

INTELLECTUAL PROPERTY INSURANCE

Underwriting Process

Intellectual Property Insurance Services Corp.

Underwriting Phase:

The IPISC Underwriter is discerning the **potential for a lawsuit**, a decision related to, but not necessarily driven by, actual infringement possibilities.

- ➔ This is done using a **quantitative** and a **qualitative** analysis.
- ➔ Quantitatively examine & evaluate the:
 1. Classes of patents that the product/IP falls within, measuring risk according to number, type and severity of litigation that has arisen with those subject classes.
- ➔ Quantitatively examine and evaluate the:
 1. Overall litigation history of the industry, including an assessment (for a Defense policy) of the likelihood of litigation by a particular competitor, again by history.
 2. Strength of differentiation of the IP/product as it compares to claims of other IP in the marketplace.
- ➔ For an increased search fee for the Defense policy, the underwriter will produce a short description of specific IP examined and a general description of results.
 - ➔ Due to the nature of such a report being directed to the issue of insurability, this is not a legal opinion, nor is it detailed and lengthy.
- ➔ Underwriting generally takes 1-3 weeks, or more for Defense on complex technologies.
- ➔ Again, it often requires a teleconference with underwriter and the client contact that is most knowledgeable regarding the IP or product make-up and additional questions to be answered, to ensure full understanding of the product.

Negotiation Phase:

Once the underwriter has completed his/her search and initial rating of the product/IP, an initial quote is formalized, sometimes with particular limitations through endorsements.

Endorsements:

- ➔ An underwriter uses endorsements as a way to limit the carrier's exposure to insurable risk, carving out standard business risk for the insured to maintain.

Limitations:

- ➔ An underwriter may sometimes, however, place limitations due to a lack of information – how a product differs from a particular IP, or the exact makeup of the process or product to be insured.
- ➔ These limitations and the "Schedule of Manufactured Products" clarify positions and concerns of the underwriter; once made known to the client there is quite often a willingness to share more information.

Negotiation:

- The underwriter and client can then begin to come to agreement regarding specific discrepancies. Again, we do this through conference calls and submissions of potential language. This can often consume several weeks.
- Once an agreement is reached regarding what risk the underwriter will assume and what limitations the client will accept, a final quote is issued.

Quote and Binding:

- Quote expires in 30 days
- Typically includes Cover letter, Invoice, Acceptance Form, Schedule of Mfd. Products or Insured IP, and other endorsements needing signature.
- Fax or email signed quote for immediate coverage of up to a three (3) year policy term.
- Include copy of surplus lines license.
- Wire (preferred) or overnight check within 15 business days.
- Full premium or 20% down with financing agreement.
- Commission checks and policy typically mailed in 7-10 days, provided all necessary forms are received and signed.

Insurability Search/ Freedom to Operate Opinion Explanation

1. IPISC performs an underwriting, insurability search for our own due diligence for every defense risk submitted to underwriting, which results in coverage of all except specifically excluded patents.
2. The fee to search the one (1) product and or product family on the defense side is generally **\$2500.00**
3. For **\$3500.00** per product and/or product family, we will provide in Insurability Opinion from underwriting.
 - This is **NOT** a non-infringement opinion or a freedom to operate opinion.
 - **IPISC is an insurance company, and cannot render a legal opinion, only an insurability opinion.**
 - We will break down the technology to specific art areas for searching out patents that have any relevance to your client's products.
 - We will do keyword searches in each art area and then we will search the referenced patents on the relevant patents.
 - We will search assignee names of companies and individuals who are known to compete or have markets in the art area.
 - Once the patents have been reviewed and distinguished from the applicant's products they will receive a list of the patents searched.
4. In lieu of the search fee, IPISC will accept a Freedom to Operate opinion from outside counsel for the required due diligence provided that it is:
 1. Six (6) months old or less; and,
 2. Comprehensive and well-reasoned.
 - If the Freedom to Operate is limited in scope, coverage will be limited to the patents that have been opined upon.