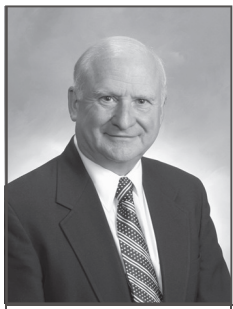


IP OBSERVER

Intellectual Property Insurance Services Corporation

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Intellectual Property Risk Management in 2013



Robert W. Fletcher, IPISC Founder & CEO

As another successful year comes to a close, I would like to take this opportunity to thank each of you, sincerely, for your business and your continued trust in Intellectual Property Insurance Services Corporation (IPISC). It is in gratitude for your trust that we accept the challenge of remaining the industry experts at helping fund the cost and consequences of intellectual

property (IP) litigation with our portfolio of insurance products. IPISC believes that the products of the mind, enforceable through IP laws, are the economic stimulus that sustains and fosters the growth of all enterprises. IPISC's insureds range from individual inventors to Fortune 500 companies, all of whom decidedly agree that IP laws should be accessible to all and uniformly enforced.

Going forward, companies realize that it's necessary to formulate and implement new strategies to carry through 2013 and beyond. Correspondingly, good risk management demands that all predictable exposures be guarded against and all business opportunities are adequately funded. A key component is a thorough review of IP risk management practices to ensure adequate protection is in place for this costly exposure. The following should be contemplated when assessing the relevant IP risk:

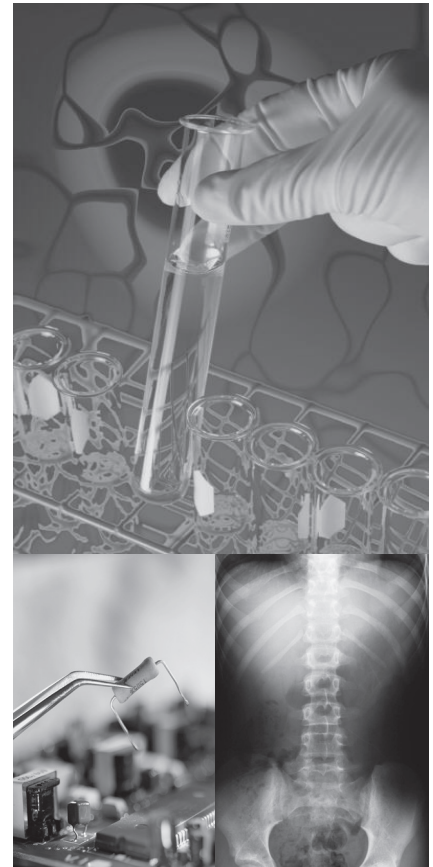
- Does the company have pending or issued patents, trademarks or copyrights?
- Is the company in a position to enforce these rights against potential infringers?
- Does the company have a contractual obligation to assert their IP to protect those with whom it does business?
- Does the company have an information gathering and evaluation plan to identify IP which may be asserted against it?
- Does the company have a contractual or statutory UCC obligation to indemnify against IP infringement?
- Does the company have any current IP defense coverage other than that which may be erroneously presumed to exist under an existing general liability policy?

For those companies who have already made the wise choice to insure their IP assets and to ensure against IP lawsuits involving their products, they should ascertain if their IP risk management plan will continue to meet the needs of the company over the next year and thereafter. Changes, such as the following, should prompt the company to reassess its current IP strategy:

- Are new products and services being added or dropped from operations?
- Will redesigned products or services be introduced to the marketplace?
- Are there new pending supply contracts or new customers?
- Are there mergers or acquisitions on the horizon?
- Are there contractual indemnification requirements or changes in new markets?
- Are newly filed or issued patents or trademarks being reported?
- Have new competitors entered the market, or have existing competitors increased their leverage through acquisitions, financing or intellectual property holdings?
- Are there non-practicing entities (patent trolls) coming into the market space of the company?

As companies evolve, so too will plans potentially need to be altered to fit the changing situations. Because product offerings and prices are changing rapidly, companies should continue to monitor the availability of IP insurance products. Intellectual property insurance enhances companies' ability to indemnify retailers against IP litigation, and may be used as a vehicle for securing a bank loan by insuring the value of the IP being used as loan collateral.

Since 1988, IPISC has been the pioneer and worldwide leader in the area of intellectual property insurance, protecting clients' patents, trademarks, copyrights and products and services by providing the dollars needed to defend against infringement allegations, as well as enforcing IP rights against infringing parties. IPISC's intellectual property insurance products are the most logical and economical choice that a company can make to ensure that the means are available to fund the high cost and consequences of an IP infringement case.



"Innovation fueled by the possibility of individual gain is the most powerful economic stimulus in the world."

Robert Fletcher, IPISC Founder & CEO



INTELLECTUAL PROPERTY
Insurance Services Corporation

OCTANE FITNESS

The Importance of Intellectual Property Insurance to Afford Litigation



After four long years of litigation, The Court of Appeals from the Federal Circuit affirmed the summary judgment grant in favor of IPISC's insured, Octane Fitness (Octane). Icon Health & Fitness (Icon), the adversary, is the largest manufacturer of exercise equipment in the world, with a stable of related patents. For over six years, Octane sold a very successful line of high-end, elliptical machines for use in commercial fitness centers. In internal emails uncovered during litigation, Icon discussed Octane's success and bantered that it was pulling an old patent off the shelf to sue the smaller, successful Octane to extract royalties out of them.

The nature of Icon's patent was directed to an elliptical machine that had an important part that moved in a straight line— a "linear path." Octane's successful machines had no such part. In fact, a quick review of Octane's elliptical machines, as compared to the embodiment shown in the patents, revealed that Octane's machines were nothing like Icon's patented machines. Yet Icon hired clever lawyers that argued that a linear path simply means an imaginary straight line between a starting point and an end point, and that the actual path through which the part moved could be curved, and did not have to be linear. Needless to say the court disagreed.

The total cost of this patent litigation was \$1.7 million. Without insurance, Octane would tell you that it could not have afforded to defend this lawsuit. As Dennis Lee, President of Octane, openly admits,

"Without patent insurance we would have been dead in the water. We did not have \$1.7 million to pay to lawyers to defend us. We would have had to have paid Icon, even though they had no real patent claim against our company." "Still further, IPISC helped us pick one of the best litigation teams in the country to help us win this. We had no idea where to even start to find a first-rate patent litigator," remarked Mr. Lee.

"Without insurance, this would have been a disaster. This is really a poster child case for why [intellectual property (IP)] insurance is essential." said Telscher.

the successful, smaller competitor in order to extract royalties and protect market share. Icon may have wrongly assumed that Octane would be unable to afford the litigation costs to stay in the game for the long-haul and fight the case on the merits.

Rudy Telscher, part of Octane's litigation team from Harness Dickey in St. Louis, MO lamented, "Icon asserted this patent against a much smaller, yet successful competitor. It was undisputed that the invention disclosed in Icon's patent did not work and was never commercialized. If not for the insurance,

Octane fell victim to a much larger competitor, Icon, who pulled out a late 1990's patent of questionable value and asserted it against Octane. This is a typical scenario; the bigger company preying upon

Octane would have likely been forced to pay a 7-8% royalty, which is what Icon sought. Even though Octane proved the victor, the courts did not award attorney's fees to the defendant, Octane. "Thus, without insurance, Octane would have had to have endured this long battle, and bear \$1.7 million in [litigation] fees, assuming that it had that money to spend in the first instance. Without insurance, this would have been a disaster. This is really a poster child case illustrating why intellectual property (IP) insurance is essential." said Telscher.

IP infringement lawsuits can be a significant risk to companies. Almost every company that is making, using, selling, importing or offering for sale goods or services in commerce has the potential to become involved in an IP lawsuit. Most often IP lawsuits such as this, the big guy going after the small guy, are implemented to put the smaller guy out of business and allow the bigger company to continue to gain or maintain a bigger slice of the market. Most small companies are defenseless against these types of unwarranted, aggressive tactics.

Contact: Rudy Telscher, Harness Dickey at 314.726.7515, telscher@hdp.com, 7700 Bonhome, Suite 400, St. Louis, MO 63105, www.hdp.com.

PROTECTING INTELLECTUAL PROPERTY ASSETS

What's the Best Method?



Todd Rowe, Tressler, LLC

A recent seventh Circuit decision provides further evidence that commercial general liability (CGL) policies are not the best method to protect intellectual property (IP) assets.

The recent decision in ProLink Holdings Corporation v. Federal Insurance Company, 103 U.S.P.Q.2d (BNA) (7th Cir. 2012), provides another real world example of the potentially dire consequences of attempting to protect valuable intellectual property assets without specialized insurance coverage for such assets. In ProLink Holdings (ProLink), the insurer, Federal Insurance (Federal), denied ProLink's claim for insurance coverage for allegations by its competitor, GPS Industries, Inc., for patent infringement, slander of title and unfair competition related to ProLink's GPS system for a golf course.

Federal denied coverage for ProLink's claim on the basis that the underlying lawsuit did not constitute "personal injury" as defined by the CGL policy, and that coverage was barred under the "Intellectual Property Laws or Rights" exclusion. The District Court for the Northern District of Illinois held there was no coverage because GPS Industries sought damages that occurred outside the effective dates of the policy.

In affirming the District Court, the Seventh Circuit not only held the damages were outside the effective dates of the CGL policy, but also addressed coverage issues directly related to the patented technology used in the GPS system. While there was no reasonable dispute that patent infringement would not be covered under the CGL policy, ProLink took the unique position that GPS Industries' claims that ProLink incorrectly represented that GPS Industries had no valid rights to the patented technology, actually constituted libel and slander and, therefore, would be covered under the CGL policy. The Seventh Circuit rejected ProLink's attempt to establish coverage under the CGL policy and held that "ProLink's representations concerned only its own right to [GPS Industries' patent] and never identified GPS or accused GPS of any wrongdoing."

Over the years, courts have made it increasingly clear that CGL policies will not be interpreted to provide coverage for intellectual property assets. The ProLinks decision once again underscores the importance of having the proper, specialized IP-specific insurance for intellectual property assets.

Contact: Todd Rowe, Tressler, LLP, 312.627.4180, trowe@tresslerlp.com, 233 S. Wacker Drive, 22nd Floor, Chicago, Illinois 60606, www.tresslerlp.com

Patent Trolls Continue to Make News

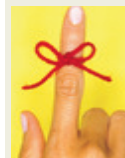
A recent study performed by Lex Machina, a legal data study company in Palo Alto, CA, shows non-practicing entities, a.k.a. "patent trolls" are responsible for driving the number of patent lawsuits to an all-time high. The study compiled a random sample of patent lawsuits from 2011 and found that 40 percent were filed by patent trolls, as opposed to 22 percent in 2007. To learn more read, "The America Invents Act 500: Effects of Patent Monetization Entities on US Litigation."



Source: Silicon Valley/San Jose Business Journal, October 10, 2012, "Patent trolls responsible for growing number of lawsuits, new data shows," www.bizjournals.com.

Intellectual Property Insurance Webinars

Remember to watch your email or check our website, www.patentinsurance.com for IPISC's monthly webinars discussing how our IP insurance products can help protect companies' assets. These webinars are specifically designed and instructed for all audiences. Learn how IP insurance can benefit all companies, from startups to Fortune 500s.



IPISC ANNOUNCES NEW PROGRAM

InventPro™ Abatement Insurance

Introducing InventPro™ Abatement Insurance, which specifically accommodates inventors and small companies by offering an affordable insurance policy to help enforce the policyholder's intellectual property (IP) rights, thus getting to a decision based on the merits of a case, not on who has the deeper pockets.

Features Overview:

- Coverage: Includes Patents and Trademarks (up to three (3) may be scheduled under this program)
- Limits: \$100K; \$250K; \$500K (USD) per claim/aggregate
- Policy Terms: Available up to 3 years
- Financing: Available for all terms
- Territory: Worldwide available
- Carriers: S&P 'A+' or A.M. Best 'A' rated
- Alternative Pricing: Available for adding IP during the policy term by prepaying for coverage
- Multi-Peril Intellectual Property (MPIP) Insurance Rider Limits: 10% of Policy limits

- Economic Benefit Relief: \$50K (USD)
- Program Exclusion: Software and Website industries
- Other Products: Available for insuring in excess of 3 scheduled IP, increased limits and circumstances or industries otherwise excluded under this program

Dedicated IP insurance policies can be a critical piece of a company's risk management plan. Ensuring minimal protection is in place for this potentially devastating exposure is essential to protecting overall financial strength. IP insurance expertise is not necessary, but it is important to work with the proven IP insurance experts at IPISC to assist in IP risk assessment and specialized insurance solutions.

For more information, contact your IPISC account representative or Janet Zahnd, Sales Manager, at jzahnd@patentinsurance.com or 502.855.5314, 800.537.7863.

TWO AT IPISC PASS THE KENTUCKY STATE BAR

Darrell Messer & Haylee Ralston

IPISC assistant underwriters, Darrell Messer and Haylee Ralston, have passed the Kentucky Bar exam and are now admitted to practice law in the Commonwealth of Kentucky. Both Darrell and Haylee were sworn-in by taking the Constitutional Oath of Office, on Friday, October 19, 2012, at the Kentucky Supreme Court in Frankfort, KY.



Darrell Messer

Mr. Messer earned his Juris Doctor from the DePaul University College of Law. He served as a Lexis Associate for Reed Elsevier and an extern at the Law Office of Vincent M. Auricchio. Mr. Messer graduated from the University of Louisville's Speed School of Engineering with a Bachelor of

Science in Computer Engineering and Computer Science. As an undergraduate, he served as Student Government Association President and University Trustee.

Mr. Messer was elected to membership in Triangle Fraternity and Omicron Delta Kappa Leadership Honor Society. Mr. Messer is currently preparing for the Patent Bar exam.

Ms. Ralston graduated from the University of Louisville's Louis D. Brandeis School of Law and holds a Bachelor of Science in Biology, summa cum laude, from the University of Louisville. Ms. Ralston is also a registered patent attorney with the United States Patent and Trademark Office.



Haylee Ralston

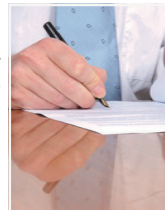
Underwriting intellectual property risks requires significant technical expertise from our underwriters, proprietary databases and associated software programs. Darrell specializes in underwriting hardware and software technology risks; Haylee specializes in underwriting pharmaceutical and biotechnology risks.

Congratulations Haylee and Darrell!!

LEVERAGING IP INSURANCE

Licensing Agreements

The inevitable 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.)

IP RISK |

IT'S OUR BUSINESS™



INTELLECTUAL PROPERTY
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