



Podcast Transcript

A New World: Indemnification, Artificial Intelligence and Intellectual Property

Date: April 14, 2025

Guest: Lisa Collins **Host:** Leeann Lee

Run Time: 7:19

For questions and comments contact:



Lisa Collins

Partner

Atlanta

T: 404.256.8231 | LNCollins@bakerlaw.com

Lee: To describe the rise of artificial intelligence, AI, as rapid is a vast understatement. From its ubiquitous presence assisting us in our most mundane daily tasks to its warm embrace by business leaders eager to revolutionize their industries, AI is pervasive, and so are its pitfalls. Indemnification provisions and enforcement are expected to shift significantly as organizations adapt to related legal changes for creators, manufacturers, distributors, and users.

In BakerHostetler's second annual IP Perspectives thought leadership piece, BHIPP, the Intellectual Property Practice Group highlights myriad IP-related topics that are at the forefront of industry developments and current challenges and trends. I'm Leann Lee, and you're listening to BakerHosts.

On today's episode, we discuss A New World: Indemnification, Artificial Intelligence and Intellectual Property. To provide us with insight into this topic, we have Lisa Collins, a partner in the Intellectual Property Group at BakerHostetler. Lisa is the co-leader of the firm's Intellectual Property Indemnification team and has an extensive background in AI and how it relates to IP. Welcome to the show, Lisa.

Collins: Thank you. Thank you for having me.

Lee: So, to start us off and level-set our audience, will you please describe the life cycle of a typical indemnity claim?

Collins: Yes. So, damage occurs, and notice is provided to an entity of the damage through either a lawsuit, a claim through a third party—an insurance company—a demand letter, or some other means. The company who receives this claim, demand letter, or lawsuit, will contact us about it. We analyze the claim, identify the implicated parties, vendors, and products. We then review the applicable contracts and send indemnification notice letters to the vendors.

If it was a lawsuit that was filed, we get the vendors or third parties to defend our client in that suit. We can handle the defense, and the third party retains us to do so. We can work with conflict-free litigation counsel of their choice. We continually monitor the litigation for updates and assist with third-party discovery as requested. When more than one vendor is involved in the suit or claim, we perform an allocation to each of the multiple vendors based on the complaint, infringement contentions, expert reports, and trial or jury verdicts.

We negotiate, settle, arbitrate as needed, and collect. It is important to note that this process is often adverse to a client's most trusted and respected suppliers and customers. So, while legal in nature, a sensitivity to business relationships is required.

Lee: And what would you say are the most challenging or time-consuming tasks associated with indemnity enforcement?

Collins: By far, it would be the allocations of indemnity responsibility among multiple vendors. Absent a jury verdict, in which the jury allocates responsibility, there is no exact legal or mathematical process. The case law supports both equal shares divided among all vendor indemnitors, as well as uneven allocations based on relative responsibility for the asserted claims. Many matters in the patent space are combination cases between base stations and handsets, in which we allocate vendor responsibility based on the functionality of the queues, products, and services, as well as the relative market share among vendors supplying similar products and services.

Lee: Can AI provide significant efficiencies with those tasks? And is that a near-term possibility?

Collins: Yes, AI can help. It is something we have discussed. For example, AI can help with analysis of complaints and other pleadings, and analysis of indemnification provisions may be done by AI. Initial notice letters are form-based and could be generated by AI algorithms and reviewed by accuracy by attorneys. Many of the allocation tasks are about identification and classification of products and services, which is a real strength of AI algorithms. Assigning percentages is also a strength. Summarize a contractual indemnity obligations would also be a good task for AI.

Mapping the identification and classification of products would be a challenge, however. This is such a niche market and the amount of training data specific to an individual client is sparse. Sharing training data across multiple clients or across an industry would pose confidentiality issues.

- Lee: So, AI may soon be used to analyze and assert infringement claims. What if indemnitors push back because the AI got it wrong?
- Collins: Both the indemnitor and the indemnitee have to recognize that AI is a tool, not a substitute for due diligence, analysis, and judgment. Again, because there are no universally-accepted processes, especially for allocations, even if AI gets it mostly correct, there is still quite a bit of judgment that is required.
- Lee: And how would you suggest a supplier to contractually protect itself to minimize its indemnification exposure in this new era of AI?
- Collins: AI can be used at the development stage to assist in Freedom To Operate analysis to identify risks associated with the product or service. There is a concept of red ocean innovation, in which there is a significant amount of innovation occurring by multiple companies, and blue ocean innovation, in which there may be one or two companies innovating in that space. The blue ocean has always been easy to navigate. The red ocean would get a considerable boost by the use of AI as a tool and FTO analysis. AI then can be used in the contract drafting stage to consider the risk associated with the sale of a product or service and draft language that helps mitigate that risk. The risk can also be allocated between supplier and buyer based on the relative risk between the two.
- Lee: Great. And I have just one final question for you. How can the indemnification team assist you?
- Collins: We can meet with your intellectual property and supply chain teams to discuss and review the process and management of your current docket and supply agreements. We can ensure all key contract provisions, such as indemnification, infringement, limitation of liability, confidentiality, and the like, are within best practices and are being utilized as intended per the agreements, your business priorities, and strategic goals.
- Lee: Well, this has been a great conversation, Lisa. Thank you so much.
- Collins: Thank you.
- Lee: If you have any questions for Lisa, her contact information is in the show notes. As always, thanks for listening to BakerHosts.

Comments heard on BakerHosts are for informational purposes and should not be construed as legal advice regarding any specific facts or circumstances. Listeners should not act upon the information provided on BakerHosts without first consulting with a lawyer directly. The opinions expressed on BakerHosts are those of participants appearing on the program and do not necessarily reflect those of the firm. For more information about our practices and experience, please visit bakerlaw.com.