

# APPENDIX: INSURANCE COVERAGE FOR PATENT INFRINGEMENT LAWSUITS

Carrier	Product	Product Description	Definition of Claim
<b>AIG</b> Jeanmarie Giordano Chief Underwriting Officer Professional Liability Division AIG 175 Water Street, 6th Floor New York, NY 10038 P: 212-458-2850 <a href="mailto:Jeanmarie.Giordano@aig.com">Jeanmarie.Giordano@aig.com</a> National Union Fire Insurance Company of Pittsburgh. Illinois National Chartist Specialty Lexington.	<b>Intellectual Property</b>	<b>Patent Infringement Indemnity Insurance:</b> Indemnity policy written on a claims made and reported basis. Reimburses for defense of and damages as a result of claims for Covered Infringement caused by the manufacture, use, distribution, advertising or sale of a Covered Product. Coverage also provides Injunction Expenses resulting from any Injunction Claim(s). Policy territory: the policy applies to Covered Infringements within the United States of America.	A demand for Damages; including Injunction Claims
<b>CFC Underwriting Ltd.</b> <b>IP/Patent</b> Erik Alsegard <a href="mailto:ealsegard@cfunderwriting.com">ealsegard@cfunderwriting.com</a> <b>Media Liability</b> Janine Eagles <a href="mailto:jeagles@cfunderwriting.com">jeagles@cfunderwriting.com</a> P: +44 2072208500 85 Gracechurch Street London EC3V 0AA United Kingdom	<b>IP and Media</b>	A modular product designed to offer a very broad infringement protection for all types of IP including patents, trademarks, copyright and trade secrets. The defence clause includes legal costs and liabilities or settlement awards in respect of infringement claims and contractual indemnities as well as elements of breach of contract and employee entitlements. Automatic inclusion of D&O cover, counter claims and loss mitigation costs. Pursuit (abatement) includes costs in pursuing an infringer, subject to reasonable prospect of success (defined in the wording). Counterclaims are included. Also includes sub-limits of loss of IP right or loss of profit as a result of a defence or pursuit claim. There are typically no exclusions specifically in relation to listed IP rights, competitors or non-practicing entities.	Demand for money, including threat of or actual suit or initiation of proceedings; Cease and desist notices or suit seeking injunctive relief; Invalidation, annulment or revocation action or interpartes re-examination; or a request for a declaration of non-infringement.
<b>IPISC</b> Robert W. Fletcher President Intellectual Property Insurance Services Corporation 9720 Bunsen Parkway Louisville, KY 40299 P: 800-537-7863 P: 502-491-1144 F: 502-491-4888 <a href="mailto:bfletcher@patentinsurance.com">bfletcher@patentinsurance.com</a> Lloyd's Syndicate (Worldwide) and Scottsdale Insurance (Program administered by Freedom Specialty Insurance Company®, a Nationwide® company. Products underwritten by the Nationwide® Group of companies (US))	<b>Intellectual Property –                      Patent, Trademark,                      Copyright, Trade Secret                      IP Infringement</b>	<b>IP Abatement Insurance</b> is a unique, plaintiff's policy to help your customers pay the cost to enforce IP rights (Available Worldwide)	Demand for authorization of a civil proceeding
		<b>IP Infringement Defense Cost and Damages Reimbursement                      Insurance</b> the solution to the gap left in CGL policies for IP risks to help customers pay the costs to defend charges of IP infringement (Available Worldwide)	Demand on the Company for written acknowledgment that litigation expense will be covered
		<b>InventPro® Abatement Insurance</b> is a starter, enforcement policy for inventors, start-ups and small companies with limited IP. (Available Worldwide)	Demand on the Company for authorization of a civil proceeding
		<b>Unauthorized Disclosure of Confidential Information</b>	Civil proceeding alleging the unauthorized disclosure of a third party's confidential information
		<b>Multi-Peril IP Insurance (MPIP)</b> First-party coverage, business interruption policy due to the loss of the insured IP litigation. (Available Worldwide)	Demand on the Company by the Named Insured during the policy period for written acknowledgement of a loss of intellectual property value
		<b>Patent Troll Defense Insurance</b> specifically covers infringement charges brought by pre-identified patent trolls and/or patent troll- related patents. (Available US-domiciled)	Demand on the Company for written acknowledgment that litigation expense will be covered
		<b>Post-Grant Defense Insurance</b> provides coverage for inventors by paying the legal costs of responding to AIA (American Invents Act) actions and maintaining the validity of the patent in question. (Available US-domiciled)	Demand on the Company by a Named Insured, on the Company's during the policy period to have a Post-Grant Proceeding( s) or any part thereof deemed Covered Action(s)
<b>Collateral Protection Insurance (CPI)</b> allows using patents as	Demand on the Company by the Named Insured or the Third Party		

		collateral for a loan, with loan default covered by insurance. (Available US-domiciled)	Beneficiary delivered during the policy period for written acknowledgement that Non-Compensated Loss will be reimbursed under this Policy.
<b>Liberty Specialty (Liberty Mut. Ins. Europe Limited)</b>  Matthew Hogg Vice President, Strategic Assets 20 Fenchurch Street, London EC3M 3AW P: +44 (0)20 3758 0368 <a href="mailto:matthew.hogg@libertyglobalgroup.com">matthew.hogg@libertyglobalgroup.com</a>  Lloyd's Syndicate 4472 / Liberty Mutual Insurance Europe Limited	<b>Intellectual Property – Patent</b>	<b>Intellectual Property Infringement Insurance</b> provides legal fees, expenses and liability cover incurred in defending allegations of IP infringement, or threatening the Insured's rights in or ownership of IP. Also covers contractual liabilities, contractual disputes and IP actions brought against D&O's.	The defense of any Judicial Proceeding commenced or threatened against the Insured
		<b>IP Value Insurance</b> provides first party coverage for the loss of net profit and increased cost of working as a result of a legal claim or political/regulatory risk. Cover can also be tapered to insure IP portfolio value.	A claim for indemnity following a Covered Loss due to an Insured Cause
<b>OPUS Underwriting</b> Sam Bobo OPUS Underwriting Limited Marlow House, 1a Lloyds Ave, London, EC3A 3NN <a href="mailto:sam.bobo@opusunderwriting.com">sam.bobo@opusunderwriting.com</a>  Lloyd's and London market insurance companies	<b>Intellectual Property</b> encompassing patents, trademarks, copyright, designs and trade secrets	<b>OPUS Sentry™</b> (Infringement Liability) provides cover for damages (liability) and defense costs arising from an actual or alleged infringement of a third party's intellectual property rights by the goods or services of the Insured. Analytics deployed at intimation of claim and before appointment of lawyers with a view to agreeing claims mitigation strategy. (Worldwide jurisdiction available)	Any Authorised Proceedings relating to infringement (alleged or actual) of third party IP rights
		<b>OPUS Sabre™</b> (Infringement Assertion) provides cover for litigation costs for owners of IP rights and only covering enforcement expenses. (Excludes US domiciled companies)	Any Authorised Proceedings relating to infringement of an Insured's intellectual property
		<b>OPUS Value™</b> (Revenue Protection) provides cover for loss of revenue following an impairment of rights. Worldwide jurisdiction available).	A claim for indemnity following a Covered Loss due to an Insured Event
<b>RPX (Lloyd's)</b>  Rob Kingsley President RPX Insurance Services, LLC One Market Plaza, Steuart Tower, Ste. 800 San Francisco, CA 94105 P: 415-418-2323 <a href="mailto:rkingsley@rpxcorp.com">rkingsley@rpxcorp.com</a>  Lloyd's	<b>Intellectual Property – Patent</b>	<b>Patent Litigation Insurance.</b> Enterprise-wide coverage for any activities of the insured accused of infringement by the plaintiff; coverage includes reimbursement of litigation expenses and approved payments to settle a covered claim. Each policy is written to the specific risk and coverage needs of the Insured. Using proprietary database of litigation and settlement costs, we have built a highly accurate actuarial model that allows us to develop the appropriate coverage and price for each policyholder.	1. Any lawsuit filed in US district court alleging Patent Infringement against the Insured; or 2. any Declaratory Judgment Action brought by an Insured that is approved in advance by the Insurer; or 3. any Reexamination Proceeding such as an IPR brought by an Insured against a patent asserted against the Insured that is approved in advance by the Insurer.
<b>Safeonline</b>  Claire Ferrie Head of Intellectual Property Safeonline LLP 80 Leadenhall Street London, EC3A 3DH P: +44 (0)20 7954 4428	<b>Intellectual Property – Patent, Trademark, Copyright, Designs, Trade Secret and contractual indemnities</b>	<b>IPGuard™ IP infringement liability</b> insurance covering defense costs and damages for claims of Patent, Copyright, Design or Trademark infringement, with extension options to include Contractual indemnities, Title or Validity challenges and IP actions against D&O's. (Available worldwide).	Any judicial proceeding, cause of action, arbitration or other alternative dispute resolution or demand directed at the insured regarding the insured's alleged infringement of third party IP rights
		<b>IPEnforcer™ IP enforcement</b> insurance covering the IP owners litigation costs to enforce insured IP against infringers and defend challenges to Title or Validity of IP rights (non-U.S. domiciled companies, but worldwide coverage).	Awareness of actual or probable infringement of the Declared IP

<p><a href="mailto:Claire.ferrie@safeonline.com">Claire.ferrie@safeonline.com</a></p> <p>Lloyd's and International insurance companies</p>		<p><b>IPProtector™ combined IP infringement liability and enforcement insurance</b> (non-U.S. domiciled companies, but worldwide coverage).</p>	<p>Combination of IPGuard™ and IPEnforcer™ above</p>
		<p><b>RepSure™ IP reps and warranties</b> insurance covering IP-related reps and warranties when IP rights are sold or assigned either as a pure asset transaction or as part of corporate sale / takeover (available worldwide).</p>	<p>Any judicial proceeding, cause of action, arbitration or other alternative dispute resolution or demand directed at the insured regarding the covered IP reps, warranties, and indemnities</p>
		<p><b>IPPostEvent™ After the Event insurance</b> to cover ad-verse costs in the event of an IP litigation loss (USA, Canada, European and Australasian jurisdictions) (Third-Party Adverse Costs)</p>	<p>Court order of adverse costs against the insured in a judicial proceeding involving IP infringement</p>
		<p><b>IPConsequential™</b> - IP Revenue Protection insurance covering loss of profits in the event of impairment of a client's IP rights, an injunction preventing the sale of goods and services and the exploitation of IP and/or a demand for a formal license.</p>	<p>Trigger of a Claim is the loss of a defined legal challenge viz; an injunction, a demand for a formal license, invalidation and/or amendment to right to use or to title</p>
<p><b>Tokio Marine Kiln</b></p> <p>Ian Lewis Tokio Marine Kiln Syndicates Ltd 20 Fenchurch Street London, EC3M 3BY P: +44 (0)20 7886 9000 <a href="mailto:Ian.Lewis@tokiomarinekiln.com">Ian.Lewis@tokiomarinekiln.com</a></p> <p>Tokio Marine Kiln Syndicate 510 at Lloyd's</p>	<p><b>Intellectual Property</b> – Patent, Trademark, Copyright, Designs, Trade Secret, and contractual indemnities</p>	<p><b>IP Defense Costs &amp; Damages:</b> Covers the costs incurred by the Representative in defending an allegation that the Insured's Products, Services or Processes, or the use of its IP rights is infringing the IP rights of a third party. Cover include the also includes any Damages or Settlement payments and can be extended to include Contractual Indemnification of distributors and customers etc.</p>	<p>Any written notice received by the Insured, or an Indemnified Party that it is the intention of any person or entity to hold the Insured or the Indemnified Party responsible for monetary damages or injunctive relief; arising from the Insured's or the Indemnified Party's alleged infringement of third party IP rights</p>
		<p><b>IP Combined Liability:</b> Covers the costs incurred by the Representative in defending an allegation that the Insured's Products, Services or Processes, or the use of its IP rights is infringing the IP rights of a third party, as well as the Enforcement of the Insured's own IP rights if infringed by a third party. Cover include the also includes any Damages or Settlement payments and can be extended to include Contractual Indemnification of distributors and customers, as well as the defense of a challenge to the title, validity or ownership of the Insured's IP rights.</p>	<p>Any written notice received by the Insured, or an Indemnified Party that it is the intention of any person or entity to hold the Insured or the Indemnified Party responsible for monetary damages or injunctive relief; arising from the Insured's or the Indemnified Party's alleged infringement of third party IP rights, and Awareness of infringement of the Insured Intellectual Property or breach of an Insured Contract.</p>
		<p><b>IP Transactional Risk:</b> Covers the IP related Representations and Warranties where IP rights are being transferred through a Sale &amp; Purchase or sale and Lease back type contracts.</p>	<p>Any judicial proceeding, cause of action, arbitration or other alternative dispute resolution or demand directed at the insured regarding a breach of the Insured IP representations and warranties.</p>
		<p><b>IP Financial Loss:</b> Cover the financial loss that an Insured may suffer if they suffer an IP related loss. This could include Lost profits arising from an injunction preventing the sale of their Products, Services or Processes as a result of IP infringement, or from invalidation of their own IP rights. Cover can be tailored to suit specific needs.</p>	<p>An Injunction, Invalidation or other IP Impairment event as defined in the Policy.</p>

**Patent Infringement Abatement Coverage**  
**Definition of Coverage – Types of Intellectual Property**

<b>Carrier</b>	<b>Suits Brought Against Third Party</b>	<b>Patents</b>	<b>Re-Examination in Patent Office/Reinsurance</b>	<b>Suits Against Terminated Licensees</b>
<b>CFC</b>	Yes	Yes, including applications and granted. All types of IP including trade secrets.	Yes, if suitable and required as part of a claim	Yes, for infringement
<b>IPISC</b>	Yes	Yes, including filed patent applications and provisional patent applications	Yes if related to and initiated during Authorized Litigation	Yes, if so endorsed
<b>OPUS Underwriting</b>	Yes	Yes – including patent applications, designs and associated IP rights	Yes – if considered as part of claim strategy	Yes, if contact extension is included
<b>Safeonline</b>	Yes	Yes, including granted rights and rights in application, Registered Designs and associated IP rights, such as Database rights, appellations of origin etc.	Yes, if required as part of an approved claim	Yes
<b>ThinkRisk</b>	Yes	Design patent coverage may be available for the aesthetic design of products		
<b>Tokio Marine Kiln</b>	Yes	Yes, including granted Patents (Method and Design) and Patents in Application	Yes, if required as part of an approved claim	Yes

## Patent Infringement Defense Coverage and Exclusions

Carrier	COVERAGE			EXCLUSIONS				
	Patents	Assertion of Patent Invalidity Counter-claims	Reexamination in Patent Office of Named Insured's Patent	Preexisting Infringement	Dishonest/ Fraudulent/ Criminal/ Malicious/ Intentional Acts	Liability for Judgments and Damages	Breach of Contract by Licensees	Patent Infringement of Another Where Named Insured Must Defend
<b>AIG</b> Patent Infringement Indemnity Insurance	Yes, for existing patents as of the start of the Policy Period, if a reasonably prudent patent attorney familiar with the type of business in which the Insured is engaged would have conducted an Infringement Search and Infringement Safeguarding prior to first manufacturing, etc. and prior to the inception of the policy	No. However, the Patent Infringement Indemnity policy provides the right but not the duty to offer pre-emptive defense, assumed by the Insured or AIG, each only with the consent of the other.	No	Yes	Yes	No	Yes, except where coverage under the Patent Infringement Indemnity Insurance policy would otherwise exist apart from such contract or agreement	The policy covers sums the Insured is legally obligated to pay for Covered Infringement caused by the manufacture, sale etc., of a Covered Product committed by the Insured or by any other person for whose actions the Insured is legally responsible.
<b>CFC</b> IP	Yes	Yes	Not applicable if the Insured is the Defendant but for the relevant patents - yes	No, unless insured knew or ought to have known	Yes	No	No, if the breach leads to infringement. Yes if it is a claim of another nature.	No
<b>IPISC</b> IP Infringement Defense Cost & Damages Reimbursement	Yes	Yes	Not applicable since Insured is the Defendant; however, as to third-party patents - yes	Pre-existing threats of infringement are excluded from coverage under the policy; however, pre-existing infringement unknown to the insured is not excluded under the Policy	Yes	Yes for Patent Troll Defense. No for IP Infringement Defense Cost & Damages Reimbursement	Yes.	No if party falls within definition of Insured
<b>Liberty Specialty Markets</b> Intellectual	Yes	Yes	No	Yes	Yes	No.	No	No exclusion but would not fall within definition of Insured. Cover can be provided if contractual Liability extension is purchased

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	Patents	Assertion of Patent Invalidity Counter-claims	Reexamination in Patent Office of Named Insured's Patent	Preexisting Infringement	Dishonest/Fraudulent/Criminal/Malicious/Intentional Acts	Liability for Judgments and Damages	Breach of Contract by Licensees	Patent Infringement of Another Where Named Insured Must Defend
Property Infringement Insurance								
<b>OPUS Underwriting</b>  OPUS Sentry™	Yes	Yes	No	Yes, if known prior to inception	Yes	No	No	Only if contractual extension is provided
<b>RPX</b>  Patent Litigation Insurance	Yes	Yes	Not applicable to Insured's patents; reexamination, including <i>inter partes</i> review (IPR) and covered business method post grant review (CBM) of patents asserted against the Insured are covered, subject to Insurer approval in advance	Pre-existing litigation excluded; however, preexisting non-litigation threats of infringement such as notices of infringement and assertion letters disclosed during the application process are not excluded	Dishonest/fraudulent/criminal/malicious: Yes, but no exclusion.  No intentional acts except for damages based on willful infringement	Yes	Yes	No; if party falls within definition of Insured under standard coverage or within definition of Scheduled Customer under Indemnification Coverage
<b>Safeonline</b>  IPGuard™ Infringement Defense	Yes	Yes	Not applicable since Insured is the Defendant; however, as to third-party patents — yes.	Any claim that arises out of an act, omission, circumstance or dispute occurring before or already in existence at policy inception that the insured knew or should reasonably have known would give rise to a third-party IP infringement claim will be excluded	Yes	No	No, policy allows for extension to include actions against licensees and NDA parties	Only if contractual extension is NOT taken.
<b>IPPostEvent™</b>	N/A	N/A	N/A	No	Dishonest/Fraudulent/Criminal/Malicious Acts: Yes  Intentional Acts: No.	Yes, except for adverse costs order against the insured in the event the insured loses the IP case	No	Yes

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	Patents	Assertion of Patent Invalidity Counter-claims	Reexamination in Patent Office of Named Insured's Patent	Preexisting Infringement	Dishonest/ Fraudulent/ Criminal/ Malicious/ Intentional Acts	Liability for Judgments and Damages	Breach of Contract by Licensees	Patent Infringement of Another Where Named Insured Must Defend
IPConsequential™	N/A	N/A	N/A	No	Yes	Yes (in respect of third-party liabilities for past use). No (arising from first party losses such as increased cost of working, e.g., on-going Royalties of fully paid up license fees)	Yes	Financial losses stemming from such matters may apply
<b>ThinkRisk</b>	Design patent coverage may be available for the aesthetic design of products	No	No	N/A	N/A	N/A	N/A	N/A
<b>Tokio Marine Kiln</b>  IP Defense Costs & Damages;	Yes and automatic cover is available for new or acquired Products, Services, Processes or IP Rights during the Policy Period	Yes	Not applicable since Insured is the Defendant; however, as to third-party patents – yes	Yes, but only if known by the insured prior to inception	Yes	No to IP Defense Costs & Damages; IP Combined Liability; and IP Transactional Risk  Yes to IP Financial Loss	No	Only if contractual extension is not taken
IP Combined Liability	N/A	N/A	N/A	Yes, but only if known by the insured prior to inception	N/A	N/A	No	Only if contractual extension is not taken
IP Transactional Risk;	N/A	N/A	N/A	Yes, but only if known by the insured prior to inception	N/A	N/A	No	No
IP Financial Loss				Yes, but only if known by the insured prior to inception			No	Financial losses stemming from such matters may apply