

IP Indemnification – Third-Party Product Exceptions

There are some nuanced—and frequently sticky—issues regarding third-party products and how they can be resolved, discuss Barbara Murphy Melby and A. Benjamin Klaber in *Morgan Lewis' Tech & Sourcing*.

“The indemnifying party commonly takes the position that it should not be responsible for infringement arising from combinations with other products or services. But what if the indemnifying party delivers or provides access to third-party products (e.g., software) as part of the overall design or relationship? Or what if certain ‘third party’ products are produced or distributed by one of the indemnifying party’s affiliates? Or what if the indemnifying party provides documentation or instructions that specifically recommend third-party products as compatible with the underlying technology? Or what if specific third-party products are necessary for the operation of the underlying technology? Under these circumstances, the indemnifying party’s core argument—that it has no control over third-party products or services—requires careful consideration.”

Read the article.