

Leveraging IP Insurance Licensing Agreements

Consequences of intellectual property (IP) litigation can destroy otherwise good licensing deals. This, however, does not have to be the case. Attorneys tasked with drafting licensing agreements are able to leverage IPISC's insurance products in licensing deals to help secure otherwise ill-fated deals.

Your clients, whether the licensee or the licensor, should not needlessly turn away from attractive deals because of the inability to provide or receive indemnification for IP-specific litigation. Likewise, the IP owner should not lose royalty points or turn down good licensing opportunities because the subject intellectual property is infringed by another, and the cost of enforcement has not been budgeted.

As licensees of IP, companies have the potential to be sued for IP infringement. A company is vulnerable if it is simply making, using, selling, importing or offering for sale a product and or service; or, if it holds sought-after technology on products and/or processes. IP Defense & Indemnification insurance reimburses the litigation costs of defending charges of infringement made by third party IP holders against an insured and can include damages.

As licensors of IP, companies have the potential to be become victims of other's infringing upon their IP rights. A company is vulnerable if it has rights in patents, trademarks and copyrights, and has new and innovative technology on products. IP Abatement insurance reimburses the litigation

costs of IP rights against infringers and levels the playing field to get through the case on the merits.

Companies owning significant breakthrough technologies put forth more than hard work and creativity; they also generate a healthy and sizable budget to pay for experimentation, prototyping, product development, patent drafting and prosecution. However, they often fail to plan for the cost of IP litigation. Bottom line, your clients should not lose money due to IP litigation when licensing deals later fall through, are breached or are terminated. All companies have the potential to be involved in IP infringement.

IP Risk Assessment:

Find out if the company has a contractual obligation to indemnify against IP infringement; if so, are they required to insure the indemnification with IP insurance?

Find out if there is planned sale, merger and/or acquisition in the company's future; if so, are the decision-makers aware that IP policies may be transferrable and/or assigned to the purchaser? (Multi-year policies are available to assist in these transactions.)