

\$2.8M Average cost of patent litigation

5,100 Patent lawsuits filed in 2016

6% Compound annual growth in IP lawsuits

22:1 Patent v. Stockholder lawsuits

American Institute of Patent Law Association (AIPLA) 2017 Report of the Economic Survey

Our expert consultants at IPISC can help with IP risk assessment and offer unique and innovative solutions.

800.537.7863

www.patentinsurance.com

info@patentinsurance.com

This material is for informational purposes only and does not change or replace any terms or effect of any Policy language. Please consult a copy of the Specimen Policy for complete terms and conditions.

© 2018 Intellectual Property Insurance Services Corporation

Enforcement Program Summary
v.01152018

Enforcement Insurance Program Summary

Issue

Companies must be able to protect their market share from the predatory practices of a larger competitor outspending them in an enforcement infringement suit thus forcing them into unfavorable settlement terms or going out of business.

Solution

Intellectual Property Enforcement Insurance is a unique, plaintiff's Policy, which reimburses the Litigation Expenses incurred in enforcing the policy holder's IP rights. Whether patents, trademarks, copyrights or trade secrets, the Policy enables a resolution based upon the merits of the case.

Coverage can be purchased for:

- Patent applications, issued patents, trademark applications, registered trademarks, copyrights and trade dress
- Unauthorized disclosure of Trade Secrets
- Enforcement actions against former licensees
- Defense of an Inter Parties Review (IPR) if the opponent can be charged with infringement

Economic Benefit

- An Economic Benefit is realized when the Named Insured receives a monetary settlement, an award of damages, a gain of market share, a retention of market share, a licensing agreement, an Injunction or a settlement agreement to stop the infringing activity.
- In the event of an Economic Benefit, the Named Insured repays to the Company, pro rata, only the amount paid into the lawsuit by the Company. The Named Insured keeps any recoveries beyond the amount paid back to the Company. Repayment reinstates the Policy limits.
- Policy provides the Named Insured with relief from repayment of up to \$100K of non-monetary, realized Economic Benefit.
- In the event the Named Insured loses the lawsuit, no repayment is required.

Partial List of Conditions

- Acts of the alleged Infringement must begin, and Claims against the alleged infringer(s) must be filed, during the Policy period.
- Authorization is based upon a Favorable Infringement Opinion regarding IP validity and Infringement from an independent, outside counsel chosen from a list of Counsel provided by the Company,
- Upon compliance with the Policy terms, the Company will then give its decision in writing regarding authorization of the suit, and the policy will begin to reimburse the Named Insured for the Litigation Expenses, if authorized.

Partial List of Exclusions

- Pre-existing acts of alleged infringer(s).
- Expenses incurred prior to the initiation of a Civil Proceeding underlying the Authorized Litigation.
- Breach of contract by licensees (unless included by endorsement).
- Willful acts of the Named Insured giving rise to Infringement.
- Criminal acts.
- Prior knowledge of facts and circumstances which suggests infringement is likely to begin.

-
- Limits available up to \$10 million (USD)
 - Policy terms available up to 3 years
 - Worldwide territory coverage available

- MPIP coverage of \$50K or 10% of policy limits, whichever is less, included with the Policy
- SIR- 2% of Policy limits/ Co-pay- 20%



Enforcement Insurance

Features & Benefits

The Enforcement Insurance Policy is a unique, plaintiff's Policy, which reimburses the Litigation Expenses to help the policy holders enforce their intellectual property rights.

Key Coverages

- Patents: issued, filed applications and provisional applications.
- Trademarks: registered and filed applications.
- Copyrights: registered or non-registered (must be registered before enforcing).
- Trade Secrets

Reasons to Insure

- Litigation is expensive. Based upon the most recent American Intellectual Property Law Association Survey, U.S. median litigation costs for an infringement suit through trial, when the amount in controversy is between \$1M and \$25M, can range from \$350K for copyrights to \$2.8M for patents. These numbers exclude Damages or settlements.
- IP is an extremely valuable asset, having a significant impact on the U.S. and global economy and job creation.
- The ability to enforce intellectual property rights from Infringement is often the key to a company's survival.

Advantages

- Reduces the risk of abandoning IP rights due to the inability to afford the cost of litigation.
- Levels the playing field by many times deterring frivolous Infringement.
- Helps the policy holder get through litigation on the merits of the case, not on who has the deeper pockets.
- Reduces the pressure to settle the case.
- Reduces the risk of entering into an undesirable license agreement with an infringing party from a position of financial weakness.
- Attracts investors when the IP is insured and strengthens the ability to license the IP.

Early Intervention Services

- Early Intervention (EI) Services provide non-threatening letters, sent by the Company's litigation management department, advising a suspected infringer of the existence of the policyholder's IP rights and the fact that it is insured.
- Limited to 10 per Policy year. Provided upon request.
- The IP, which is the subject of the letter, must be insured and issued or registered (not pending).
- The suspected Infringement cannot be pre-existing to the policy effective date.
- The EI Services Letter Request Form, provided by IPISC which identifies the suspected infringer and provides contact information, must be completed and signed.

Premium

- The actual premium is dependent upon the number of insured products, risk factor, litigation history and/or litigation potential, Policy limits and other underwriting factors. Contact IPISC for a premium indication.
- Financing is available for all terms. If financed, a down payment of 20% of the premium (plus any applicable taxes) is due 15 business days after binding coverage.

Premium Estimates

- Contact IPISC to obtain a premium estimate form, an application or a specimen Policy. Send completed application, reflecting all products the applicant wishes to insure to an IPISC account representative.
- Include descriptions of the subject matter to be insured, i.e. product brochures, operational manuals, relevant patent claims, if any, sample specimens and/or source code.

-
- Limits available up to \$10 million (USD)
 - Policy terms available up to 3 years
 - Worldwide territory coverage available

-
- MPIP coverage of \$50K or 10% of policy limits, whichever is less, included with the Policy
 - SIR- 2% of Policy limit
 - Co-pay- 10% minimum

Our expert consultants at IPISC can help with IP risk assessment and offer unique and innovative solutions.

800.537.7863

www.patentinsurance.com

info@patentinsurance.com

This material is for informational purposes only and does not change or replace any terms or effect of any Policy language. Please consult a copy of the Specimen Policy for complete terms and conditions.

© 2017-18 Intellectual Property Insurance Services Corporation

DefenseFeatures&Benefits_v.12.14.
2017-18





Enforcement Insurance FAQ's

The following are representative questions posed to IPISC about the Intellectual Property (IP) Enforcement Insurance Policy. IPISC has made every effort to answer its Insureds' questions clearly and concisely. As always, please consult IPISC or an IP insurance professional should you have additional questions not addressed below.

How does the Self Insured Retention work?

The Self-Insured Retention (SIR) does not reduce Policy limits. Unlike a typical deductible, the Named Insured pays the SIR out-of-pocket before the Policy begins paying on behalf of the Named Insured.

Can IP be added during the policy term?

Yes; IP can be added for an additional premium upon underwriting approval.

If there is known infringement, can I still get a policy?

Not to cover the known infringement. The Policy excludes pre-existing infringing activity from coverage. However, any new Infringement after the Policy is bound, is eligible for coverage.

Are declaratory judgements covered?

The Policy does not cover declaratory judgments brought by the Named Insured. However, if a party brings a declaratory judgment for invalidity or non-infringement against the Named Insured, the Policy will respond if the Named Insured has basis to assert Infringement against the party seeking the declaratory judgement.

What is Multi-Peril IP (MPIP) Insurance?

MPIP Insurance provides first party reimbursement arising from the loss of an insured IP lawsuit. The rider is automatically included with the standard Abatement Insurance Policy, with limits of \$50K or 10% of Policy limits, whichever is less. Perils include, but are not limited to, Business Interruption; Cost of Redesign, Remediation and Reparation; and Loss of Commercial Advantage.

How are claims handled?

The Named Insured must notify the Company upon discovering the Infringement within the policy period. The Named Insured must complete a Claim form and provide the Company with a favorable infringement opinion from an independent, outside counsel chosen from a list of approved counsel provided by the Company. Upon compliance with the Policy terms, the Company will give its decision in writing regarding authorization of the suit and begin to make payment on behalf of the Named Insured for the Litigation Expenses, if authorized.

Who chooses litigation counsel?

The Named Insured chooses litigation counsel unless otherwise provided by endorsement, requested by the Named Insured in exchange for a premium reduction, or if selected counsel does not meet minimum criteria and/or does not agree to the Company's billing guidelines.

Who controls the lawsuit?

The Company reserves the right to make recommendations as to how the case should or should not move forward, but ultimately the Named Insured is in control of the lawsuit. However, the Company does have settlement approval authority.

Why would a claim be denied?

The IP is not covered under the terms of the Policy.

Fraud or misrepresentation.

The infringing act(s) is pre-existing.

Our expert consultants at IPISC can help with IP risk assessment and offer unique and innovative solutions.

800.537.7863

www.patentinsurance.com

info@patentinsurance.com

This material is for informational purposes only and does not change or replace any terms or effect of any Policy language. Please consult a copy of the Specimen Policy for complete terms and conditions.

© 2018 Intellectual Property Insurance Services Corporation

Enforcement_FAQs_v.1152018





Enforcement Policy Claims

IPISC's mission is to promote efficient and effective claim resolution by building a strong working relationship with the Insured, and by doing all that is possible, within the terms of the policy, to help support the Insured in enforcing and/or defending their Intellectual Property (IP) rights. The following are actual Abatement claims experienced by IPISC policy holders. In an effort to protect the identity of our clients, names have been omitted, except for those giving express permission to disclose. For additional questions about IPISC's Litigation Management Services and claims, please contact IPISC or an IP insurance professional.

Personal Fitness Industry

The Insured produced a mechanism for personal fitness machines. Because they had an Abatement Policy to enforce their patents, they were able to sue a competitor for using that mechanism in their production and sales. Ultimately, the competitor was forced to withdraw from the market and to pay a financial settlement to the Insured. The Insured recently won the appeal in the Federal Circuit Court.

Medical Device Industry

The Insured purchased a policy for their invention that was in the application stage pending registration. Before the patent issued, a large competitor began producing an infringing product. Once the patent issued, the Insured was able to pursue the alleged infringer and assert their patent rights. Without the insurance policy providing the funds to enforce their rights, the Insured would have continued to lose market share or possibly gone out of business.

Construction Industry

The Insured sued a competitor for literal infringement of their major structural patented product. They asked for a permanent injunction, an award of damages and lost profits due to the infringement. The inability to enforce their patents would have seriously impacted their market share and their reputation.

Wireless Technology Industry

Insured was a small company pursuing a much larger company with considerably deeper pockets. The Insured won a confidential settlement.

New Customer Products – Pet Industry

The Insured was a small company enforcing their patents, trademarks and copyrights against a large company who was accused of copying its product and infomercial. The Insured filed suit and gained a favorable settlement by mutual agreement upon terms that are confidential.

Manufacturing Industry

The Insured pursued multiple parties including a manufacturer of an infringing product who ended production and negotiated license agreements with multiple former purchasers. This Insured used the same Policy three times to go after multiple infringers. Once one suit was settled, they paid back the amount of the Policy used to the carrier, thus reinstating the Policy limits. Once limits were reinstated, they pursued another infringer.

Claimant Testimonial – Irrigation/Electrical Industry

Long-time Insured, King Technology of MO, Inc. (King), experienced patent infringement of one of its largest income producing patents by one of its competitors. This left King no choice but to take legal action to protect itself, a process which lasted several years. Without the insurance, King would not have been able to successfully enforce its patents. King was pleased with the lucrative settlement and the ease and efficiency of working through the claims process with IPISC. The insurance helped King mitigate the potential high costs and consequences associated with IP litigation, as well as preserve the value of the company. "There are several benefits to having intellectual property insurance," says Herb King, King's President. "In our case, our greatest assets are our pieces of intellectual property. We need to be continually prepared to enforce our IP against any adversary. Having the financial support via this type of insurance through IPISC provides us a more equal financial footing with our huge competitors. And today, having previously enforced our patents successfully, our competitors take us very seriously."

Contact King Innovation: Nancy Crigler ncrigler@kinginnovation.com, 800.632.0232

Our expert consultants at IPISC can help with IP risk assessment and offer unique and innovative solutions.

800.537.7863

www.patentinsurance.com

info@patentinsurance.com

This material is for informational purposes only and does not change or replace any terms or effect of any Policy language. Please consult a copy of the Specimen Policy for complete terms and conditions.

© 2018 Intellectual Property Insurance Services Corporation

Enforcement Policy Claims
v01152018

