

INTELLECTUAL PROPERTY INSURANCE

Claims Scenarios

Intellectual Property Insurance Services Corp.

The following scenarios are actual claims that IPISC has managed.

Defense Claims

Software Industry:

- ➔ A patent troll enforces patents in the market place with the sole intention to collect licensing revenue. He does not produce a product, but rather uses litigation to broadly assert the rights of a patent in the industry. The tactic is to assert patent rights against smaller companies unable or unwilling to fight a court battle. Once several smaller companies have settled, the troll pursues larger companies along with their clients and suppliers. Defense insurance gives the Insured the ability to level the playing field and fight the case on the merits. They also received strong advice and assistance from IPISC's claims management department regarding the decisions regarding the case.

Retail Industry:

- ➔ A small shoe manufacturer/distributor was recently accused of infringement by an attorney patent troll. The troll's patent had been successfully enforced against smaller manufacturers unable to pay Defense costs, thereby forcing the Insured into signing license agreements and paying royalties. The Insured discussed the situation with IPISC's Claims Management Department, which was able to offer guidance regarding how to handle the discussion and respond to the accuser and his attorney. Unlike the other small manufacturers that were forced to give up their rights to manufacture, our Insured used the power of his Defense policy, thus preparing him to fight this weak allegation against him. Simply holding the Defense policy can ward off frivolous lawsuits.

Artificial Sweetener Industry:

- ➔ A competitor sued numerous companies in the industry for patent infringement. The Insured had limited their insurance to cover only what they deemed the "most valuable" products. However, the plaintiff brought in several pieces of technology that were outside the scope of the Insured's coverage. By trying to guess what may happen in the future, the Insured set themselves up for coverage on a pro-rata basis, instead of having the foresight of insuring all of their products. The good news, the suit was dropped against them because they did have the insurance to fight the accuser.

Electronic Security Industry:

- ➔ An industry leader was successfully defeated in the “plaintiff friendly” Eastern District of Texas by our Insured after the claim of patent infringement of their electronic surveillance tags was rejected by the jury. If our Insured would have lost, they could have easily been put out of business. Fortunately, the money was available to fund a successful Defense. Our Insured was quoted as saying, “You never know when you will need insurance.” It was the first verdict for a defendant, our Insured, out of the past 20 (twenty) cases tried and decided in this district.

Residential Safety Electronics Industry:

- ➔ Insured did not want to use the counsel suggested by IPISC’s claims manager, therefore they quickly ran through policy limits. The Insured has since offered to tell any future claimants that he should have listened to the claims manager and began the case with the counsel suggested by IPISC. The Insured would have had longer staying power and preserved his policy limits.

IP Attorney Statement:

Rudy Telscher, Harness Dickey, St. Louis, MO

- ➔ “The larger companies know very well that the smaller companies cannot afford the multi-million dollar price tag of patent or other intellectual property litigation. Instead of settling, larger companies know that they can pursue the litigation for several months and eventually the smaller company will either collapse altogether or will take a very unfavorable settlement to get out of the litigation.” Rudy says that he has, “handled several cases now where the insured would have been bowled over by the bigger opponent without insurance to back them.”

Abatement Claims

Personal Fitness Industry:

- ➔ Insured is a producer of a mechanism for personal fitness machines. Because he had an Abatement Policy to enforce his patents, he was able to sue a competitor for using that mechanism in their production and sales. Ultimately, the competitor was forced to withdraw from the market and pay a financial settlement to the Insured. The personal fitness industry is one of the most litigious art areas.

Medical Device Industry:

- ➔ Insured purchased a policy for their invention which was in the application stage pending registration. Before the patent issued, a large competitor began producing an infringing product. Once the patent issued, the Insured was able to pursue the alleged infringer and assert their patent rights. Without the insurance policy providing the funds to enforce their rights, the Insured would have continued to lose market share, possibly gone out of business or lost a high percentage of their market share.

Construction Industry:

- Insured sued a competitor for literal infringement of their major structural patented product. They asked for a permanent injunction, an award of damages and lost profits due to the infringement. The inability to enforce their patents would have seriously impacted their market share, as well as the reputation that they had worked hard to build in their market industry.

Wireless Technology Industry:

- Insured was a small company pursuing a much larger company with considerably deeper pockets. The Insured won a confidential settlement.

Infomercial New Products Industry:

- Insured was a small company enforcing their patents, trademarks and copyrights against a large company who was accused of copying its product and infomercial shot for shot . The Insured filed suit and gained a favorable settlement by mutual agreement upon terms that are confidential.

Manufacturing Industry:

- Insured pursued multiple parties including manufacturer of infringing product who ended production and negotiated license agreements with multiple former purchasers. This Insured used the same policy three times to go after multiple infringers. Once one suit was settled, they paid back the amount of the policy used to the carrier, thus reinstating the policy limits. Once limits were reinstated, they pursued another infringer.

For further information, please contact:

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