

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 Claim Study is an actual Claim managed by IPISC's Litigation Management Department, and was reimbursed according to the terms of the Defense Policy and specific Claim terms. In an effort to protect the identity of our clients, names have been omitted, except those agreeing to provide testimonials. For additional questions about IPISC's Litigation Management Services and claims, please contact IPISC or an IP insurance professional.

The Situation

The Insured manufactures and markets a successful line of high-end elliptical machines. The Insured was sued by a larger competitor, who alleged infringement of an older patent that the competitor was never able to commercialize.

The Policy Terms

Limits: \$2M/ \$2M

Term: 1 Year

Premium: \$55,647.00

Self-Insured Retention (SIR): \$150K

Co-pay: 10%

The Claim Outcome

Final Decision: U.S. Supreme Court handed down unanimous decision in favor of the Insured, Octane Fitness

Length of litigation: 6 years

Total Defense costs: \$2.1M

Insurance Company Paid: Over \$1.69M

Insured Paid: the \$150K SIR, 10% co-pay and remainder of litigation-related expenses

The Claim History

April 2008: A competitor sued the Insured and another party, alleging that the Insured's elliptical products infringed two of the competitor's patents. The competitor filed the lawsuit in California, which was an inconvenient forum for the Insured.

November 2008: The district court granted the defendants' motion to transfer the case to Minnesota, the Insured's home jurisdiction.

May 2009: After some discovery, the competitor voluntarily dismissed all claims relating to one of the patents in the suit.

June-September 2011: After extensive discovery, a Markman hearing and motions practice, the district court granted the Insured's motion for summary judgment of non-infringement. The Insured filed a Motion for Attorney Fees and Costs, which the district court denied using the rigid attorney fee award standard set by the U.S. Court of Appeals for the Federal Circuit in 2005. The competitor then appealed the summary judgment decision to the U.S. Court of Appeals for the Federal Circuit, while agreeing to dismiss the uninsured co-defendant from the lawsuit. The Insured appealed the denial of attorney fees to the U.S. Court of Appeals for the Federal Circuit.

October 2012: The U.S. Court of Appeals for the Federal Circuit affirmed the district court's summary judgment decision, and upheld the district court's decision not to award attorney's fees.

March 2013: The Insured filed a petition for a *writ of certiorari* with the U.S. Supreme Court, seeking to overturn the rigid standard used by the district courts and the U.S. Court of Appeals for the Federal Circuit in determining whether or not to award attorney's fees under 35 U.S.C. 285.

October 2013: The U.S. Supreme Court granted the petition for *writ of certiorari*.

February 2014: Oral arguments were heard at the U.S. Supreme Court.

April 2014: The U.S. Supreme Court handed down a unanimous decision in favor of the Insured. The decision overturned the rigid attorney fee award standard, and held that district courts may exercise their discretion to determine whether a case is "exceptional" under Section 285 on a case-by-case basis, while considering the totality of the circumstances. The case is on remand.