

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 is a Case Study depicting how the Multi-Peril Intellectual Property (MPIP) insurance policy would respond in the event of a loss of the underlying insured, IP lawsuit under the Defense Policy. For additional questions about IPISC's Litigation Management Services and Claims, please contact IPISC or an insurance professional.

LIFE SCIENCES/ MEDICAL DEVICES INDUSTRY

Situation

A small manufacturing company produces and distributes diagnostic test kits, purified reagents and other life-science related products. The company was adding to its base of products with improved, automatic, retractable needle syringes.

Risk

While proper due diligence was exercised during the initial investigation into the existing IP rights of others and the overall design and function of its products, the company was still aware that certain, close patents could lead to accusations of Infringement.

Risk Management

The company purchased IP Defense Insurance on all of its products, including those in commercial production, as well as those being developed. The company also purchased a MPIP Insurance Policy, insuring against Business Interruption, Cost of Redesign, Remediation and Reparation and Loss of Commercial Advantage.

Subsequent Development 1

A competitor sued the company for patent Infringement on one of its diagnostic test kits. The suit went to trial and the company lost. The court awarded Damages against the company and imposed an injunction against future Commercial Activity.

Subsequent Development 2

A competitor sued the company for Infringement of patents relating to its new, automatic, retractable, needle syringes. There had been only modest sales of the syringes to date. The case went to trial, and the company was found to be an infringer. The court imposed an Injunction against future Commercial Activity against the company, causing Loss/Cost to wholesalers and retailers. Advertisements and promotional materials were rendered obsolete, as were social media promotions. The company's warehouses were stocked with a product that was now unsalable. Recall costs were a looming expense.

Benefits 1

Defense: The Defense Policy reimbursed the company for its Litigation Expenses incurred in defending the Infringement case against it. The Damages provision of the Defense Policy provided funds to pay the award against the company following the loss.

MPIP: The MPIP Insurance Policy reimbursed the Loss Due to Business Interruption, which was a consequence of the Injunction prohibiting further Commercial Activity. Since there was an Injunction imposed against the Named Insured, the loss due to Business Interruption is the provable Loss of Business Income i.e. money that is realized as a result of Commercial Activity as earned income, excluding wages, salary, tips, commissions, bonuses and interest, and is classified as ordinary income for tax purposes. The business interruption reimbursement is 80% of the provable loss of the taxable, net business income.

Benefits 2

Defense: The Defense Insurance Policy reimbursed the company for its litigation expenses incurred in defending the Infringement case against it. Since there were minimal sales, there were only modest Damages awarded and reimbursed by the Defense Policy.

MPIP: The MPIP Insurance Policy reimbursed the Loss/Cost, which was directly caused by the Injunction prohibiting further Commercial Activity. Since there was an Injunction imposed against the Named Insured, the loss due to the Cost of Redesign, Remediation and Reparation, reimbursable to wholesalers and retailers, was the provable actual cost of renaming and/or redecorating of business premises; disposal of infringing Manufactured Products and shipping and restocking with non-infringing Manufactured Products. The Named Insured assumed the additional costs needed to retool and rebuild the goodwill of distributors, retailers and customers.

Reimbursement was made under the Policy since the Named Insured was receiving compensation from the newly established wholesalers and retailers from Commercial Activity. Reimbursement under the MPIP Policy is the actual Loss/Cost of the above provable items.