

**INTELLECTUAL PROPERTY  
INSURANCE SERVICE**

**S CORPORATION**



**CORPORATE HISTORY  
&  
INSURANCE PRODUCT DESCRIPTIONS**

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# ENVIRONMENT

**MISSION STATEMENT:** To pioneer the field of intellectual property insurance, to enable our Insureds' to protect their livelihood and technology, by providing them the basic financial strength necessary, through affordable insurance, to create and contribute the products of their minds, for the benefit of all, with just reward.

**IPCC** and its subsidiary, **Intellectual Property Insurance Services Corporation** were formed in September of 1990. Their formation was inspired by their management's past experiences in developing intellectual property related financial products in the context of a subsidiary of an investment banking firm. The formation of the Company and its subsidiary occurred at a time when dynamic changes were taking place in the way patents, copyrights and trademarks were being perceived by their owners and other business executives. Intellectual Property was becoming more frequently viewed as a revenue generator within the organizational units charged with its management. Thus, each such unit was now perceived as having the potential to evolve into a separate profit center. Honeywell, Inc. and Texas Instruments were emerging as leading examples of such evolution and profit generation on a company-wide basis.

However, several issues arose from a business perspective when addressing intellectual property. One persistent problem was that intellectual property, as an intangible asset, expressed in the form of a negative right to prevent others from making, using, selling or offering for sale that which was the subject of the intellectual property right, was difficult to value. Another was that enforcement of intellectual property was rapidly becoming more complex and expensive. Lastly, there was no readily available market for disposition or sale of intellectual property. Thus, it had little value as collateral. These problems were obstacles to Intellectual Property being treated like conventional tangible property in the business world. The difficulty of valuation, the high cost of enforcement and lack of collateral value were problems that IPCC was prepared to address head-on.

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## CORPORATE HISTORY

Intellectual Property Control Corporation and its subsidiary, Intellectual Property Insurance Services Corp were founded by Robert W. Fletcher in Louisville, Kentucky in 1990. IPCC is a complete intellectual property service organization, focusing mainly upon insurance products relating to the legal enforcement of and collateralization of IP rights and products. Intellectual Property Insurance Services Corporation, the insurance services arm, serves as a program manager and managing general agent for insurance companies offering IP programs. In this capacity, IPISC performs the steps of procuring the business, underwriting the risks, administering the program, issuing policies, handling the payment of agent commissions, and providing claims management services to its carriers. IPISC serves clients ranging from Fortune 500 companies to individual inventors.

From their involvement with HLPM, Inc. a wholly owned subsidiary of a regional investment banking company (Hilliard Lyons, Inc.) in 1976, the key personnel of IPCC have had extensive experience in valuing and commercializing patented technologies. Ever since IPCC was formed it has worked exclusively with IP insurance and related service products through IPISC.

In the years since 1990, IPISC has focused on creating and managing IP insurance programs. The programs involved issuance of enforcement policies that provided funds to enable IP owners to enforce their patent, copyright and trademark rights against infringers.

The second IP program created by IPISC was a defense product that provided indemnification of litigation funds in the event that an infringement allegation was made against him.

Additional IP insurance products include a multi-peril first party coverage for ancillary losses caused by various adverse happenings to IP or in an IP lawsuit. Finally, the newest generation of IP insurance is an Asset Backed Intellectual Property Insurance product which offers parties having an ownership interest in a specific item of IP a vehicle through which it can use this interest as collateral for a loan.

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## THE DEVELOPMENT OF IP INSURANCE

Intellectual property being an intangible asset is not thought of as being destructible in the conventional sense. Consequently, Intellectual Property was not thought of as being the subject of generally known forms of insurance. As noted, accountants have long been perplexed by the need to value intellectual property for purposes of reflecting its worth on the corporate books thus further frustrating attempts at conventional insurance coverage.

The accountants' inability to fix a sum-certain value for intellectual property, however, does not detract from its importance as an income producing asset. In fact, it was reported as early as 1991 that 25% of the exports of the United States were in the form of intellectual property. See Time Magazine, June 10, 1991, pg. 44 & 45.

Typically, whenever a class of assets becomes significant to holders and to the economy in general, the financial and insurance communities will be involved. In the case of intellectual property, financial groups contributed venture capital financing, initial public offerings to promote the products incorporating the intellectual property and even funds for the enforcement of the various intellectual property rights. Correspondingly, the insurance industry has responded by insuring against losses from adverse judgments of intellectual property suits (Intellectual Property Defense Insurance). In the first instance, coverage was provided by court orders interpreting the scope of general liability policies.

The insurance industry has also responded by insuring intellectual property through policies which cover the cost of enforcing it against infringers. These policies have been designated as Intellectual Property Infringement Abatement Insurance Policies or more simply, patent enforcement, copyright enforcement or trademark enforcement insurance as the case may be.

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# THE INSURANCE PRODUCTS OF IPISC

## INTELLECTUAL PROPERTY INFRINGEMENT ABATEMENT (ENFORCEMENT)

Intellectual Property Infringement Abatement insurance reimburses the litigation costs and other expenses incurred by the Named Insured in enforcing his or her patents, trademarks or copyrights against infringers. The coverage also includes reimbursement of expert witness fees, travel, out-of-pocket expenses and the like. The policy responds after notification of a claim and subsequent authorization. The infringement must begin during the initial policy period or subsequent, continuous policy periods.

IP abatement insurance helps reduce the financial burden and includes the following features:

- The insured chooses its own litigation counsel.
- The insured controls the lawsuit.
- Patents, copyrights, trademarks, patent applications and foreign equivalents to the U.S. patents, trademarks and copyrights can be covered. The insured may pick and choose the IP s/he wishes to insure or s/he can include the entire IP portfolio.
- Limits available are \$100,000; \$250,000; \$500,000; \$750,000; \$1,000,000; \$2,000,000; and \$3,000,000 (and up to \$3,000,000 aggregate). Higher limits are considered at the request of the Applicant.
- Coinsurance is up to 20%, or higher at the option of the Applicant;
- Self Insured Retentions (SIRs) are generally 2% of limits; higher SIR's are available at the option of the Applicant. In the alternative they are sometimes set by the Underwriters based upon perceived risk.

Not covered by the policy would be in-house costs, such as salaries and expenses for employees, officers, directors, and the like. Similarly not covered are suits resulting from Named Insured's cancellation of a contract or license agreement (unless specifically covered by endorsement). In addition, willful acts of the Named Insured giving rise to infringement of the insured IP are not covered nor are pre-existing infringements covered.

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Many safeguards have been included to protect the carrier from unjustified risk in writing this coverage. Inspection of the policy which is provided in Appendix A is invited for a more thorough understanding of usual terms

Currently, the company's patent, copyright and trademark insurance abatement products permit the enforcement of intellectual property rights against all types of wrongdoers. Recently, for example, IPISC's trademark enforcement coverage was expanded to cover the situation where the insured's trademark is being used by another as part of, or, as his entire domain name. It is now possible for an insured to use the trademark infringement abatement coverage to prevent such illegal use of his trademark. Also, the trademark enforcement coverage was expanded to cover the situation of internet traffic diversion. In brief, internet traffic diversion is the activity of an offender implanting another's trademark in his own web page metatag (The description of the contents of his web page.) so that inquiries directed to the trademark owner are directed to the offender's web page instead. Such activities generally involve the use of popular trademarks and can divert the contacts intended for the trademark owner to the perpetrator's website automatically. Of course, the more traditional infringement of software patents as well as patents related to IP-commerce business methods are already covered by the products of IPISC. IPISC's trademark coverage likewise covers the infringement of trade dress, i.e. the appearance of a product, for example the familiar silver and chocolate brown wrapper of a Hershey's candy bar, as it might arise in IP-commerce activities.

### **INTELLECTUAL PROPERTY INFRINGEMENT DEFENSE & INDEMNIFICATION**

Intellectual Property Infringement Defense and Indemnification insurance reimburses the litigation costs of defending charges of infringement made by third party IP holders against the Named Insured. The coverage includes reimbursement for Litigation Expense paid to defense counsel as a direct result of Covered Litigation. The coverage also includes reimbursement of expert witness fees, travel, out-of-pocket expenses and the like and indemnification of Damages awarded against the Named Insured (except for fines and penalties, including but not limited to punitive, exemplary, treble or multiple damages). The policy responds after notification of a claim and subsequent authorization of the Litigation. The infringement suit against the insured must be initiated during the policy period.

Even if the insured has a patented product, this does not guarantee that they will not be sued by a third party holding similar IP rights. And, even if the case against the insured is unjustified or frivolous, s/he will still incur legal bills in his/her defense.

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The IP Defense Policy has the following features:

- The insured chooses its own litigation counsel
- The insured controls the lawsuit
- Defense coverage can be selected for patent, trademark, and/or copyright infringement charges against the Insured's product.
- Coverage for damages awarded against the Insured are available.
- Limits available are \$100,000; \$250,000; \$500,000; \$750,000; \$1,000,000; \$2,000,000 and \$3,000,000 (with up to \$3,000,000 aggregate). Higher limits are considered at the request of the Applicant.
- Coinsurance of 10% or 25% is generally offered.
- Self insured retentions are as low as \$2,500 for limits below \$1,000,000, or begin at \$10,000 for limits above \$1,000,000.

Not covered by the policy are in-house costs, i.e. expenses and salaries of employees, officers, directors, and the like of Named Insured's personnel. Also not covered are actions brought by a related party, i.e. by any third party in which Named Insured or its personnel have an interest, except for holdings in publicly traded companies listed on a major stock exchange. Similarly not covered are suits resulting from Named Insured's cancellation of a contract or license agreement. In addition, willful infringement is not covered.

A defense policy is considered to be standard risk only after investigation of existing U.S. patents to assure Underwriters that no infringement is present. The policy covers the risk that a subsequently issued patent would apply to the products being manufactured or that reasonable minds would differ regarding the scope of existing patent claims. In the underwriting of defense risks all of the patents of concern are available in the public domain with the sole exception of some patent applications belonging to small entities which are requested to not be published in contradistinction to the standard practice of publishing applications eighteen months after filing. IPISC has a powerful search tool which is licensed in, in part and internally developed in part to assure the most accurate searching possible. The search facility includes the ability to search pending patent applications as well as foreign patents.

For non-published patent defense risks, since a complete and comprehensive investigation of pending U.S. patent applications is not possible, a high self-insured retention is frequently used if an investigation into the art area suggests that there is currently significant application activity among small entities and there may be unpublished applications on file.

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In addition to patent infringement defense coverage, the policy also can be written to provide trademark and copyright infringement defense. If such options are chosen, trademark and copyright searches and probes are performed in the same manner as stated above for patents.

## **MULTI-PERIL INTELLECTUAL PROPERTY REIMBURSEMENT**

The Multi-peril Intellectual Property Reimbursement Policy (MPIP) provides first party coverage for loss of value because of any of the adverse IP happenings described below. These adverse happenings are in the form of legal actions by or against IP owners and/or third parties.

The MPIP policy responds after the final adjudication of a court action that directly caused or established the loss of value. The civil proceeding (i.e. the precursor to loss of IP value) must be initiated during the policy period. The customer base is IP holders or third party beneficiaries similar to the enforcement product or, in certain cases, those entities subject to being sued for IP violations.

The MPIP policy provides coverage for losses incurred, relating to IP, including the IP's value. The coverages are described below and *may be chosen individually or together*:

- **LOSS OF COMMERCIAL ADVANTAGE:** If the insured IP is declared to be invalid, the MPIP pays the loss of the additional increment of business income which was enjoyed while the IP was in force, for a pre-established period of time.
- **BUSINESS INTERRUPTION:** If the insured receives a preliminary injunction due to a suit filed against him for IP infringement, the MPIP pays for the loss of business income resulting from interrupted sales for a pre-established period of time; or, if the insured loses a civil proceeding filed against him charging that his manufactured products infringe the IP of another, the MPIP pays for the loss of business income for a pre-established period of time.
- **LOSS OF ONGOING ROYALTIES/LICENSE FEES:** The MPIP policy pays loss of profits for a pre-established period of time if the insured loses royalties/license fees because:
  - a preliminary injunction is granted against him or a licensee; or,
  - the insured's IP is declared invalid in a civil proceeding; or,



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- the insured loses on infringement issues in an IP civil proceeding; or,
  - a license is wrongfully terminated, abandoned or suspended; or,
  - the insured suffers a non-appealable finding of inequitable conduct or patent misuse of his licensed IP.

➤ **LOSS OF BENEFIT OF RESEARCH & DEVELOPMENT:** The MPIP reimburses the insured a pre-established declared value of research and development of monies spent if:

- the insured's patent is declared invalid; or,
- the insured loses an interference proceeding; or,
- there is a finding of patent misuse against the insured; or,
- there is a finding of inequitable conduct against the insured; or,
- there is a loss of benefit of research monies spent due to a Hatch-Waxman Act proceeding.

➤ **LOSS OF COVERED INTELLECTUAL PROPERTY PORTFOLIO VALUE:** The MPIP policy pays a pre-established declared value should the insured:

- have their IP declared invalid; or,
- lose an interference proceeding vis-à-vis covered IP; or,
- there is a non-appealable finding of inequitable conduct or patent misuse against the insured.
- This coverage can assist in establishing the basis for writing IP on the balance sheet as an asset, even though the IP was developed in-house.

➤ **COST OF REDESIGN, REMEDIATION & REPARATION:** The MPIP reimburses the insured the actual cost of redesigning, retooling or disposal of infringing manufactured products, marks and works, as well as shipping and restocking with non-infringing products, marks and works, as well as renaming and/or redecorating of business premises and the rebuilding of goodwill of distributors, retailers and customers which are necessitated because:

- the insured's covered IP is invalidated; or,
- the insured loses a civil proceeding charging them with infringement vis-à-vis their manufactured products, marks and works; or,
- the insured loses an interference proceeding; or,
- the insured suffers a non-appealable finding of inequitable conduct or patent misuse.

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- **LOSS OF TRADE DRESS IDENTITY:** The MPIP reimburses the insured for loss of business income caused by the loss of a civil proceeding that enjoins the insured from continuing its use.
  
  - **LOSS OF TRADE SECRET ADVANTAGE:** The MPIP reimburses the insured for loss of business income caused by the unauthorized disclosure of trade secrets which were protected by confidentiality and nondisclosure agreements and/or were held on deposit with a technology escrow service for insurance verification purposes.

Because the MPIP is triggered by the same legal risks, the pricing and risk selection associated with this product mirrors that employed with the defense and abatement products and is derived from the same databases and pricing formulas that have received, and continue to receive, favorable actuarial review. The MPIP policy is found at Appendix C.

It is worth noting that each of the named perils is a direct result of a suit brought wherein the risk insured against is that the suit will be lost. This is the identical risk Intellectual Property Insurance Services addresses in underwriting its current infringement abatement and defense coverages and is the same risk upon which IPISC has extensive data.

The Multi-Peril IP policy goes one additional step in that “loss of covered intellectual property portfolio value” coverage is available to a patent holder up to a declared amount for selected patents and portfolios. This declared amount is the result of negotiations between the insured and IPISC, with IPISC taking into account the strength of the patent(s), the risk of a lawsuit and the risk of loss of a patent through invalidity or the like. This again is an underwriting/valuation topic upon which IPISC has considerable data. This loss of value coverage enables an IP holder to insure his portfolio of patents for their agreed upon value, thus giving his accountants an amount to use in their endeavors to value the portfolio for balance sheet purposes. The argument is that if the portfolio is insured for X dollars that amount should be its portfolio value, or should be at least a major portion of its value for balance sheet purposes. The end result is that a company’s net worth could and would be increased to the point of being more reflective of the true value of the company. Consequently, Multi-Peril IP insurance could be used to enhance the insured’s balance sheet.

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## UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION

UDCI Defense Cost Reimbursement Insurance reimburses the legal expenses to defend against lawsuits brought in the U.S. for inadvertent or unintentional, unauthorized use, publication, dissemination, abandonment or delivery of any confidential information in violation of the enforceable and valid rights of another party's confidential information. Confidential includes, but is not limited to:

- Trade Secrets
- Privacy Policy Violations
- Personal Information
- Break-Ins
- Software Programs

## TERRITORY

IPISC's program covers all fifty states and in some cases overseas operations of U.S. companies as well. This business plan contemplates IPISC being appointed as a Lloyds cover holder thus expanding IPISC's underwriting/products into foreign markets i.e. offering all policies to foreign domiciled IP holders. The full scope of the envisioned expansion involves writing business on foreign entities' US IP as well as offering IP policies to foreigners to be used in their native countries.

## WEBSITE

We encourage utilization of our website, [www.ipisc.com](http://www.ipisc.com). The website provides streaming videos explaining our policies in detail, as well as numerous other educational resources.