

# Abatement Insurance Program Summary

## ISSUE:

*Companies must be able to protect their innovations from the predatory business practices of some companies, or they may risk losing their intellectual property (IP) rights, being forced into unfavorable settlement terms or going out of business.*

## SOLUTION:

*Intellectual Property Abatement Insurance is a unique, plaintiff's Policy, which reimburses the Litigation Expenses to help enforce the policy holder's IP rights made up of patents, trademarks, copyrights and trade secrets. This Policy helps level the playing field, enabling a resolution based upon the merits of the case by providing access to funds to help enforce the policy holder's IP against infringers.*

## COVERAGE

- Scheduled coverage for patent applications, issued patents, trademark applications, registered trademarks, copyrights and trade secrets.
- Authorized Litigation claims of IP infringement lawsuits brought by the Named Insured during the Policy period.
- Re-Examination or Post-Grant Proceeding & Reissue.
- Defense of Patent invalidity counterclaims.

## ECONOMIC BENEFIT

- 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.
- 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.
- 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 of the amount paid by the Company into the lawsuit is required.

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- Limits available up to \$5 million (USD)
  - Policy terms available up to 3 years
  - Worldwide territory coverage available

## 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 from an independent, outside counsel chosen from a list of Panel Counsel provided by the Company, regarding IP validity and Infringement.
- 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).
- Liability for judgments and damages (may be available under the IP Defense Insurance Policy).
- 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.

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

Please consult a copy of the specimen Policy for all terms and conditions. This material in no way changes the terms or effect of the Policy language nor is it meant to replace the Policy language.

# Abatement Insurance Features & Benefits

*The Abatement Insurance Policy is a unique, plaintiff's Policy, which reimburses the Litigation Expenses to help the policy holder enforce their intellectual property (IP) rights, which come in the form of patents, trademarks, copyrights and trade secrets.*

## KEY COVERAGE

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

## 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.

## FEATURES

- Worldwide territory coverage available.
- Multi-year policies, up to three years, are available; and, provide a premium discount.
- Availability of combining the Abatement policy with the Defense policy, which provides a premium discount.
- IPISC's Litigation Management Services are offered as a courtesy to the policy holder.
- Economic Benefit Relief available up to \$100K.

## 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.

## REASONS TO INSURE

- Litigation is expensive. Based upon the most recent AIPLA 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.
- IP is an extremely valuable asset, having a significant impact on the U.S. and global economy and jobs creation.

## PREMIUM

- The actual cost is dependent upon the number of insured IP, risk factor, litigation history and/or litigation potential, Policy limits and other underwriting factors. Contact IPISC for an indication.
- Premium 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.

## QUOTES

- Contact IPISC at 800.537.7863 to obtain an application or a specimen Policy. Send completed application, reflecting all IP the applicant wishes to insure, to an IPISC account representative.

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- *Limits available up to \$5 million (USD)*
  - *Policy terms available up to 3 years*
  - *Worldwide territory coverage available*

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

# Abatement Insurance Frequently Asked Questions

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

## Abatement v. InventPro® Abatement

The Abatement product offers coverage for an unlimited, scheduled number of IP and extends coverage to include copyrights, as well as Software and/or Website patents. The InventPro® Abatement product specifically accommodates inventors and small companies who have 1-3 patents, patent applications, trademarks and/or trademark applications. The Abatement Policy offers limits in excess of \$500K; whereas, the InventPro® Abatement product caps the Policy limits at \$500K.

## 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 reimbursement. Once the SIR is satisfied, the Policy begins reimbursement.

## Can IP be added during the policy term?

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

## Is known infringement covered?

Yes; however, the Policy excludes the infringing activity from coverage. If the Commercial Activity that led to the Infringement began before the first Policy period, then pre-existing circumstances are excluded from coverage.

## Are declaratory judgments covered?

No; the Policy does not cover declaratory judgments brought by the Named Insured. However, if a party brings a declaratory judgment for invalidity or noninfringement against the Named Insured, the Policy will respond, if possible, for the Named Insured to assert Infringement against the party seeking to invalidate the IP.

## What is Multi-Peril IP (MPIP) Insurance?

MPIP Insurance provides first party reimbursement due to 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 covered are Business Interruption; Cost of Redesign, Remediation and Reparation; and Loss of Commercial Advantage.

## How are claims handled?

The Named Insured will notify the Company upon discovering the Infringement, and provide other relevant facts. 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 panel counsel, provided by the Company, regarding IP validity and Infringement. Upon compliance with the Policy terms, the Company will 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.

## Who chooses litigation counsel?

The Named Insured chooses litigation counsel unless otherwise required by endorsement, requested by the Named Insured for a premium reduction or 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.

## What are some of the Policy Endorsements?

There are several endorsements\* that may expand (for an increase in premium) or limit coverage offered under the Abatement Policy. The endorsements include, but are not limited to, the following:

- Licensee Coverage Endorsement
- Economic Benefit Relief
- Exclusionary Endorsement
- Post-Review Grant/ Reissue Endorsement
- Special SIR Endorsement

\*The available endorsements are not all-inclusive. The specific endorsements offered will only be determined after an application is underwritten and coverage is formally quoted. Please refer to the Policy for explanations of how each endorsement changes Policy terms.

*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 Consumer 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  
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# Multi-Peril IP Insurance Abatement Program Summary

## ISSUE:

*As part of Intellectual Property (IP) risk mitigation, companies must plan for their own future in the event of a loss of an IP lawsuit. If there is a loss, companies must be prepared to experience a Business Interruption because their product had to be taken off the market; or, they may suffer a Loss of Commercial Advantage because their Patent(s) was invalidated by the court. Some companies may even be forced to start over by having to completely redesign their products.*

## SOLUTION:

*A Multi-Peril Intellectual Property (MPIP) Insurance policy is designed to provide first party reimbursement for the loss of an IP lawsuit and responds after the final adjudication of a Civil Proceeding that directly caused loss. The MPIP Policy covers debilitating expenses that may otherwise be present as a result of overlooking the simple step of making sure the company has a recovery plan in place in the event of the loss of an IP lawsuit.*

## COVERAGE

- MPIP Abatement Insurance rider provides first party coverage directly to the Named Insured for loss of value because of any of the subsequent Adverse Happenings, which are the consequence of legal actions by or against the Named Insured(s) and/or third party(ies).
- The MPIP Abatement Insurance rider responds after the final adjudication of a civil proceeding that directly caused or gave rise to the loss of value.
- Named Perils: Business Interruption; Loss of Commercial Advantage; Cost of Redesign, Remediation & Reparation.
- Minimal coverage is automatically included as a rider to the standard IP Abatement Insurance Policy.

## BUSINESS INTERRUPTION

If a third party from whom the Named Insured is receiving compensation suffers a Preliminary or permanent Injunction due to a suit filed against him for IP Infringement, then the Policy pays for the Named Insured's Loss of Business Income for a pre-established period of time which resulted from interrupted sales; or, if the Named Insured loses a Civil Proceeding filed against him charging that his IP-protected Manufactured Products infringe another's IP, then the Policy will pay for the Named Insured's Loss of Business Income for a pre-established period of time.

**Adverse Happening:** (1) Business Interruption caused by a Preliminary or permanent Injunction against a third party with respect to the protected, licensed Manufactured Products; or, (2) Business Interruption caused by a Loss of a Civil Proceeding which validates a third-party plaintiff's IP resulting in a Loss/Cost to the Named Insured.

- Limits available up to \$3 million (USD) for additional premium
- Policy terms available up to 3 years but terms must coincide with the underlying IP Abatement Insurance Policy limits
- Co-Pay- 20%

## LOSS OF COMMERCIAL ADVANTAGE

If the Named Insured loses a Civil Proceeding which invalidates the Named Insured's IP, and then experiences an unintended reduction of the sale price of the Manufactured Product, the Policy will pay the Loss of Business Income after the Adverse Happening as compared to Named Insured's Business Income before the Adverse Happening.

**Adverse Happening:** Loss of Commercial Advantage caused by a Loss of a Civil Proceeding, which invalidates the Named Insured's IP resulting in a Loss/Cost to the Named Insured.

## COST OF REDESIGN, REMEDIATION & REPARATION

The Policy will reimburse the Named Insured for the Loss/Cost of redesigning, retooling or disposal of Named Insured's patented products. If found to infringe the IP of a third party, the Policy will also reimburse the cost of shipping, restocking, renaming and/or redecorating business premises, and the rebuilding of goodwill of distributors, retailers and customers which expenses are necessitated by the Loss of a Civil Proceeding.

**Adverse Happening:** Cost of Redesign, Remediation and Reparation caused by a Loss of a Civil Proceeding, which finds Infringement of the Named Insured's IP-covered products resulting in a Loss/Cost to the Named Insured.

- MPIP coverage of \$50K or 10% of Policy limits, whichever is less, included with the Policy
- Worldwide territory coverage available, if included in coverage of the underlying IP Abatement Insurance Policy

Please consult a copy of the specimen Policy for all terms and conditions. This material in no way changes the terms or effect of the Policy language nor is it meant to replace the Policy language.