

# IP OBSERVER<sup>SM</sup>

## Did You Know?

- Don't know too much about intellectual property or intellectual property insurance? IPISC is here to help you learn more about this important coverage by offering free webinars each month. The featured topics are:

- **Abatement**
- **Defense**
- **Multi-Peril**
- **Unauthorized Disclosure**

Please logon to [www.ipisc.com](http://www.ipisc.com) to register for the webinars. Invitations to attend will also be sent.

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You tell us! What would you like to read about in our newsletters? Please send suggestions to Karrie Lewis at: [klewis@ipisc.com](mailto:klewis@ipisc.com)

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## COVER THE DISCLOSURE, by Karrie Lewis

Have you ever wondered what makes up the “eleven herbs and spices” in Kentucky Fried Chicken’s recipe? Or, how about the “secret” in Coca-Cola®; what makes this particular cola taste different from its competitors? Is it really that these secret ingredients make the products smell or taste better, or, is it the secretive allure of the ingredients which puts them ahead of their competitors?

Either way you look at it, secrets have given these companies an edge over their competitors for years and carry with them an ellusiveness, a mystique, that has catapulted them into billion dollar corporations. Their success does not lie in the fact that they have trade secrets. These companies can attribute their success largely to the ability to keep their recipes

and formulas, well, secret. Would these companies still be successful if there were no “secret ingredients” or “secret formulas”?

Where would these companies be without their trade secrets? Companies vigilently protect their trade secrets, their livelihood, by spending millions in litigation each year protecting and keeping their trade secrets from being discovered.

I know, you think it won't happen to you... But what if it does? Did you know, according to the 2009 AIPLA Survey<sup>1</sup>, the average cost to litigate a trade secret dispute is \$1.6 million dollars? This does not even include damages.

Could you afford a disclosure of a valuable trade secret such as your client list or method of doing business? How about your own super-

secret recipe or formula? Are you entrusted with another's confidential information, or do you have your own? Do you have \$1.6 million dollars lying around to litigate? IPISC can help cover liability from disclosure with our Unauthorized Disclosure of Confidential Information Defense policy, to defend against charges of disclosing another's confidential information.

Are you worried about others improperly obtaining your company's confidential information? IPISC offers insurance under our Abatement policy to cover the costs of enforcing your rights.

Contact an IPISC account representative at 800.537.7863 or visit our website at [www.ipisc.com](http://www.ipisc.com) to learn more.

<sup>1</sup> Results are based upon a 2009 survey conducted by the American Intellectual Property Law Association (AIPLA)

## Become Better Positioned... IPISC Offers Higher Limits

Business executives have a significant responsibility to protect a company's profitability. Part of that responsibility includes evaluating risk and putting in place the proper safeguards to manage the exposure.

Intellectual Property (IP) is a large part of most companies' risk. A company's involvement in an IP dispute usually means expensive litigation. If companies can't afford the costs to see the litigation through to the end, they may seriously threaten the livelihood of the business, or at worst, put them out of business.

For twenty years, IPISC has offered insurance policies to help fund the high cost of IP litigation. With increasingly expensive IP lawsuits and assessed damages, IPISC has responded by offering aggregate limits up to **\$15 Million** to help businesses better position themselves should they become involved in an IP dispute. For more information about our policies and/or available limits, please contact an IPISC account representative or your agent or broker today.



**Chuck Baxter,**  
IPISC General Counsel &  
Senior Underwriter



**Every business has some intellectual property risks. Anyone who works with you to bring your product to market may share those risks.**

## Stand (Stronger) By Me: Enhancing Indemnity Agreements, by Chuck Baxter

When you share a risk, you want to know: does my partner in that risk have the resources to “Stand By Me”? The boys in the Rob Reiner movie, like the singer in the Ben E. King song, valued the support of another in their time of difficulty. Wouldn’t it be better to know that your companion in that endeavor had their own additional resources to support you both?

Every business has some intellectual property (IP) risks. Anyone who works with you to bring your product to market may share those risks. If a component part draws allegations of infringement, the retailer, distributor, manufacturer and part supplier may all be targets. Similarly, patent licensors and licensees both risk losing value if an unlicensed competitor uses the technology.

So, if an IP dispute arises, who has to pay for it? If a “merchant” sells moveable “goods”, the Uniform Commercial Code may impose a warranty by law that they must indemnify their buyer for accusations of infringement. Rather than relying on uncertain automatic allocations, many supplier agreements and licenses transfer parts of those risks to the party with the most control over the potential conflict. Purchase orders may include a warranty by the vendor that the goods “will not result in any claim of infringement ... of any patent.” Licensees often insist that their licensor agree to enforce the IP to maintain its value.

But the indemnified party should ask, does the indemnifying party have the funding to back up its obligations? How can that funding be strengthened?

Insurance requirements are well-known for many risks; roofers or plumbers routinely advertise that they are “insured.” Sellers of component parts are often required to carry insurance for product liability, with products-completed coverage in their commercial general liability policies. Fewer people are aware that the IP risks transferred can also carry a requirement for insurance. For example:

**“Supplier shall maintain defense insurance for allegations of patent, trademark and copyright infringement by the Products, naming Retailer as Additional Insured, with minimum limits of \$2 million per claim and \$2 million aggregate.”**

When a licensee seeks to protect the value of their royalty payments, they may include terms to support the ability of the licensor to enforce the IP:

**“Licensor shall maintain intellectual property abatement insurance for enforcement of the licensed patents with minimum limits of \$2 million per claim and \$2 million aggregate.”**

Allocation of shared risk can be strengthened by requiring insurance in a commercial transaction, supply agreement or license. Talk with an IPISC representative about how our coverages can support your ongoing business relationships.



# Intelligence to Stay Ahead of Your Competition

by Maureen Veterano

IPISC is known in the industry for our insurance policies, but many of our clients have also been able to take advantage of our research services. Our team of patent attorneys and scientists can prepare reports to provide you with the intelligence to stay ahead of the competition.

IPISC can provide an insurability analysis of your product. This report uses a number of factors to discern the potential for a lawsuit. Instead of limiting the focus to whether or not the product may be infringing, this report provides a much broader analysis and evaluates the likelihood of an infringement suit being filed. We review the litigation trends of others in the industry and consider who in the industry has significant issued patents and published patent applications. You can find out which companies hold assignments of the most patents in your area of technology. Our patent experts have developed an in-house rating system to determine the strength of a patent or patent application and we also use the latest state of the art research tools that objectively evaluate the strength of the issued patents. This is used in conjunction with IPISC proprietary data bases that calculate litigation risk based on the number of lawsuits filed in each patent class and subclass each year.

Patent and technology valuations for the purpose of sale or loan collateralization are also offered. We use a conservative system known as the Orderly Liquidation System to assess revenue potential as well as infringement risk.

Patent owners will want to request the IP Enforcement report – an investigative report that focuses on owners of related technology that may be of concern or offer potential licensing opportunities. Find out who is making advances, improvements or variations of your invention.

Our services are offered on a per-project or hourly basis by professionals with the expertise and experience to routinely place millions of dollars in insurance behind their work. For more information or pricing information, call your IPISC account representative or Maureen Veterano 502-855-5316.

**Mention this article and receive a 10% discount off any of our Risk Management Services.  
Use Reference Code: MLV2005**



**Maureen Veterano, JD  
Patent Attorney**

**Our team of patent attorneys and scientists can prepare reports to provide you with the intelligence to stay ahead of the competition.**

## IPISC Real Abatement Claim Example

### DILIGENCE PAYS OFF

An innovator gets outspent by a copycat, but enforcing their intellectual property (IP) rights yields big results! That's what recently happened to a company that carried IP Abatement insurance through IPISC. The settlement agreement isn't finalized, so we can't give you details yet, but it's a story for all IP owners to cheer. The insured created a terrific tool to simplify a regular job performed by many households and was beginning to get market acceptance. Then, another company knocked off the product, gave it a similar name, and blanketed the internet and TV with infomercials that nearly duplicated the insured's ads shot by shot. The copycat's marketing blitz sent its sales sailing past the insured's.

That's where litigation management from IPISC was able to help. With guidance from our Claims Department, the insured assessed their strongest causes of action, and filed suit. They informed the defendant (and its insurers) that the abatement coverage provided the financial backing to vigorously assert its case. Well before trial, the defendant came to the bargaining table and the insured accepted an offer worth many times the costs of the case to that point. The economic benefit payback will replenish the policy limits available to pursue other infringers, with the significant proceeds after the costs of the case kept by the insured to reinvest in the growth of their company!

**They (the Insured) informed the defendant (and its insurers) that the Abatement coverage provided the financial backing to vigorously assert its case.**

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*We Provide the Money to Make the Court System Work for You...*

## Intellectual Property Insurance Services Corporation

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