

Intellectual Property litigation can be costly and time consuming. IPISC's Litigation Management Services (LMS) team's depth of expertise and experience is beyond compare in the emerging intellectual property (IP) insurance industry. IPISC's LMS team readily assists insureds manage their legal services and costs associated with IP litigation, and often saves the insured real dollars in excess of the amount paid in premium. The LMS Team monitors the legal activities of litigating counsel to ensure that pre-negotiated billing rates and guidelines are followed and makes certain that litigation tactics are case-driven and not fee-driven in an effort to preserve policy limits.

IPISC's insured, Octane Fitness, was sued by a larger competitor for patent infringement. The insured manufactured product triggered a claim under their IP Defense policy. Ed O'Connor, CFO of Octane, said, "IPISC's litigation management team has managed our claim highly effectively, and recommended an excellent legal team that is well versed in IP litigation. All legal invoices are closely reviewed, holding the legal firms accountable for their billings. IPISC is reasonable and fair to work with and has earned our trust." Ed also knows that Octane appreciates the value in IPISC's insurance product experts. "One question always comes to mind when working with insurance companies, will they be there for you when you need them; when a claim arises? With IPISC, the answer is- yes. We are currently involved in an IP claim and IPISC has been there for us from the beginning and continues to stand by their commitment every step of the way. It is easy to do business with IPISC. The IPISC team has a combination of excellent customer service, industry expertise and integrity," commended O'Connor.

IPISC's Early Intervention (EI) services provided by the LMS team also helps proactively, and many times effectively, thwart claims. These complimentary letters, offered under the IP Abatement policy, are critical to IPISC's litigation management strategies. This discretionary service informs suspected infringers of the existence of the Insured's IP, and of the fact that there is an insurance policy in place to enforce the IP if necessary.

Recently, one of IPISC's IP Abatement insureds learned that another party, a reseller, was selling a product that infringed on his exclusive rights. The insured contacted IPISC's LMS Team, who then promptly sent an EI letter to the infringing party on the company's behalf. The infringing party responded to IPISC, and pledged not to sell any more of the infringing products. The Insured likened not having an IP insurance policy through IPISC to "just sitting back watching people steal out of your own pocket over and over and over again, and there is really nothing you can do about it."

The IP insurance policy, along with IPISC's LMS Team, ensures that companies have the resources and support necessary to protect IP assets. Insureds can do something about the infringers and keep their money in their pocket with IPISC's insurance policy and litigation management expertise. The Team's mission is to promote efficient and effective claim resolution by building a strong working relationship with the Insured, and by doing all that is possible, within the terms of the policy, to help support the Insured in enforcing and/or defending their IP rights.

The following claim study was an actual claim managed by IPISC's LMS Team and was reimbursed according to the terms of the Defense Policy and specific claim terms. In an effort to protect the identity of the insured, their name has been omitted:

### **Situation:**

The insured specializes in the design and distribution of lighting components contained in LED lights and compact fluorescent lamps (CFL).

### **Policy Terms:**

The insured purchased a one year, Intellectual Property Defense Cost Reimbursement Policy for patent coverage, with limits of \$1,000,000 per claim, \$1,000,000 aggregate and a \$20,000 SIR. The policy also included a 10% Co-Pay.

### Claim History:

**February 2012:** The plaintiff, the patent owner, filed a complaint against the insured, the defendant, and other parties, with the International Trade Commission (ITC). The ITC complaint, which was not covered under the Defense Policy, alleged infringement of one patent claim.

**August 2012:** The plaintiff then filed a complaint for patent Infringement against the insured in U.S. District Court alleging infringement of the same patent claim, which was covered under the policy. During the discovery phase, plaintiff's counsel alleged \$1.9 million in damages.

**September 2012:** The insured's ITC counsel filed for re-examination of the patent with the U.S. Patent and Trademark Office (USPTO).

**September 2012:** The USPTO accepted the re-examination. The judge in the U.S. District Court Complaint issued a stay pending the outcome of the ITC proceeding and the re-examination.

**February 2013:** The USPTO issued a First Office Action rejecting the patent claim at issue, as anticipated, because of prior art. The Plaintiff appealed the First Office Action.

**February 2013 (late):** The ITC issued an Initial Determination finding the patent claim valid and infringed. However, the ITC also found that no domestic industry existed as required by subsection (a)(2) of section 337.

**April 2013:** The plaintiff filed a More Definite Statement to add allegations of infringement of two additional patent claims. The judge allowed the two additional claims, and allowed the case to move forward on the two new claims. Shortly thereafter, the parties settled the U.S. District Court Complaint, and agreed to dismiss the ITC proceeding and Appeal at the USPTO.

### The Outcome:

**Length of litigation:** 11 months

**Total Defense costs:** over \$315,000

**Insured Paid:** \$72,000 (plus the \$20,000 Self Insured Retention)

**Insurance Company Paid:** \$243,000 (costs plus settlement)

### IPISC's LMS Team offers the following Services:

- Assist the insured with selecting suitable litigating counsel
- Assist the insured with negotiating hourly rates for litigating counsel and local counsel, document discovery services, etc. (if needed)
- Provide customized litigation management and billing guidelines for selected counsel
- Require counsel to agree to litigation management and billing guidelines prior to being retained
- Monitor counsel's invoices, making adjustments needed to comply with billing guidelines and making recommendations of payment after adjustments, if needed
- Monitor counsel's services; requesting regular verbal and written updates and any changes to counsel's litigation strategy; assisting the insured, if requested, monitor the strategy decisions and assist in keeping litigating counsel focused on the case
- Discuss litigation benchmarks and associated costs
- Supervise all litigation and other proceedings involving the lawsuit and, and attend any judicial or administrative hearing involving the

IPISC's LMS Team professionals serve the needs of the insured while at the same time ensuring that the integrity of the policy language is upheld. Both can be successfully accomplished by building and sustaining a working partnership with the Insured. It is important for the Insured and the LMS professionals to maintain a close and candid relationship. In our experience, applying this practice ensures that the policy holder receives exceptional support, which in turn optimizes value and promotes a prompt and fair claim resolution. This practice also helps build a positive relationship with our Insureds, one based upon fairness, courtesy and mutual respect.

For more information on IPISC's Litigation Management Services or IP insurance products, please contact David Stitzel, Sales/Marketing Manager at 502.855.5316 or [dstitzel@ipisc.com](mailto:dstitzel@ipisc.com). Please visit our new website at [www.ipisc.com](http://www.ipisc.com).