

INFRINGEMENT ABATEMENT (ENFORCEMENT) INSURANCE

Frequently Asked Questions

The following questions and answers are for promotional purposes only and in no way change the terms, conditions or exclusions of the Policy. Consult a copy of the Policy itself for any specific questions that you may have. These questions and answers should not, in any instance, be deemed legal advice. The term, “Alleged Wrongdoer(s)” referred to throughout this document shall mean an entity which is or is suspected of making, using, selling, offering for sale or substantially completing and displaying any process, machine, manufacture, composition of matter, symbol, slogan, mark or work of authorship defined by the IP for which insurance is sought.

Q. Are invalidity counterclaims covered by the policy with no additional increase in premium?

A. Yes, to the extent they arise out of AUTHORIZED LITIGATION.

Q. Can coverage be obtained if there is a known Alleged Wrongdoer(s) at the time insurance is sought?

A. Yes. However, that particular Alleged Wrongdoer(s) will be excluded from coverage under the policy at least to the extent of his current activities.

Q. Are the expert witness fees and other non-legal costs associated with proving infringement covered by the policy?

A. Yes, all outside legal and non-legal costs necessary to prove infringement and rebut any counterclaim of invalidity arising from AUTHORIZED LITIGATION, including travel costs of expert witnesses, are covered.

Q. Are declaratory judgments covered?

A. Technically they are not covered, but, the policy will respond and pay LITIGATION EXPENSES if it is possible to assert INFRINGEMENT against the party seeking to have the insured intellectual property declared invalid. The procedure of obtaining such coverage is to counterclaim for INFRINGEMENT under the policy and then invoke the invalidity counterclaim defense provisions. Declaratory Judgments brought by the Named Insured are not covered.

Q. What part, if any, of the costs associated with anti-trust counterclaims is covered by the policy?

A. None. The policy covers enforcement and invalidity counterclaims only.

Q. What is economic benefit?

A. The value, whether or not resulting in a monetary settlement or judgment, derived from the successful prosecution of an infringement action.

Q. If there is an economic benefit paid to the insured and the insurer shares in that economic benefit what happens to the money?

(over)

A. It goes back "into the pot" so to speak, increasing the net aggregate limit by the amount of recovery. This means that the money is available to be used again in another AUTHORIZED LITIGATION arising during the same policy period.

Q. What happens when I discover an infringer?

A. Once you detect the existence of a possible infringer, you must notify the Company on a standard claim form supplied by the Company. In addition to information submitted on the claim form, you are also required to secure and deliver to the Company a favorable opinion letter from outside patent counsel (independent of the counsel chosen to litigate), at your cost, on matters of validity, infringement and legal impediments. Having complied with the above and all of the other policy terms, the Company will consider the action to be covered under the terms of the policy, absent fraud or material misrepresentation on the Company.

Q. Is the rating of my intellectual property prior to quoting a premium discoverable in a subsequent trial?

A. The Company takes all steps possible to ensure that the rating worksheets are company confidential and cannot be discovered. They are not disseminated to outsiders and are strictly the work product of the rating committee, all of whom are attorneys. Since rules of discovery vary from jurisdiction to jurisdiction, however, we suggest you check with your counsel to confirm that rating materials would not be discoverable.

Q. What endorsements can be added to the policy?

A. There are several endorsements available which modify the standard policy. Some of the more frequently used Endorsements are as follows:

- Foreign coverage

The **Territory Endorsement** is available for additional premium. This Endorsement changes the policy to permit bringing the suit in foreign jurisdictions if foreign patents/applications and/or trademarks and/or copyrights are insured.

- Patent or Trademark Applications

The **Patent or Trademark Applications Endorsement** changes the policy to include patent or trademark applications listed on the Declarations page and provides that any infringement or like activity which begins after the application was insured, is covered for CIVIL PROCEEDINGS after issuance.

- Exclusion of present infringer(s)

The **Exclusionary Endorsement** provides that the Company will not Authorize Litigation under the policy by the Named Insured against those parties named in the endorsement. Note: Any Alleged Wrongdoer existing on or before the policy effective date is excluded from coverage at least to the extent of his current activities irrespective of whether or not the policy contains an Exclusionary Endorsement.

- Licensee Coverage

The **Licensee Coverage Endorsement** is available for an additional premium. This endorsement provides that Licensee(s) may be defendants in Authorized Litigation provided the License Agreement was terminated by Licensee or the Insured because of a material breach thereof.

- Service of Process against the Company

The **Service of Process Endorsement** is an endorsement required by certain states which provides that should the Named Insured wish to bring suit against the Company, the Company agrees to comply with requirements necessary to give the Court jurisdiction.

- Re-Issue/Re-Examination Coverage

The **Re-Issue/Re-Examination Endorsement** provides that if during Authorized Litigation you decide to pursue reissuance of your Insured Patent's claims or the Defendant petitions to have your Insured Patent re-examined in the Patent Office, the policy will pay the associated costs as Litigation Expenses.

Q. How is counsel selected?

A. The patent counsel you propose 1) must be admitted to the Patent Bar, 2) must be independent of the Insured, 3) cannot have participated in the prosecution of your Intellectual Property, and 4) must perform in a manner consistent with the standards of the profession. With respect to litigation counsel, the Company requires he/she propose a reasonable budget for the work to be done to get you through a lawsuit. Both counsel selected shall be subject to Company approval.

Q. What kind of legal impediment could exist with my patent which would result in an unsuccessful prosecution of the infringement suit?

A. The Company wants to make certain that prior to Authorizing Litigation, there are no legal impediments such as an on-sale bar (where the product has been on sale or in public use for more than a year before the filing date of the patent) which would prevent the successful prosecution of the infringement suit.

The above material in no way changes the terms or effect of the Policy language.