



INTELLECTUAL PROPERTY INFRINGEMENT DEFENSE INSURANCE

The Defense policy reimburses the Litigation Expenses to defend against charges of intellectual property (IP) infringement, as well as:

- The costs to assert patent invalidity as a defense, and
- The cost of re-examination proceedings as a defense.

Coverage for the reimbursement of damages awarded against you and/or settlement costs can be purchased.

Products and Activities Covered

US and Foreign coverage available - includes making, using, selling, offering for sale, importing in commerce:

- Any product, process or method of doing business.
- Any word or mark being used in commerce.
- Any copyrightable material.

Reasons to have the IP Defense Policy

- Litigation is expensive! Based upon the 2009 AIPLA Survey, US litigation costs for an infringement suit through trial when the amount in controversy is between \$1MM and \$25MM ranged from \$600,000 for copyrights to \$3.1MM for patents. These numbers exclude damages. The median damage award for patents is over \$3.7MM.
- IP can be a company's most valuable asset.
- The ability to defend against charges of IP infringement may be the key to a company's survival.
- Every lawsuit charging infringement must be taken very seriously and defended to the utmost.
- The IP Defense Insurance can ensure that litigation and indemnification funds will be available when needed.

Alternatives to Defense Insurance

- Abandon the accused infringing product.
- Attempt to obtain a license from the accuser from a position of financial weakness.
- Incur a burdensome royalty payment.
- Pay for the legal defense costs using cash reserves or credit lines, if any are available.

Advantages of holding the IP Defense Policy

- Prevents abandoning market share by timely and forceful defense of infringement charges.
- Prevents unexpected cash drain on operations.
- Provides adequate litigation funds to optimize a favorable outcome.
- Deters frivolous suits by demonstrating the ability to be financially protected.
- Reduces the pressure to settle infringement cases because of mounting legal expenses.
- Makes a company more attractive to investors.

Policy Terms

- Claims Made and Reported.
- One, two or three year policies available.
- Known pre-existing threats of infringement are excluded from coverage. Threats include, but are not limited to, warning letters and/or emails accusing infringement and verbal threats of infringement. Under this policy the threat of litigation must be made during the policy period. Damages will be covered back to the date the infringing activity began, not the actual threat itself.
- There is a 90 day exclusionary period. That means any threats of infringement brought during the initial 90 days of the policy are excluded from coverage. The 90 days are not lost; they are added to the end of the last defense policy held by the insured.
- Limits available: \$250,000 up to \$5,000,000. (Higher limits may be available).
- Minimum 10% Co-Pay. (Higher options available).
- Minimum 2% Self-Insured Retention of the per claim limit. (Higher options available)

The Policy Holder controls the lawsuit

- The Insured chooses their own litigating counsel, subject to minimum levels of experience as “first chair” trial attorney in similar cases.
- The Insured dictates the settlement terms, if any, not the Company.

Insurability Analysis Report

To obtain a binding proposal of insurance the Applicant must agree to and fund an insurability analysis done by the underwriter. This report is a search for patents that may overlap with the applicant's product(s). The applicant receives a copy of this report regardless of whether or not they purchase the insurance. The cost of the report runs \$2,000-\$5,000. In lieu of the report the applicant can submit a "Freedom To Operate" opinion done by recognized counsel so long as it has been completed with the prior 6 months.

Premiums

Typical policy premiums:

- As a general rule, the premium will be 1-3% of the limit purchased. For example, the premium for a \$1,000,000 coverage limit at 1% would be \$10,000.
- The actual cost will vary according to product and industry.
- Binding premium quotes are given after an application has been submitted. Estimated premiums can be provided with a minimal amount of information.

This material is for promotional purposes only, and in no way changes the terms or effect of the Policy language.

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