



Intellectual Property Scenarios

David v Goliath: when big meets small

David v Goliath cases like this one are becoming more common as industry leaders attempt to stifle innovative fledgling companies before the start-up has even considered itself as a 'competitor'.

The media is dominated with competitor versus competitor IP lawsuits as demonstrated in the ongoing titanic battle between Apple and Samsung. Making the situation ever more perilous, IP lawsuits do not come cheap. The estimated average cost of an IP lawsuit in Canada is between CAD1m and CAD5m. The question then arises – how can companies, be they large or small, fend off such attacks on their IP, while protecting their balance sheet from sizeable representative fees and the considerable liabilities awarded by the courts? The scenario here looks at how some of these disputes arise and the different outcomes you could see.

Case Example

BeatLink is Toronto based start-up in the process of securing second round funding for their tech business which offers mobile security technology for smart devices. One of the most interesting features of the new technology is the way it identified security threats such as violating privacy and malicious code in a smart environment. BeatLink is tipped for big things and has not gone unnoticed by Bluesoft, the third largest technology company in the world. Bluesoft issue a 104 page cease and desist letter alleging the software utilised in BeatLink's App is infringing Canadian Patent 1,123,4XX* and files suit in the Federal Court of Canada for an injunction and damages.

In a situation where BeatLink is **uninsured** – it appoints a representative for its defence and receives the quotation for defence costs through the trial for in excess of CAD2m. Unable to afford the cost of defence, BeatLink has no option but to negotiate a settlement from a weakened position or continue to fight the case and risk bankruptcy.



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In a situation where BeatLink has **purchased** Intellectual Property insurance and wins the case:

Sample Policy**

Coverage:	Infringement Defence
Limits of Indemnity:	CAD3,000,000 any one claim and in the aggregate – representatives Fees & Liability
Excess:	CAD50,000
Co-Insurance:	5%

BeatLink notifies its insurer and agrees to the appointment of an experienced representative to fight the legal case. The appointed representative is reimbursed by the insurer up to the values agreed in the Intellectual Property insurance policy (less any applicable self-insured retention and coinsurance).

*Fictional patent, for illustration purposes only.

** These coverage scenarios are hypothetical only and do not increase or limit your coverage, the nature and extent of which will depend on the specific circumstances of each case, which remains subject to all policy terms, conditions, limitations and exclusions.



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Tokio Marine Kiln

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