston, TX
- ❑ Independent UK Investors
- ❑ Supporting Lloyd's Capacity



An experienced team

London



Ian Lewis, 20 years experience
with insurance and IPR

London



Sam Bobo, 20 years experience
with insurance and IPR

Houston (Texas)



Kim Cauthorn – 20 years
experience with insurance and IPR

Copenhagen



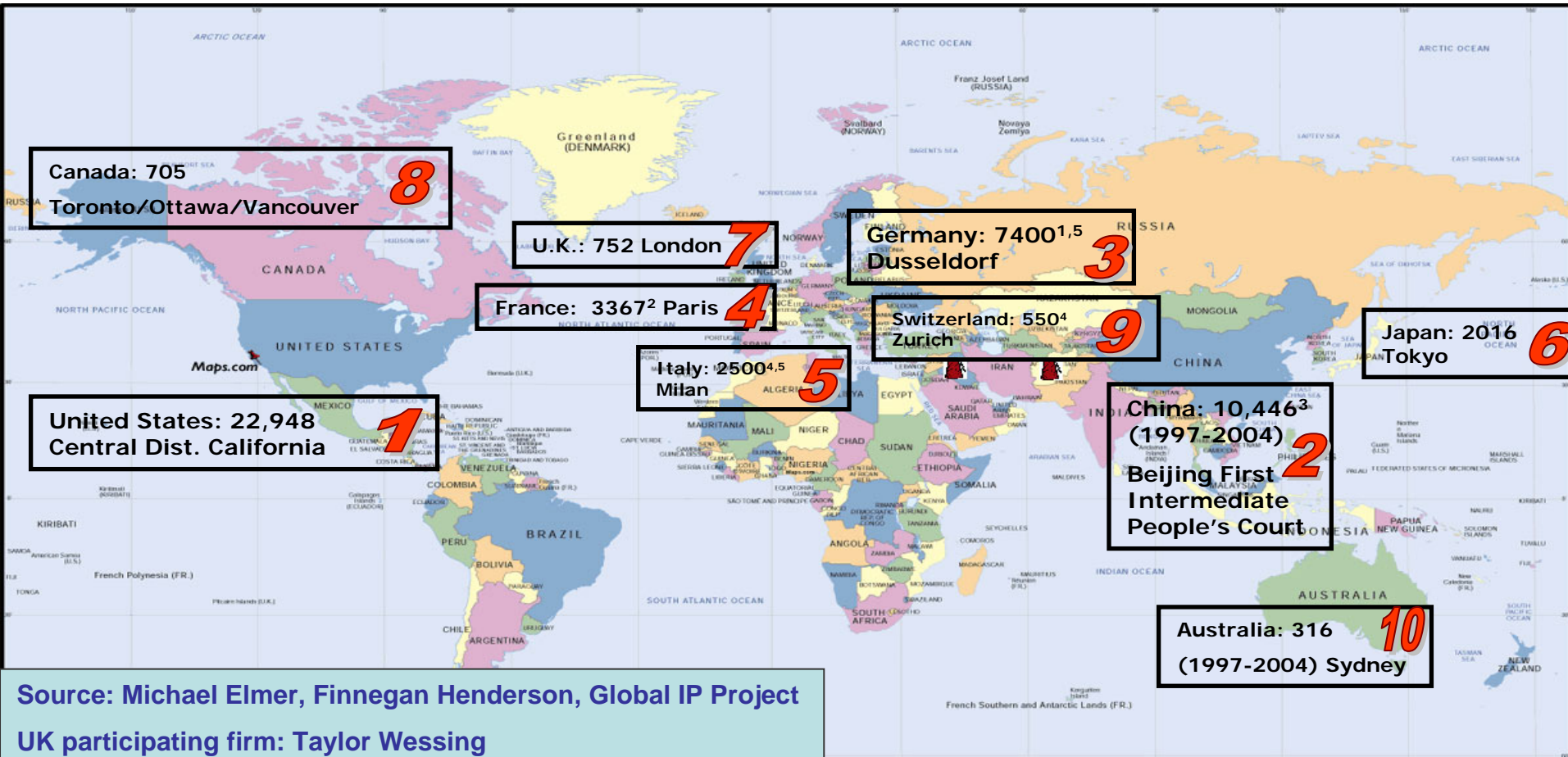
John Horsted – 15 years
experience with IPR

IP Risk is everywhere

Top 10 Patent Litigation Countries
USA Statistics
Damages Awards



10 Most Litigious Countries with # of Patent Litigation Filings (1997-2005) and Courts

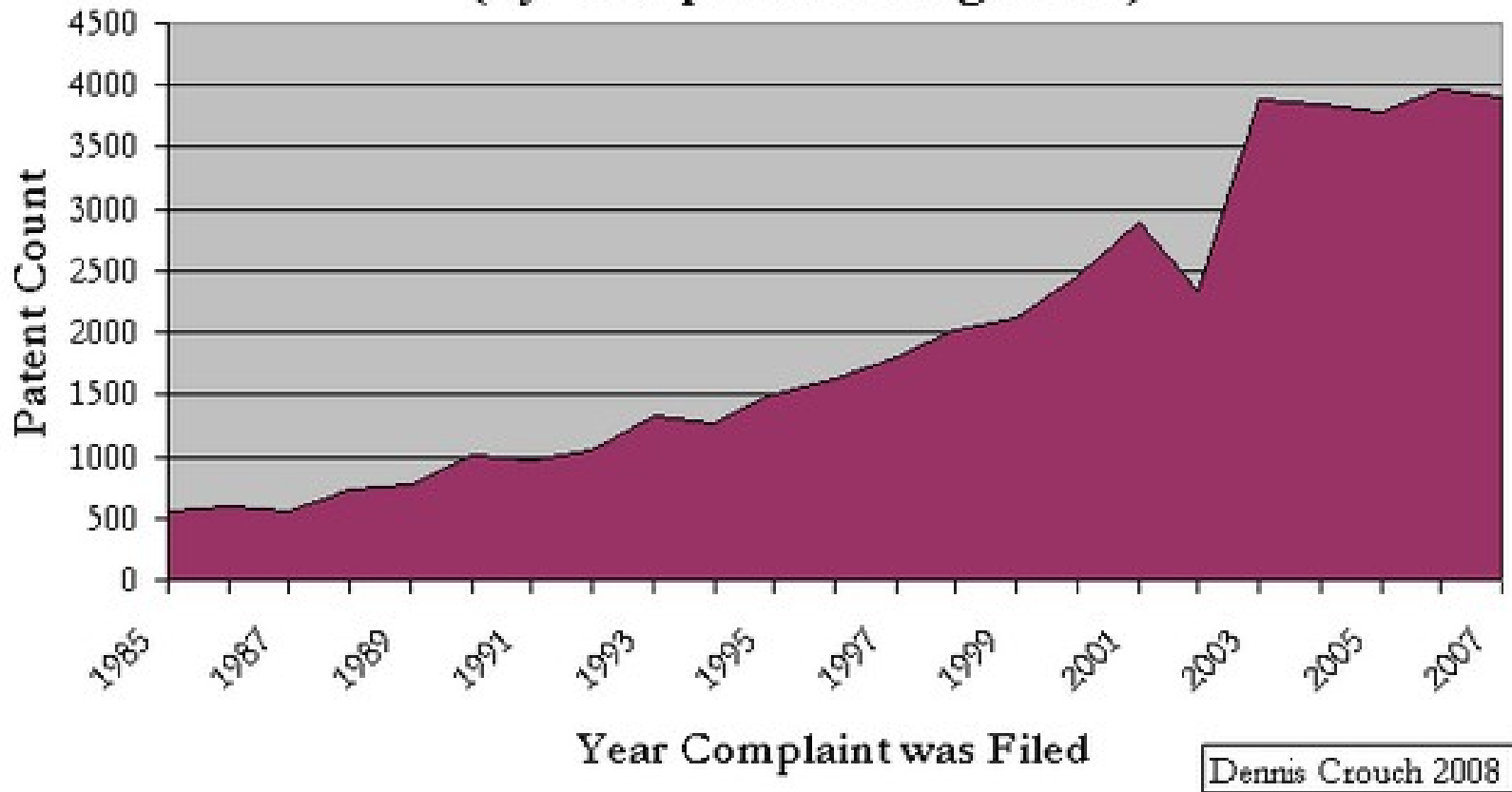


Notes:

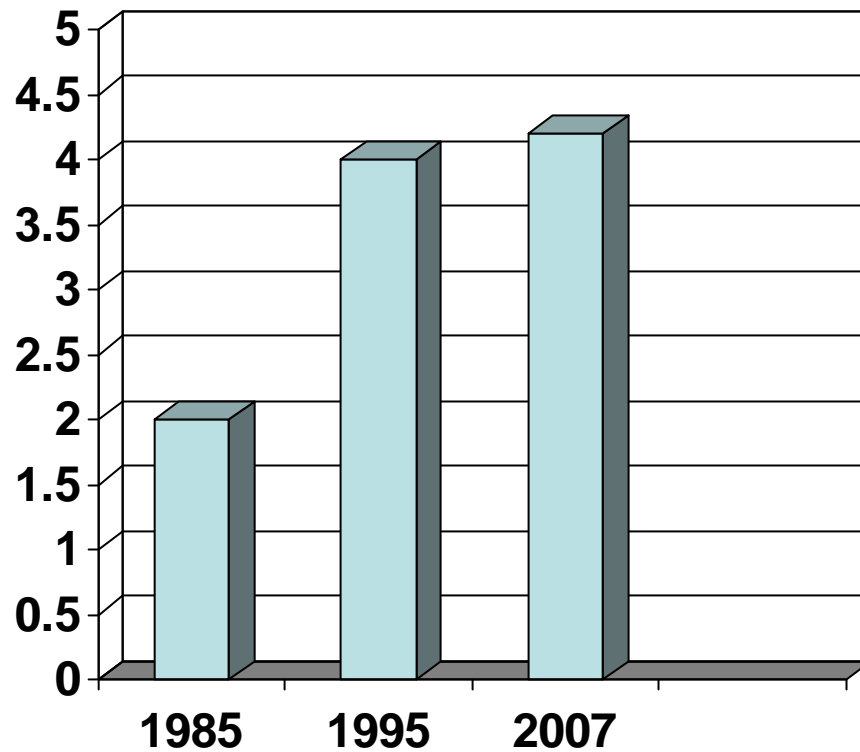
- 1 Estimate from Global IP project participating firm in Germany, Taylor Wessing.
- 2 Estimate extrapolated from 1997-01 data – currently being verified
- 3 est.; China data includes trial court infringement actions only, not AAPA actions. Most (est. 70-80%) of China's patent infringement cases are utility model cases.
- 4 Indicates estimate by GIP participant based on number of decisions because number of cases filed is not obtainable
- 5 We estimate that utility model cases make up a significant portion of the patent litigation filing numbers in Italy and Germany. In Germany, e.g., we estimate that about 1/3 of the cases filed relate to utility models.

US Patent Litigation

Number of Patents in Litigation
(by Complaint Filing Date)



Patent Damages Awards



Note that these are damages awards & do not include settlements or litigation costs

■ Average Awards (\$ Millions)

Source: PwC 2008 Patent Litigation Study

Risks and Solutions

Liability
Ownership
Known Disputes
Financial



Liability - Risks

- Infringement Liability
- Contractual Indemnity
- Transaction Reps & Warranties
- Open Source

Liability Issues



Infringement Liability Insurance



IP Reps & Warranties Insurance

Infringement Liability



- ❑ Damages and defence costs
- ❑ Worldwide cover available
- ❑ £7.5m / \$15M aggregate limits of indemnity (if higher limits needed, then can be “layered”)
- ❑ Claims made and reported policy
- ❑ Extension for contractual indemnities
- ❑ Extension for directors & officers
- ❑ Extension for open source matters

Reps & Warranties

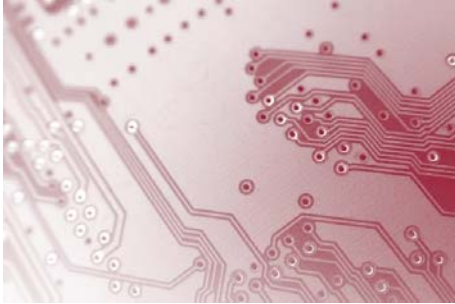


- ❑ Damages and defence costs for most forms of IP infringement & Title reps
- ❑ Worldwide cover available
- ❑ £7.5m / \$15M aggregate limits of indemnity
- ❑ Claims made and reported policy
- ❑ Up to 36 month policy period
- ❑ Aimed at Sellers, but can be applied for purchasers

Ownership - Risks

- Invalidity / Opposition / Re-examination
- Title / Ownership
- Enforcement
- Licensing In & Out

Ownership Issues



Enforcement Legal Expenses

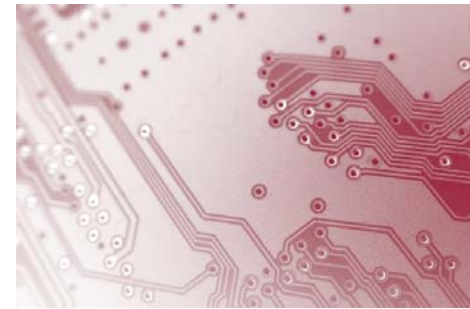


IP Combined Liability



Patent Enforcement -
PatentSword™

Enforcement Expenses



- ❑ Covers litigation costs incurred by IP right owners when pursuing infringers of their IP rights
- ❑ Extension to include party(s) contractually indemnified by the Insured
- ❑ Extension to cover defence of challenges to the title or validity of the Insured's IP rights
- ❑ Limits of up to £3,000,000
- ❑ Worldwide Territorial Limits available
- ❑ Claims made and reported policy

Combined Liability



- ❑ Covers defence costs and damages (liability) from infringement of third party IP rights, plus enforcement costs and defence of validity/title disputes
- ❑ Cover for enforcement or defence of a breach of contract around IP rights
- ❑ Limits of up to £3,000,000 for enforcement, but £50,000,000+ for defence
- ❑ Worldwide Territorial Limits available
- ❑ Claims made and reported

Enforcement - *PatentSword™*



- ❑ A scheme with CPA Global for legal costs incurred in patent enforcement actions
- ❑ Up to 10 patent families can be insured
- ❑ Available to clients in Europe, Australia & NZ
- ❑ £500,000 Limit of Indemnity
- ❑ Worldwide Territorial Limits available
- ❑ Focused on SME's with less than £100m sales

Visit: www.patentsword.com

Known Disputes - Risks

- Adverse Costs
- Own Disbursements

After The Event

- ❑ Covers adverse litigation costs and own disbursements for owners of IP rights when pursuing infringers of their IP rights
- ❑ Limits of up to £2,500,000+
- ❑ Available for litigation in Europe, Australia, New Zealand, Singapore & Honk Kong
- ❑ Policy period – until end of litigation
- ❑ Indemnity policy (no interim payments)
- ❑ Bonds available for Security of Costs

Financial - Risks

- ❑ Revenue streams – Lost royalties
- ❑ Asset Value – depreciation
- ❑ Lost future / forecast income

Asset Value Protection

- ❑ Covers loss of asset value following findings of invalidity, loss of title or unenforceability or non-exploitation
- ❑ Agreed value indemnity basis
- ❑ Limits of up to £10,000,000+
- ❑ Worldwide Territorial Limits available
- ❑ 36 month policy period available
- ❑ Can be used to secure funding or loans

Revenue Protection

- ❑ Covers lost revenues (current or future) following findings of invalidity, loss of title or unenforceability or non-exploitation
- ❑ Adjusted indemnity basis
- ❑ Limits of up to £10,000,000+
- ❑ Worldwide Territorial Limits available
- ❑ 36 month policy period available
- ❑ Can be used to support investment or acquisition

Underwriting Considerations

Risk Factors
Risk Information



Risk Factors

- ❑ Domicile of the Insured
- ❑ Business activity of the Insured
- ❑ The turnover of the company and % derived from IP or products to be insured
- ❑ Territories in which products / IP sold or used
- ❑ What are the products or IP to be insured
- ❑ Prior dispute history
- ❑ Are there contractual indemnities, in or out

Risk Information

- ❑ Fully completed Proposal Form
- ❑ Details of IP and/or products to be insured
- ❑ Product brochures / literature / samples
- ❑ Financial Data – Report & Accounts
- ❑ Prior disputes
- ❑ Underwriting Risk Review

Case Examples



Case Study – Infringement Defence

- ❑ Software company in Nevada, USA
- ❑ Annual sales under US\$2,000,000
- ❑ Required by clients to give IP indemnities including patent infringement)
- ❑ Purchased US\$2,000,000 Limit of Indemnity
- ❑ SIR US\$25,000 + 10% co-insurance
- ❑ Premium US\$35,000 plus taxes

Case Study – Reps & Warranties

- ❑ Medical Device company in Maryland, USA
- ❑ Annual Sales circa US\$50,000,000
- ❑ Selling a product suite to a large US corporation and needed cover for the IP Reps and Warranties (including patent)
- ❑ US\$60m transaction stalled over IP indemnities
- ❑ Purchased US\$10,000,000 Limit of Indemnity
- ❑ Policy period 24 months, to match warranties
- ❑ Premium US\$1,200,000 plus taxes

Case Study – Combined Liability

- ❑ Fashion accessories company in London, UK
- ❑ Annual sales circa £500,000
- ❑ Need cover for IP indemnities to customers (including patent) + Enforcement
- ❑ Purchased £2,000,000 Limit of Indemnity
- ❑ Excess GBP 10k, but GBP 25k in USA
- ❑ Premium £32,500 plus taxes



Underwriters Preferences

Agreements

When drafting IP agreements for clients note that Insurers like to see the following:

- ❑ Insured has sole control of action
- ❑ Insured has full rights of settlement
- ❑ There are limitations on the level of liability
- ❑ The indemnified party is required to co-operate fully and must not comment on liability



Any Questions?

For More Information contact

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