



What is the issue? Patents, trademarks and copyrights are key corporate assets of life science companies established through significant investment of time, money and intellectual capital. Failure to protect these assets could lead to financial distress or, at a minimum, become a major distraction as the company seeks to protect its intellectual property against the predatory business practices of unscrupulous competitors.

What is abatement cover? Abatement Cost Reimbursement Insurance is a unique “affirmative” coverage which provides funds to help a policyholder enforce its legal rights to stop infringement of its intellectual property. Specifically, this insurance reimburses the policyholder for certain litigation expenses it must incur to proceed with legal action to prevent a party from infringing upon its patents, trademarks and copyrights. The ability to take swift and decisive action to protect its intellectual property allows a life science company policyholder to carry out its business plan with confidence.

Provides litigation financing to prevent intellectual property infringement.	IP litigation can be expensive and diverts much needed financing from core operations.
Intellectual property broadly defined for life science company applicants.	Insured Intellectual Property includes patents, trademarks and copyrights filed and enforceable in the United States and which concern the handling, manufacture, sale or distribution of life science products.
Broad definition of infringement.	Definition includes the making, use, sale, offer for sale, reproduction, distribution, performance or display of a product, process, machine, composition of matter, word, name, symbol, device or work of authorship by another.
Access to specialized claims counsel and legal advisors experienced in IP property infringement litigation.	To be effective, legal counsel must have expertise in this highly technical area of the law and, ideally, also understand the disputed technology. It is also critical that counsel consider the insureds commercial needs throughout the litigation.

What are the advantages of abatement cover?

The availability of abatement insurance to pursue infringers helps maintain a competitive advantage, prevent loss of market share and intellectual property, and ease diversion of cash from operations to IP enforcement litigation. Just having the cover available may deter frivolous infringement lawsuits and reduces the pressure to settle the case too early. Insurance to help protect a company’s intellectual property may also attract investors concerned with the cost and distraction of infringement litigation.

Products and services are provided by one or more insurance company subsidiaries of W. R. Berkley Corporation. Not all products and services are available in every jurisdiction. Certain coverages may be provided through surplus lines insurance company subsidiaries of W. R. Berkley Corporation through licensed surplus lines brokers. Surplus lines insurers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds. In California, Berkley Life Sciences conducts business as Berkley LS Insurance Solutions, LLC, a licensed surplus lines broker (License Number 0H44165).

Any reference to insurance is descriptive and presented for discussion purposes only. Coverage afforded under any insurance policy issued is subject to the individual terms and conditions of that policy as issued. Claims scenarios are hypothetical in nature and for illustrative purposes.

Why would a life science company need it?

According to a May 2016 study of patent litigation by PricewaterhouseCoopers, approximately 5600 patent cases were filed in 2015. The biotech/pharmaceutical industry represents 14% of all patent litigation in the period 1996 - 2015.

What types of claims does this cover apply to?

An insured filed a patent application to protect its new medical device. Pending registration of the patent, a large competitor began manufacturing and selling an infringing product. Once the patent issued, the insured was able to pursue the alleged infringer and assert its patent rights. Without the insurance policy providing funds to enforce its rights, the insured would have continued to lose market share and possibly have gone out of business.

Isn't my patent protected by law?

Yes. But your rights are only as strong as your financial and practical ability to legally enforce your patent. In most cases the courts will need to address the validity of the patent asserted and the scope of claims, and quite often the defendant will file a counterclaim alleging infringement on the part of the policyholder. The insurance protects against such a counterclaim.

Is it expensive to enforce my intellectual property rights?

Yes. But taking decisive action to protect intellectual property may discourage an infringing party from continuing its infringing activities before a case becomes prohibitively expensive.

What is covered?

Abatement Cost Reimbursement Coverage reimburses the insured for IP Litigation Expense arising from authorized litigation. Covered expenses include attorney's fees and the cost of depositions, transcripts and expert witnesses. It also includes the cost of defense of invalidity counterclaims and declaratory judgments seeking to have the intellectual property declared invalid if the other parties can be charged with infringement of the underlying intellectual property.

Abatement Cost Reimbursement Insurance Coverage is just one of a number of key coverages available through LS Prime Corporate Safeguard tailored to meet the unique needs of life science companies seeking to grow and prosper in a competitive marketplace.

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