

Multi-Peril IP Insurance Abatement Program Summary

ISSUE:

As part of Intellectual Property (IP) risk mitigation, companies must plan for their own future in the event of a loss of an IP lawsuit. If there is a loss, companies must be prepared to experience a Business Interruption because their product had to be taken off the market; or, they may suffer a Loss of Commercial Advantage because their Patent(s) was invalidated by the court. Some companies may even be forced to start over by having to completely redesign their products.

SOLUTION:

A Multi-Peril Intellectual Property (MPIP) Insurance policy is designed to provide first party reimbursement for the loss of an IP lawsuit and responds after the final adjudication of a Civil Proceeding that directly caused loss. The MPIP Policy covers debilitating expenses that may otherwise be present as a result of overlooking the simple step of making sure the company has a recovery plan in place in the event of the loss of an IP lawsuit.

COVERAGE

- MPIP Abatement Insurance rider provides first party coverage directly to the Named Insured for loss of value because of any of the subsequent Adverse Happenings, which are the consequence of legal actions by or against the Named Insured(s) and/or third party(ies).
- The MPIP Abatement Insurance rider responds after the final adjudication of a civil proceeding that directly caused or gave rise to the loss of value.
- Named Perils: Business Interruption; Loss of Commercial Advantage; Cost of Redesign, Remediation & Reparation.
- Minimal coverage is automatically included as a rider to the standard IP Abatement Insurance Policy.

BUSINESS INTERRUPTION

If a third party from whom the Named Insured is receiving compensation suffers a Preliminary or permanent Injunction due to a suit filed against him for IP Infringement, then the Policy pays for the Named Insured's Loss of Business Income for a pre-established period of time which resulted from interrupted sales; or, if the Named Insured loses a Civil Proceeding filed against him charging that his IP-protected Manufactured Products infringe another's IP, then the Policy will pay for the Named Insured's Loss of Business Income for a pre-established period of time.

Adverse Happening: (1) Business Interruption caused by a Preliminary or permanent Injunction against a third party with respect to the protected, licensed Manufactured Products; or, (2) Business Interruption caused by a Loss of a Civil Proceeding which validates a third-party plaintiff's IP resulting in a Loss/Cost to the Named Insured.

- Limits available up to \$3 million (USD) for additional premium
- Policy terms available up to 3 years but terms must coincide with the underlying IP Abatement Insurance Policy limits
- Co-Pay- 20%

LOSS OF COMMERCIAL ADVANTAGE

If the Named Insured loses a Civil Proceeding which invalidates the Named Insured's IP, and then experiences an unintended reduction of the sale price of the Manufactured Product, the Policy will pay the Loss of Business Income after the Adverse Happening as compared to Named Insured's Business Income before the Adverse Happening.

Adverse Happening: Loss of Commercial Advantage caused by a Loss of a Civil Proceeding, which invalidates the Named Insured's IP resulting in a Loss/Cost to the Named Insured.

COST OF REDESIGN, REMEDIATION & REPARATION

The Policy will reimburse the Named Insured for the Loss/Cost of redesigning, retooling or disposal of Named Insured's patented products. If found to infringe the IP of a third party, the Policy will also reimburse the cost of shipping, restocking, renaming and/or redecorating business premises, and the rebuilding of goodwill of distributors, retailers and customers which expenses are necessitated by the Loss of a Civil Proceeding.

Adverse Happening: Cost of Redesign, Remediation and Reparation caused by a Loss of a Civil Proceeding, which finds Infringement of the Named Insured's IP-covered products resulting in a Loss/Cost to the Named Insured.

- MPIP coverage of \$50K or 10% of policy limits, whichever is less, included with the Policy
- Worldwide territory coverage available, if included in coverage of the underlying IP Abatement Insurance Policy

Please consult a copy of the specimen Policy for all terms and conditions. This material in no way changes the terms or effect of the Policy language nor is it meant to replace the Policy language.



Multi-Peril IP Insurance Defense Program Summary

ISSUE:

As part of Intellectual Property (IP) risk mitigation, companies must plan for their own future in the event of a loss of an IP lawsuit. If there is a loss, companies must be prepared to experience a Business Interruption because their product had to be taken off the market; or, they may suffer a Loss of Commercial Advantage because their Patent(s) was invalidated by the court. Some companies may even be forced to start over by having to completely redesign their products.

SOLUTION:

A Multi-Peril Intellectual Property (MPIP) Insurance policy is designed to provide first-party reimbursement for the loss of an IP lawsuit and responds after the final adjudication of a Civil Proceeding that directly caused loss. The MPIP Policy covers debilitating expenses that may otherwise be present as a result of overlooking the simple step of making sure the company has a recovery plan in place in the event of the loss of an IP lawsuit.

COVERAGE

- The MPIP Defense Insurance rider provides first party coverage directly to the Named Insured for non-compensated loss of value or Loss of Business Income because of any of the subsequent, Adverse Happenings, which are the consequence of legal actions by or against the Named Insured(s) and/or third party(ies).
- The MPIP Defense Insurance rider responds after the final adjudication of a civil proceeding that directly caused or gave rise to the loss of value.
- Named Perils: Business Interruption; Loss of Commercial Advantage; Cost of Redesign, Remediation & Reparation.
- Minimal coverage is automatically included as a rider to the standard IP Defense Insurance Policy.

BUSINESS INTERRUPTION

If the Named Insured suffers a Preliminary or permanent Injunction due to a suit filed against him for IP Infringement, then the Policy pays for the loss of Business Income resulting from the Named Insured's interrupted sales for a pre-established period of time; or, if the Named Insured loses a civil proceeding filed against him charging that his Manufactured Products infringe another's IP, the Policy pays for the loss of Business Income for a pre-established period of time.

Adverse Happening: (1) Business Interruption caused by a Preliminary or permanent Injunction with respect to the Insured Manufactured Products; or, (2) Business Interruption caused by a Loss of Civil Proceeding, which validates a third-party plaintiff's IP resulting in a Loss/Cost to the Named Insured.

- Limits available up to \$3 million (USD) for additional premium
- Policy terms available up to 3 years but terms must coincide with the underlying IP Defense Insurance Policy limits
- Co-Pay- 20%

LOSS OF COMMERCIAL ADVANTAGE

If a third party, from whom the Named Insured is receiving compensation, loses a Civil Proceeding in which the court finds Infringement by the third party, then the Policy will pay the increased costs of Non-Compensated Loss because of higher production costs (including royalties payable) in continuing the sale of those Manufactured Products for a pre-established period of time.

Adverse Happening: Loss of Commercial Advantage caused by a Loss of a Civil Proceeding by a third party from whom the Named Insured is receiving compensation, resulting in a loss or increased cost to the Named Insured.

COST OF REDESIGN, REMEDIATION & REPARATION

The Policy will reimburse the Named Insured for the Loss/Cost of redesigning, retooling or disposal of infringing, Manufactured Products, Marks and/or Works. The Policy will also reimburse the cost of shipping and restocking with non-infringing Manufactured Products, Marks and/or Works, the cost of renaming and/or redecorating the business premises, and the rebuilding of goodwill of distributors, retailers and customers which expenses are necessitated by the Loss of a Civil Proceeding.

Adverse Happening: Cost of Redesign, Remediation and Reparation caused by a loss of Civil Proceeding finding Infringement by the Named Insured's Manufactured Products resulting in a Loss/Cost to the Named Insured.

- MPIP coverage of \$50K or 10% of policy limits, whichever is less, included with the Policy
- Worldwide territory coverage available, if included in coverage of the underlying IP Defense Insurance Policy

Please consult a copy of the specimen Policy for all terms and conditions. This material in no way changes the terms or effect of the Policy language nor is it meant to replace the Policy language.

Multi-Peril IP Insurance Features & Benefits

The Multi-Peril Intellectual Property (MPIP) Insurance Rider provides first party coverage due to the loss of the Insured Intellectual Property (IP) litigation, and is available to any entity with a risk covered under an IP Abatement and/or IP Defense Insurance Policy.

KEY COVERAGECY

- A \$50K Rider or 10% of Policy limits, whichever is less, is automatically included with the standard IP Abatement and/or IP Defense Insurance Policy, unless otherwise excluded by the terms of the Policy.
- Covered Perils: Loss of Commercial Advantage; Business Interruption; and Cost of Redesign, Remediation and Reparation.

REASONS TO INSURE

- Litigation is expensive. Based upon the most recent American Intellectual Property Law Association Survey, U.S. median litigation costs for an infringement suit through trial, when the amount in controversy is between \$1M and \$25M, can range from \$350K for Copyrights to \$2.8M for Patents.
- IP is an extremely valuable asset, having a significant impact on the U.S. and global economy and jobs creation.

PREMIUM

- The MPIP Rider is automatically included with the underlying, standard IP Abatement and/or IP Defense policy. Excess limits may be available for an additional premium.
- Premium financing is available for all terms. If financing, a down payment of 20% of the premium (plus any applicable taxes) is due 15 business days after binding coverage.

ADVANTAGES

- While the IP Abatement and IP Defense Insurance policies pay the attorney fees, the MPIP Insurance Policy pays money to help the policy holder recover after a loss of an insured IP lawsuit.
- Helps policy holders recover by providing the monetary resources needed to reestablish business operations after the loss of an Insured IP lawsuit.
- Hastens a company's downtime by affording the money needed for the expensive undertaking of retooling and restocking goods, or the redesigning or renaming of the business.
- Reduces the risk of entering into an undesirable license agreement with an infringing party from a position of financial weakness.

QUOTES

- Contact IPISC at 800.537.7863 or an insurance professional to obtain an application or a specimen Policy, or to discuss other IP insurance products.

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- *Limits: \$50K (USD) per Claim/Aggregate or 10% of Policy limits, whichever is less*
 - *Co-pay: 20%*
 - *Worldwide available, if included in coverage of the underlying IP Abatement and/or IP Defense Insurance Policy*
 - *Underlying IP Abatement and/or IP Defense insurance Policy is required*
 - *Policy terms available up to 3 years, but the terms must coincide with the underlying IP Abatement and/or IP Defense Insurance Policy*

Multi-Peril IP Insurance Frequently Asked Questions

The following are representative questions posed to IPISC about the Multi-Peril Intellectual Property (MPIP) Insurance rider. IPISC has taken every effort to answer the questions clearly and concisely. As always, please consult IPISC or an insurance professional should you have additional questions not listed below.

What is Multi-Peril IP Insurance rider?

Multi-Peril Intellectual Property (MPIP) Insurance provides first party reimbursement due to the loss of an Insured Intellectual Property (IP) lawsuit. This policy is for any entity with an IP risk covered under the Abatement and/or Defense Insurance Policy.

Does the rider cost additional premium?

A \$50K Rider or 10% of Policy limits, whichever is less, is automatically included with the standard IP Abatement and/or IP Defense Insurance Policy. Higher limits may be available for an additional premium.

What perils are covered?

Covered Perils: Loss of Commercial Advantage; Business Interruption; and Cost of Redesign, Remediation and Reparation.

Does the MPIP rider cover settlements?

Two occurring events trigger the MPIP Insurance Rider (1) a Civil Proceeding must be initiated which seeks a result covered by the Policy; (2) there must be an Adverse Happening, which results in the Named Insured suffering a Loss/Cost or Loss of Business Income. If the Civil Proceeding is settled, the second condition has not been met, and the Policy does not apply.

Are 3rd party claim-backs covered?

If a third party, from whom the Named Insured is receiving compensation, attempts to claim back against the Named Insured for losses connected with the sale of Manufactured Products, the coverage does not apply. It only applies to Loss/Cost or Loss of Business Income of the Named Insured. It does not apply to damages of any other party, even if the Named Insured is ultimately charged with reimbursing them.

Against what legal risk does MPIP cover?

It covers the Loss/Cost or Loss of Business Income, which is the consequence of a Loss of Civil Proceeding covered by the associated Policy. The Rider itself does not pay Litigation Expenses or Damages.

Are there limitations on the use of proceeds?

No, reimbursed proceeds can be used for any desired purpose.

How are claims handled?

- The Named Insured may access the Policy by triggering one or more Adverse Happenings caused by the Loss/Cost consequence of legal actions by or against the Named Insured and/or third parties.
- The MPIP rider responds after the final adjudication of an insured Civil Proceeding that directly caused or gave rise to the loss of value.
- Upon compliance with the Policy terms, the Company will then give its decision in writing regarding authorization of the suit, and the Policy will begin to reimburse the Named Insured for the following Adverse Happenings. Please see specific information regarding Abatement claims and Defense claims as follows:

Abatement Claims

- Business Interruption caused by a Preliminary or permanent Injunction against a third party with respect to the protected, licensed Manufactured Products; or, a Business Interruption caused by a Loss of Civil Proceeding, which validates a third party plaintiff's IP resulting in a Loss/Cost to the Named Insured.
- Loss of Commercial Advantage caused by a Loss of Civil Proceeding, which invalidates Named Insured's IP resulting in a Loss/Cost to the Named Insured.
- Cost of Redesign, Remediation and Reparation caused by a Loss of Civil Proceeding, which finds Infringement of the Named Insured's Covered Intellectual Property(ies) resulting in a Loss/Cost to the Named Insured.

Defense Claims

- Business Interruption caused by a Preliminary or permanent Injunction with respect to the Named Insured's Manufactured Products; or, Business Interruption caused by a Loss of Civil Proceeding, which validates a third-party, plaintiff's IP resulting in a Loss/Cost to the Named Insured.
- Loss of Commercial Advantage caused by a Loss of a Civil Proceeding by a third party from whom the Named Insured is receiving compensation, resulting in a loss or increased cost to the Named Insured.
- Cost of Redesign, Remediation and Reparation caused by a Loss of a Civil Proceeding finding Infringement by the Named Insured's products resulting in a loss/cost to the Named Insured.

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 Abatement policy. For additional questions about IPISC's Litigation Management Services and Claims, please contact IPISC or an insurance professional.

EXERCISE EQUIPMENT INDUSTRY

Situation

A small manufacturing company produces and distributes exercise equipment, including an elliptical exerciser, sports equipment, a competitive model, compound bow and other outdoor activity related products. The company is adding to its base of products with a new, in-line vibrational Chi machine.

Risk

The company has spent considerable time and money developing its own line of unique products, some of which have gained significant market share. Competitors grew envious of the new products and, rather than encourage the introduction of similar competitive products, the company has licensed out its most popular sports equipment item, a competitive model, compound bow. However, because of the significant profits generated by its elliptical exerciser the company has elected to maintain its proprietary market share through patents.

Risk Management

The Insured did not want to use the counsel suggested by IPISC's claims manager, quickly running through policy limits. The Insured has since offered to tell any future claimants that they should have listened to the claims manager and begun the case with the counsel suggested by IPISC. The Insured would have had longer staying power and preserved Policy limits.

Subsequent Development 1

A third party sued the company's largest licensee for patent Infringement of one of its patents, which allegedly covered the licensed-out compound bow. The lawsuit went to trial, the licensee lost, and the court imposed an Injunction against future commercial production of compound bows.

Subsequent Development 2

A competitor began manufacturing an exact copy of the elliptical exerciser, and the policy holder was forced to sue for Infringement of its patents covering the exerciser. The case went to trial and, in an adverse holding, the company's patents were found to be invalid and/or not infringed. The competitor was free to continue manufacturing exercisers leading to a Loss of Commercial Advantage to the company.

Benefits 1

Abatement: The Abatement Insurance Policy reimbursed the company for its Litigation Expenses incurred when bringing the Infringement case against the competitor. The company experienced the benefit of being able to bring an enforcement action and avoided using its own working capital.

MPIP: The MPIP Insurance Policy reimbursed the Loss/Cost directly caused by 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 licensee, the Loss Due to Business Interruption is the license royalty rate multiplied by 80% of the projected future sales for the next year, based upon the past three years sales record. Thus, if the past three years sales are showing an increase the projected future sales will be increased, while if the past three years sales are showing a decrease, the projected future sales will be decreased.

Benefits 2

Abatement: The Policy reimbursed the company for its Litigation Expenses incurred in bringing the Infringement case against the competitor. The company experienced the benefit of being able to bring an enforcement action without having to use its own working capital, which was needed for continued operations.

MPIP: The Policy reimbursed the Loss/Cost directly caused by the Loss of Commercial Advantage because the elliptical exerciser was no longer patent-protected i.e. it was off-patent. The amount of reimbursement is 80% of provable Loss of Business Income resulting from a competitively-induced reduction in sales price of the exercisers after the Adverse Holding as compared to the company's sales price before the Adverse Holding. The Loss of Commercial Advantage is the incremental difference between the last year's seasonally adjusted sales price and the projected future sales price for the next year, multiplied by 80%. Accordingly, if the last year's sales were showing an increase, the projected future sales would be increased. If last year's sales were showing a decrease, the projected future sales would be decreased.

Reimbursement was made under the Policy, since the Named Insured was receiving compensation from the licensee because of Commercial Activity.

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.