

INTELLECTUAL PROPERTY INFRINGEMENT DEFENSE COST AND DAMAGES REIMBURSEMENT INSURANCE POLICY

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THIS IS A CLAIMS MADE AND REPORTED POLICY. ALSO, PLEASE NOTE THIS IS A DEFENSE COST AND DAMAGES REIMBURSEMENT POLICY ONLY. UNLESS SPECIFICALLY ASSUMED BY THE COMPANY IN WRITING, THE DEFENSE OF THE NAMED INSURED IN ANY ACTION, ADMINISTRATIVE PROCEEDING(S) OR CIVIL PROCEEDING(S) OF WHATEVER NATURE IS AT ALL TIMES THE SOLE RESPONSIBILITY OF THE NAMED INSURED.

Please read the Terms, Conditions, and Exclusions of this Policy carefully and discuss its coverage with your professional advisor. Words and phrases appearing in capital letters have special meaning while the same words and phrases in lower case type have their ordinary and customary meanings. Please refer to the DEFINITIONS (Article II.) below.

This Policy only applies to CLAIM(S) that are made and reported to the Company by the Named Insured during the POLICY PERIOD or its Grace Reporting Period for reimbursement of LITIGATION EXPENSE(S) and DAMAGES (if DAMAGES are designated on the Declarations Page) arising out of COVERED LITIGATION. Coverage under this Policy does not include reimbursement of fines or penalties including but not limited to fines or penalties for punitive, exemplary, treble or multiple damages, non-pecuniary relief and taxes assessed against the Named Insured.

No coverage is available under this Policy for any CLAIM(S) arising from any CIVIL PROCEEDING(S) commenced sooner than ninety (90) days after the beginning of the POLICY PERIOD. If this Policy is renewed, or terminates by non-renewal, or if this Policy is cancelled by the Company for any reason other than nonpayment of premium or fraud or misrepresentation, the Company will accept for consideration CLAIM(S) on this Policy submitted to it within a Grace Reporting Period of ten (10) days following the expiration of the POLICY PERIOD provided that the CIVIL PROCEEDING(S) is incepted no earlier than thirty (30) days prior to the expiration of the POLICY PERIOD. If this Policy is cancelled by the Named Insured for any reason, or cancelled by the Company for nonpayment of premium, fraud or misrepresentation, there is no Grace Reporting Period and the Company will not authorize any CLAIM(S) submitted after the Effective Date of cancellation. Any CIVIL PROCEEDING(S) alleging INFRINGEMENT commenced sooner than ninety (90) days after the Effective Date of coverage will also bar coverage for any CLAIM(S) arising from any subsequent CIVIL PROCEEDING(S) by the same or a related party thereafter asserting the same or related allegations of INFRINGEMENT. Any NEWLY ADDED INSURED MANUFACTURED PRODUCT(S) are subject to a similar ninety (90) day Exclusionary Period.

After a period of one year from the expiration of the Policy, the Company will not reimburse LITIGATION EXPENSE(S) or DAMAGES arising from any not authorized, but not withdrawn or denied CLAIM(S) (i.e., a delayed CLAIM(S)) properly made and reported during the Policy Period irrespective of the reason(s) for such delay and regardless of blame or fault.

NOTICE: THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES (IF SUCH DAMAGES ARE DESIGNATED ON THE DECLARATIONS PAGE) SHALL BE REDUCED BY ANY AMOUNTS REIMBURSED FOR LITIGATION EXPENSE(S). AMOUNTS PAID BY THE NAMED INSURED FOR LITIGATION EXPENSE(S) AND DAMAGES SHALL BE APPLIED AGAINST THE SELF INSURED RETENTION AMOUNT.

CONDITIONS PRECEDENT

The coverage under this Policy is made in reliance upon 1.) the statements in any required FAVORABLE INFRINGEMENT OPINION or OPINIONS including any updates or substitutes thereto or therefore and 2.) the statements in the Insurance Application and any substitute or renewal applications (or prior applications if this Policy is a renewal of a previous Policy) and 3.) payment of the premium specified on the Declarations Page hereof. The Insurance Application means and includes the current application and the corresponding Quotation/Acceptance Form as well as all renewal or prior applications and corresponding Quotation/Acceptance Forms of this and any prior related policies.

I. INSURING AGREEMENTS

A. Insurance Coverage

Subject to the Co-payment Percentage, Self Insured Retention per CLAIM(S) and LIMITS OF LIABILITY stated on the Declarations Page for each of the patent, copyright, trademark or trade dress coverages indicated on the Declarations Page, the Company shall reimburse the Named Insured only for LITIGATION EXPENSE(S) and DAMAGES (if DAMAGES are designated on the Declarations Page) for which the Named Insured is liable and has paid to a third party arising out of COVERED LITIGATION, even if such COVERED LITIGATION is FRIVOLOUS. All reimbursement of LITIGATION EXPENSE(S) and DAMAGES (if DAMAGES are designated on the Declarations Page) payable under this Policy shall be subject to all the terms, conditions, limitations, and exclusions stated herein. Reimbursements payable under this Policy will be made based upon receipts for LITIGATION EXPENSE(S) paid by Named Insured and submitted to the Company.

B. Territory

The insurance provided under this Policy applies to COVERED LITIGATION that is brought in the United States of America, its territories or possessions.

C. Limits of Liability

1. Subject to the Co-payment Percentage and the Self Insured Retention per CLAIM(S) shown on the Declarations Page, the Limits of Liability shown on the Declarations Page is the most that the Company shall pay for reimbursement of all LITIGATION EXPENSE(S) and DAMAGES (if DAMAGES are designated on the Declarations Page) for:
 - a. any single CLAIM(S) (which must be made and reported during the POLICY PERIOD); or
 - b. all CLAIM(S) in the aggregate (which must be made and reported during the POLICY PERIOD).
2. The inclusion herein of more than one Named Insured or the making of more than one CLAIM(S) or the bringing of more than one CIVIL PROCEEDING(S), whether by one or more persons or organizations, shall not operate to increase the Company's Limits of Liability as shown on the Declarations Page.
3. The Limits of Liability as shown on the Declarations Page shall not be increased based on the number of Additional Insureds under this Policy.
4. The Company will not be obligated to continue to reimburse the Named Insured under this Policy after the applicable Limits of Liability (which includes Damages if DAMAGES are designated on the

Declaration Page) of the Company have been exhausted by reimbursement of LITIGATION EXPENSE(S) and/or DAMAGES (if DAMAGES are designated on the Declarations Page).

D. Allocation

The Company shall reimburse the Named Insured only for LITIGATION EXPENSE(S) and DAMAGES arising out of that portion of a CIVIL PROCEEDING(S) which has been determined to be COVERED LITIGATION, and not for any other costs arising from the CIVIL PROCEEDING(S). If a CIVIL PROCEEDING(S) includes COVERED LITIGATION and allegations that are not COVERED LITIGATION, the Policy shall conclusively allocate reimbursable LITIGATION EXPENSE(S) and DAMAGES pro-rata as follows:

1. If the CIVIL PROCEEDING(S) includes counts or causes of action "Count(s)" which are not COVERED LITIGATION, reimbursable LITIGATION EXPENSE(S) shall be determined by multiplying the reasonable and customary attorney's fees, costs and disbursements arising from the CIVIL PROCEEDING(S) by a fraction whose numerator is the number of Counts which are COVERED LITIGATION present in the CIVIL PROCEEDING(S) at the time those LITIGATION EXPENSE(S) arose, and whose denominator is the total number of Counts in the CIVIL PROCEEDING(S) at that time.
2. If a Count includes allegations of INFRINGEMENT by both insured and uninsured MANUFACTURED PRODUCT(S), the reimbursable LITIGATION EXPENSE(S) arising from that Count shall be determined by the proportion of the insured MANUFACTURED PRODUCT(S) present in the CIVIL PROCEEDING(S) at the time the LITIGATION EXPENSES arose to total MANUFACTURED PRODUCT(S) accused therein at that time.
3. If a Count includes allegations that both insured-against and uninsured-against patents, trademarks, copyrights or portions thereof (including individual claims of a patent) are INFRINGED by an insured MANUFACTURED PRODUCT(S), the LITIGATION EXPENSE(S) arising from that Count shall be determined by the proportion of the insured-against patents, trademarks, copyrights or portions thereof (including individual claims of a patent) to total patents, trademarks, copyrights or portions thereof asserted in that Count at the time the LITIGATIONS EXPENSES arose.
4. If DAMAGES are itemized by a Court according to any of the criteria above in 1. through 3., such itemization shall determine the reimbursable portion of DAMAGES. If DAMAGES are not itemized by a Court, the pro-rata calculation controlling LITIGATION EXPENSE(S) shall also apply to DAMAGES.

The allocation(s) under each applicable subpart of this Section shall be read in conjunction with each other, and the resulting cumulative allocation shall apply to determine reimbursable LITIGATION EXPENSE(S) (and DAMAGES if indicated) prior to application of any Self Insured Retention or Co-payment.

E. Co-Payment Percentage

The Named Insured shall be obligated to pay the percentage of co-payment stated in Item 4. of the Declarations for all LITIGATION EXPENSE(S), including DEFENSE EXPENSES for INVALIDITY COUNTERCLAIM and RE-EXAMINATION PROCEEDINGS arising from COVERED LITIGATION and DAMAGES (if indicated), with the Company paying its share until reimbursements by the Company have reached the Limits of Liability shown in the Declarations Page. Thereafter, all LITIGATION EXPENSE(S) and DAMAGES (if indicated) shall become the sole responsibility of the Named Insured.

F. The Named Insured

1. "Named Insured" whenever used in this Policy means:
 - a. The individual, partnership, joint venture or corporation (including its agents and attorneys but only for purposes of the corporation's knowledge and acts) designated in Item 1. of the Declarations Page including any partner, member, executive officer, employee or director of such designated entity solely while acting within the scope of their duties as such but only with respect to MANUFACTURED PRODUCT(S); or
 - b. Any legal representative or trustee of a Named Insured listed in Item 1 above in the event of the Named Insured's incompetence, insolvency or bankruptcy; or
 - c. Additional Insured(s) which are added by endorsement.
2. Only the first Named Insured has the right to receive notifications from the Company and control the Policy including but not limited to adding or removing Additional Insureds, cancelling the Policy or agreeing to modifications to the Policy. Also, only those Named Insureds whose names actually appear in Item 1 of the Declarations Page (or their legal representatives or trustees) have the right to make CLAIM(S) against the Company and receive reimbursement under this Policy.
3. No person or entity is a Named Insured under this Policy with respect to the conduct of any current or past partnership or joint venture if that entity or person is not named in Item 1. of the Declarations Page of this Policy.

G. Ninety Day Exclusionary Period

1. **The Company will not accept or consider CLAIM(S) on CIVIL PROCEEDING(S) alleging INFRINGEMENT if such CIVIL PROCEEDING(S) are commenced sooner than ninety (90) days after the beginning of the POLICY PERIOD.**
2. Any CIVIL PROCEEDING(S) alleging INFRINGEMENT commenced sooner than ninety (90) days after the Effective Date of coverage will also bar coverage for any CLAIM(S) which arises from any subsequent CIVIL PROCEEDING(S) by the same or a related party asserting the same or related allegations of INFRINGEMENT.
3. No coverage is available under this Policy for any CIVIL PROCEEDING(S) or part of a CIVIL PROCEEDING alleging INFRINGEMENT by any NEWLY ADDED INSURED MANUFACTURED PRODUCT(S) which is commenced within ninety (90) days of the Effective Date of coverage for such NEWLY ADDED INSURED MANUFACTURED PRODUCT(S).

H. Grace Reporting Period

1. If this Policy is renewed, or terminates by non-renewal, or if this Policy is cancelled or terminated by the Company for any reason other than nonpayment of premium or fraud or misrepresentation, the Company will accept and consider CLAIM(S) on this Policy submitted to it within a Grace Reporting Period of ten (10) days following the expiration of the POLICY PERIOD provided that the CIVIL PROCEEDING(S) is incepted no earlier than thirty (30) days prior to the expiration of the POLICY PERIOD.

2. If this Policy is cancelled by the Named Insured for any reason, or canceled by the Company for nonpayment of premium, fraud or misrepresentation, there is no Grace Reporting Period or Recapture of Ninety Day Exclusionary Period and the Company will not authorize any CLAIM(S) submitted after the Effective Date of cancellation.

II. DEFINITIONS

- A. **ASBESTOS** includes but is not limited to asbestos, asbestos products, asbestos fibers, asbestos particles, asbestos dust, or any product or goods containing asbestos in any form.
- B. **ASBESTOS LIABILITY** means any liability arising directly or indirectly from or related to loss, injury or damage caused by the HANDLING, USE, MISUSE or EXISTENCE of ASBESTOS.
- C. **BODILY INJURY** includes but is not limited to sickness, disease, occupational disease, death, shock, disability, mental anguish, mental injury, emotional upset, asbestosis, any trauma, suffered or alleged to be suffered by any person or entity.
- D. **CIVIL PROCEEDING(S)** means any legal or administrative proceeding, suit, cause of action or alternative dispute resolution proceeding or the threat thereof, including but not limited to, cease and desist letter(s) and the like, directed to or brought against the Named Insured by one or more parties, where applicable, in a State Court, a Federal District Court or United States Appellate Court, or if an alternative dispute resolution, in a proper forum.
- E. **CLAIM(S)** means a demand on the Company by a Named Insured on the Company's properly completed and executed "Infringement Defense Claim" form to have a CIVIL PROCEEDING(S) alleging INFRINGEMENT or any part thereof deemed COVERED LITIGATION and for written acknowledgement that LITIGATION EXPENSE(S) and DAMAGES (if designated on the Declarations Page) resulting from the COVERED LITIGATION will be reimbursed under this Policy. CLAIM(S) does not refer to the actual CIVIL PROCEEDING(S) brought against the Named Insured.

Demands on the Company relating to CIVIL PROCEEDING(S) arising out of the same act or a duplication of an act or out of a series of interrelated acts regardless of the time period over which the acts occurred shall be considered as giving rise to a single CLAIM(S) covered by a single policy regardless of the number of CIVIL PROCEEDING(S), plaintiffs, defendants, the number of MANUFACTURED PRODUCT(S), or the year or policy under which the CLAIM(S) is made.

Two or more CLAIM(S) arising out of related allegations of INFRINGEMENT or any series of related allegations of INFRINGEMENT, whether those allegations assert INFRINGEMENT of single or multiple patents, copyrights or trademarks or any combination thereof, will be deemed a single CLAIM(S). These provisions apply regardless of the number of Named Insureds, patents, copyrights, trademarks, MANUFACTURED PRODUCT(S), plaintiffs, defendants, or organizations that are involved in such CIVIL PROCEEDING(S).

- F. **COPYRIGHT** means the rights in original WORKS OF AUTHORSHIP of the Named Insured fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device as conferred by 17 USCA 106 provided such WORKS OF AUTHORSHIP have been registered by the Named Insured in the U.S. Copyright office under 17 USCA 408 or have been licensed-in by the Named Insured or if foreign coverage is selected, substantially equivalent rights in such jurisdiction. The term copyright in lower case type means the rights in original WORKS OF AUTHORSHIP of another fixed in any tangible

medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device as conferred by 17 USCA 106 provided such WORKS OF AUTHORSHIP having been licensed-in by or registered by that other in the U.S. Copyright office under 17 USCA 408 or if foreign coverage is selected, substantially equivalent rights in such jurisdiction.

G. COVERED LITIGATION shall mean the defense of a CIVIL PROCEEDING(S) or any part thereof, brought during the POLICY PERIOD and reported to the Company within the POLICY PERIOD or any applicable Grace Reporting Period, in which the Named Insured is acting in a defensive or defendant's role which alleges INFRINGEMENT by the Named Insured, including INJUNCTION PROCEEDINGS; provided that the allegations of INFRINGEMENT (i.e., patent, trademark, copyright or trade dress infringement) correspond to the specifically indicated coverage on the Declarations Page and any endorsements, and the Company, in response to a properly filed CLAIM(S), has stated in writing to the Named Insured that LITIGATION EXPENSE(S) arising from such CIVIL PROCEEDING(S) will be reimbursed by this Policy; except:

COVERED LITIGATION does not include any CIVIL PROCEEDING(S) brought as a retaliatory suit in or to a legal or administrative proceeding, suit, cause of action or alternative dispute resolution proceeding or the threat thereof, including but not limited to, cease and desist letter(s) and the like brought by the Named Insured or a third party acting in concert with the Named Insured. A suit shall be deemed to be retaliatory if it is brought within ninety (90) days of a legal or administrative proceeding, suit, cause of action or alternative dispute resolution proceeding or the threat thereof, including but not limited to, cease and desist letter(s) and the like brought by the Named Insured or a third party acting in concert with the Named Insured; or, the suit in question is of the same subject matter or based on the same facts or transactions as the a legal or administrative proceeding, suit, cause of action or alternative dispute resolution proceeding or the threat thereof, including but not limited to, cease and desist letter(s) and the like brought by the Named Insured or a third party acting in concert with the Named Insured.

COVERED LITIGATION does not include any legal proceeding, suit, cause of action or alternative dispute resolution proceeding which is formally commenced more than one year after the date of the Named Insured's submission of a CLAIM(S) which legal proceeding, suit, cause of action or alternative dispute resolution proceeding arises out of the same act or a duplication of the same act or series of interrelated acts which is the basis for that CLAIM(S).

Authorization to appeal is required to be obtained by the Named Insured if the Named Insured does not prevail in the COVERED LITIGATION and wishes to appeal such decision. However, authorization is not required to be obtained again by the Named Insured if the Named Insured is the prevailing party in the COVERED LITIGATION and the opposing party appeals such decision.

H. DAMAGES means monetary sums arising out of COVERED LITIGATION paid by the Named Insured to a claimant pursuant to either judgments, awards or settlements negotiated with the written consent of the Company, whichever is applicable, as past lost profits and/or royalties for past infringement, and/or reasonable attorney's fees assessed by the Court against the Named Insured provided, however, that Damages shall not include fines, penalties (including but not limited to punitive, exemplary or multiplied damages), non-pecuniary relief and taxes assessed against the Named Insured. DAMAGES also does not include any amount for which the Named Insured is not financially liable or any amount as to which there is no legal recourse by the person who is awarded such relief against the Named Insured. Also excluded from DAMAGES is any loss, cost, expense or award arising from any such matters which are uninsurable under the law pursuant to which this Policy shall be construed.

- I. DEFENSE EXPENSES** means sums of money which the Named Insured shall have paid as reasonable and customary attorney's fees, costs, and disbursements, including, but not limited to, court costs, costs of depositions, transcripts, fees and expenses of expert witnesses, appeals authorized under this Policy, but only to the extent that those sums arise out of COVERED LITIGATION.

DEFENSE EXPENSES includes the actual costs and expenses incurred in asserting any INVALIDITY COUNTERCLAIM or initiating any RE-EXAMINATION PROCEEDING which is a direct consequence of COVERED LITIGATION. DEFENSE EXPENSES shall further include: expenses incurred by the Company in any COVERED LITIGATION defended by the Company; costs levied against the Named Insured in any such COVERED LITIGATION defended by the Company; premiums on appeal bonds and bonds to release attachments, to the extent that the face amount of such bonds do not exceed the Company's then remaining Limits of Liability and are required in any COVERED LITIGATION defended by the Company, provided however, neither this provision nor any other in this Policy shall be construed as requiring the Company to defend any Named Insured, commence or prosecute any appeal or to apply for or furnish any bonds.

If the DEFENSE EXPENSES are prorated under this Policy then the bond costs shall be prorated in the same way.

Expenses incurred in obtaining a FAVORABLE INFRINGEMENT OPINION are not included in DEFENSE EXPENSES. Also not included in DEFENSE EXPENSES are loss of earnings, expenses and costs incurred by the Named Insured for salaries and expenses of its officers, staff, in-house attorneys, directors, employees (and outside attorneys or consultants functioning in the capacity of any of the foregoing).

All DEFENSE EXPENSES shall consume and not be in addition to the Limits set forth in Item 4 of the Declarations Page.

- J. FAVORABLE INFRINGEMENT OPINION** means an opinion by an independent intellectual property attorney who is selected by the Named Insured, approved by the Company and compensated by the Named Insured, or who is selected and compensated by the Company under Article IV, Section A.1.b.i. of this Policy, which opines that more likely than not a properly advised trier of fact or law or both would conclude that there is no INFRINGEMENT of any unexpired U.S. patent, trademark or copyright vis-à-vis a MANUFACTURED PRODUCT(S) either literally or based upon a search of the records and prior art compiled in the United States Patent & Trademark Office or Copyright Office, and/or other equivalent foreign office or repository as the case may be, which opinion concludes the intellectual property in question is invalid and which opinion has been accepted by the Company applying reasonable standards.

- K. FRIVOLOUS** means clearly insufficient on its face and thus not making or controverting material points required in a pleading written to the standards of the profession, i.e., where a proponent can present or presents no rational argument in support of a claim or defense. While other CIVIL PROCEEDING(S) may be FRIVOLOUS under this definition; specifically, a CIVIL PROCEEDING(S) alleging INFRINGEMENT with a supporting claims chart applying a patent's claim elements or steps to an article, process or machine, manufacture or composition of matter is deemed not to be FRIVOLOUS.

- L. HANDLING, USE, MISUSE, or EXISTENCE** includes, but is not limited to, the manufacture, mining, use, sale, installation, distribution, removal, encapsulation, transportation, or presence of ASBESTOS. It includes the inspection for and exposure to ASBESTOS. It includes the failure to perform, or inadequate performance in said HANDLING, USE, MISUSE or EXISTENCE.

M. INFRINGEMENT means the specific allegation that the making, use, sale or offer for sale of MANUFACTURED PRODUCT(S) by the Named Insured, within the United States of America, its territories or possessions during the POLICY PERIOD is unauthorized and in violation of specifically identified enforceable and valid rights of another arising from the grant by the United States Patent & Trademark Office and/or the U.S. Registrar of Copyrights or the foreign equivalent office, or offices as the case may be, of any unexpired patent, trademark or copyright excluding rights arising under or enforceable by virtue of a Treaty with one or more foreign governments. INFRINGEMENT shall not include in its meaning inducement to infringe, but shall include contributory infringement and in the case of copyrights, vicarious infringement.

N. INJUNCTION EXPENSE(S) means sums of money which the Named Insured shall have paid as reasonable and customary attorney's fees, costs and disbursements including but not limited to, court costs, costs of depositions, transcripts, fees and expenses of expert witnesses, appeals authorized under this Policy, but only to the extent those sums arise out of an INJUNCTION PROCEEDING(S), and only if such INJUNCTION PROCEEDING is brought during the POLICY PERIOD and is solely in respect to the regular, ordinary and usual course of the business of the Named Insured as that business existed on the first date of the POLICY PERIOD and as described in the application for insurance attached hereto and made a part hereof.

INJUNCTION EXPENSES shall further include:

1. Expenses incurred by the Company in any INJUNCTION PROCEEDING defended by the Company;
2. Costs levied against the Named Insured in any such INJUNCTION PROCEEDING defended by the Company;
3. Premiums on appeal bonds and bonds to release attachments, to the extent that the face amount of such bonds do not exceed the Company's then remaining applicable limit of indemnity and are required in any INJUNCTION PROCEEDING defended by the Company, provided however, neither this provision nor any other in this Policy shall be construed as requiring the Company to defend any Named Insured, commence or prosecute any appeal or to apply for or furnish any bonds.

Not included in INJUNCTION EXPENSES are loss of earnings, expenses and costs incurred by the Named Insured for salaries and expenses of its officers, staff, in-house attorneys, directors, employees (and outside attorneys or consultants functioning in the capacity of any of the foregoing).

All INJUNCTION EXPENSES shall consume and not be in addition to the Limits set forth in Item 4 of the Declarations Page.

O. INJUNCTION PROCEEDING(S) means any CIVIL PROCEEDING(S) brought during the POLICY PERIOD alleging INFRINGEMENT against the Named Insured and thereby seeking to limit or cease Named Insured's specific activities with regard to MANUFACTURED PRODUCT(S) on the ground that the activities result in INFRINGEMENT, and which could result in a legally enforceable order against the Named Insured to limit or cease the specific activities in question.

P. INVALIDITY COUNTERCLAIM means any legal action taken by the Named Insured in the course of and as part of COVERED LITIGATION which seeks invalidation of a copyright, a trademark or one or more claims of a patent under which INFRINGEMENT is being asserted.

- Q. LIMIT(S) OF LIABILITY** means the maximum amount the Company will reimburse (indemnify) for LITIGATION EXPENSE(S) and/or DAMAGES, either for each CLAIM(S) made and reported during the POLICY PERIOD or all CLAIM(S) in the aggregate made and reported during the POLICY PERIOD under the Policy for CLAIM(S) authorized by the Company as indicated on the Declarations Page and as set forth in Article I, Section C..
- R. LITIGATION EXPENSE(S)** (included in the Limits Of Reimbursement (Indemnification) Liability and Damages (if indicated in Item 5 of the Declarations page)) means:
1. DEFENSE EXPENSES and/or
 2. INJUNCTION EXPENSES and/or
 3. Costs and expenses of any unsuccessful pursuit of any other Insurer or Indemnitor, which the Company has requested under Article IV, Section P on Excess Insurance and/or under Article IV, Section Q. on Excess Indemnity of this Policy; and/or
 4. RE-EXAMINATION Expense pursuant to Article II., Section Y., Re-Examination Proceedings of this Policy.
- S. MANUFACTURED PRODUCT(S)** means any COPYRIGHT, TRADEMARK, TRADE DRESS, WORK OF AUTHORSHIP, word, slogan, symbol, design, process, machine, article of manufacture or composition of matter specifically enumerated on the Declarations Page of this Policy which is reproduced, published, applied or manufactured in the United States or abroad by or for a Named Insured during the POLICY PERIOD and used, sold or offered for sale by or for the Named Insured in the United States (or if foreign coverage applies, in the foreign jurisdiction in question) during the POLICY PERIOD.
- T. NEWLY ADDED INSURED MANUFACTURED PRODUCT(S)** means an INSURED MANUFACTURED PRODUCT(S) which is/has been submitted to the Company for underwriting and, upon acceptance, has been added to the present Policy during the present POLICY PERIOD, or if this Policy is a renewal, was not continuously insured under the immediately expiring policy.
- U. PATENT** means any unexpired Patent of the Named Insured. The term patent in lower case type shall mean any patent of another.
- V. POLICY PERIOD** means the period from the Effective Date shown in Item 2. of the Declarations Page of this Policy to the expiration date shown in that Item. In the case of an expiration due to non-renewal, or cancellation or termination by the Company for any reason other than fraud, material misrepresentation or nonpayment of premium, the POLICY PERIOD extends for an additional period of ninety (90) days after such expiration date; or in the case of cancellation or termination by an Insured, or cancellation by the Company for reasons of fraud, material misrepresentation or nonpayment of premium, the POLICY PERIOD ends as of the Effective Date of cancellation or termination of this Policy.
- W. PROPERTY DAMAGE** includes but is not limited to (1) Damage to tangible or intangible property; (2) Loss of, or loss of use of, tangible or intangible property; (3) Loss of, loss of use of, or interference with property rights; (4) All forms of radioactive contamination of property.
- X. RECOVERED COSTS** means any monies received by the Named Insured by way of penalty, indemnification (other than by this Policy), or punitive award, or the like, arising in connection with a COVERED LITIGATION.

- Y. RE-EXAMINATION PROCEEDING** means a proceeding brought in the United States Patent and Trademark Office requesting re-examination of one or more claims of a patent under which claim(s), INFRINGEMENT is being asserted.
- Z. SELF INSURED RETENTION** means the amount of un-reimbursed LITIGATION EXPENSE(S) and/or DAMAGES for each CLAIM(S) that the Named Insured shall be obligated to pay before the Company shall reimburse any CLAIM(S) amounts. The Self Insured Retention is measured by the amounts that would otherwise be LITIGATION EXPENSE(S) and/or DAMAGES, but shall not reduce the Limits of Liability.
- AA. TRADE DRESS** means the appearance and image of a MANUFACTURED PRODUCT(S) of the Named Insured taken as a whole, including but not limited to the features of size, texture, shape, color or color combinations and graphics. TRADE DRESS does not include the particular advertising or marketing techniques used to promote the product's sale. The term trade dress in lower case type means the appearance and image of the manufactured product of another taken as a whole, including but not limited to the features of size, texture, shape, color or color combinations and graphics. It does not include the particular advertising or marketing techniques used to promote the manufactured products of that other.
- BB. TRADEMARK** means a word, slogan, design or other symbol used to identify and distinguish goods or services which is licensed-in by or registered by the Named Insured, under state or federal law, as a trademark, service mark, collective mark, certification mark or TRADE DRESS. The term trademark in lower case type means a word, slogan, design or other symbol used to identify and distinguish goods or services which is registered by or licensed-in by another, under state or federal law, as a trademark, service mark, collective mark, certification mark or trade dress.
- CC. WILLFUL INFRINGEMENT** means a specific determination by the Federal District court(s) and/or other court or administrative tribunal(s) in which the CIVIL PROCEEDING(S) was/were heard finding that the Named Insured's INFRINGEMENT of the patent, copyright or trademark in question was "willful" or that the Named Insured proceeded in a deliberate fashion in disregard of the intellectual property of others. Notwithstanding the determination of such court(s) or tribunal(s), such INFRINGEMENT will not be considered WILLFUL INFRINGEMENT under this Policy where the Named Insured has first obtained a FAVORABLE INFRINGEMENT OPINION with respect to the insured MANUFACTURED PRODUCT(S) which actually discusses the patent, copyright or trademark under which INFRINGEMENT was found.
- DD. WORK(S) OF AUTHORSHIP** shall include the following:
1. Literary Works; and/or
 2. Musical works, including any accompanying words; and/or
 3. Dramatic works, including any accompanying music; and/or
 4. Pantomimes and choreographic works; and/or
 5. Pictorial, graphic and sculptural works; and/or
 6. Motion pictures and other audiovisual works; and/or
 7. Sound recordings; and/or
 8. Architectural works; and/or

9. Computer programs

III. EXCLUSIONS

A. Coverage under this Policy does not include reimbursement of:

1. Any loss, costs or expenses arising from any liability of the Named Insured for fines, or penalties, including but not limited to punitive, exemplary, treble, or multiple damages of any kind.
2. Any loss, costs or expenses arising from BODILY INJURY or PROPERTY DAMAGE.
3. Any loss, costs or expenses arising from any litigation, adjudicatory action or CIVIL PROCEEDING(S), or part thereof, other than COVERED LITIGATION.
4. Any loss, costs or expenses arising from any CLAIM(S) not submitted to the Company during the POLICY PERIOD or any Grace Reporting Period under Article IV, Section B. of this Policy.
5. Any loss, costs, expenses or professional fees arising from or incurred by the Named Insured prior to the commencement of the COVERED LITIGATION.
6. Any LITIGATION EXPENSE(S) or DAMAGES arising out of a CIVIL PROCEEDING(S) where such CIVIL PROCEEDING(S) was commenced, served or delivered prior to the beginning of the POLICY PERIOD and whether or not the pleadings of such CIVIL PROCEEDING(S) (if any) are amended subsequent to the beginning of the POLICY PERIOD to allege INFRINGEMENT.
7. Any loss, costs or expenses arising from or incurred by the Named Insured for salaries, expenses and/or fees of its officers, staff, in-house attorneys, directors, and employees and outside attorneys or consultants functioning in the capacity of any of the foregoing.
8. Any loss, costs or expenses arising from the defense of, or any liability arising from, any criminal act or omission of Named Insured.
9. Any loss, costs or expenses arising from WILLFUL INFRINGEMENT.
10. Any loss, costs or expenses arising from a CIVIL PROCEEDING(S) alleging INFRINGEMENT where the/a Named Insured or any of the Named Insured's officers, directors, employees, licensees, assignees, lessees, transferees, agents, sales agents, attorneys, distributors, affiliates, parents, subsidiaries, predecessors or successors in interest (collectively, "Commercially Related Party/Parties") had knowledge prior to the Effective Date of this Policy of any patents, trademarks, copyrights, or applications for patents or trademarks or copyrights, which are or could be the basis for the allegation of INFRINGEMENT other than those disclosed to the Company and discussed or noted in a FAVORABLE INFRINGEMENT OPINION or similar substantive written analysis, or where the/a Named Insured or a Commercially Related Party knew or reasonably should have known that the manufacture, use, sale, offer for sale, application or reproduction of a MANUFACTURED PRODUCT(S) would result in the Named Insured being charged with INFRINGEMENT.
11. Any loss, costs or expenses incurred in or arising out of the defense of any allegations of anti-trust or anti-competitive conduct or unfair trade practices.

12. Any loss, costs or expenses arising from any declaratory actions of any nature whether Named Insured is plaintiff or defendant.
13. Any loss, costs or expenses arising from any administrative proceeding of any nature including but not limited to International Trade Commission Proceedings, except RE-EXAMINATION PROCEEDINGS.
14. Any loss, costs or expenses arising out of allegations of INFRINGEMENT by a MANUFACTURED PRODUCT(S) which is the same as or substantially similar to a WORK OF AUTHORSHIP, word, slogan, symbol, design, TRADEMARK, COPYRIGHT, process, machine, article of manufacture or composition of matter specified on the Declarations page of this policy produced within the three (3) years preceding the Effective Date of this Policy by any former employer or employee of a Named Insured.
15. LITIGATION EXPENSE(S) or DAMAGES arising from any COVERED LITIGATION in which the Named Insured or any parent, subsidiary or affiliate of a Named Insured or any officer, director, employee or holder of more than five percent (5%) of the stock of any of the foregoing has any direct or indirect interest in any potential or actual recovered DAMAGES, injunctions or the like arising from such COVERED LITIGATION.
16. Any loss, costs or expenses based upon or arising out of any circumstances or activities of which a Named Insured or any of the Named Insured's officers, directors, employees, licensees, assignees, lessees, transferees, agents, sales agents, attorneys, distributors, affiliates, parents, subsidiaries, predecessors or successors in interest suspects or has knowledge, at a time prior to the Effective Date of this Policy is/are likely to give rise to a CLAIM(S). This exclusion includes, but is not limited to, any prior CIVIL PROCEEDING(S) or possible CIVIL PROCEEDING(S), activity or circumstance whether or not referenced in the Named Insured's Application for this Policy.
17. Any loss, costs and expenses based upon or arising out of any CIVIL PROCEEDING(S) if, on the Effective Date of this Policy, Named Insured had/has any knowledge of any event or circumstance which he knows (or could reasonably believe) may result in such CIVIL PROCEEDING(S) alleging/alleged INFRINGEMENT, irrespective of when such CIVIL PROCEEDING(S) is/was actually initiated. Negotiation of a License or like Agreement is a non-limiting example of a circumstance, activity or event which could, if unsuccessful, result in a CIVIL PROCEEDING(S) alleging/alleged INFRINGEMENT and thus falls within its scope of this exclusion.
18. Any loss, costs or expenses including but not limited to LITIGATION EXPENSE(S) or DAMAGES based upon or arising out of any CIVIL PROCEEDING(S) alleging/alleged INFRINGEMENT by virtue of any party's breach or termination of any contract, license or agreement or suspension of performance thereunder or the expiration of the license or the expiration of the contract, license or agreement.
19. Any loss, costs or expenses relating to circumstances involving fraud, material misrepresentation or omission by the Named Insured.
20. Any loss, costs or expenses arising from any CLAIM(S) made by any Named Insured under this Policy against any other Named Insured under this Policy.
21. Any loss, cost or expenses based upon or arising out of discrimination by a Named Insured on the basis of race, creed, national origin, disability, age or sex, or sexual preference.

22. Any loss, cost or expenses based upon or arising out of the actual or threatened, discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, pollutants or contaminants into or upon the land, the atmosphere or any course or body of water, whether below or above ground. The intent and effect of this exclusion is to delete from any and all coverage afforded by this Policy any claim, judgment, liability, settlement, defense or expenses (including any loss, cost or expense arising out of any government cost, or expense arising out of any governmental direction or request that the Named Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants) in any way arising out of such actual or threatened discharge, dispersal, release or escape, whether such results from the Insured's activities or the activities of others, and whether or not such is sudden or gradual, and whether or not such is accidental, intended, foreseeable, expected, fortuitous or inevitable, and wherever such occurs.
23. Any loss, cost or expenses arising out of BODILY INJURY or PROPERTY DAMAGE as it relates to Nuclear Energy
- a. With respect to which a Named Insured is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be a Named Insured under any such policy but for its termination upon exhaustion of its limit of liability; or resulting from the "hazardous properties" of "nuclear material" and with respect to which (1) any person or any organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the Named Insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
 - b. resulting from the "hazardous properties" of "nuclear material" if:
 - i. the "nuclear material" (a) is at any "nuclear facility" owned by the Named Insured or operated by the Named Insured or on the Named Insured's behalf, or (b) has been discharged or dispersed there from;
 - ii. the "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by the Named Insured or on the Named Insured's behalf; or
 - iii. the BODILY INJURY or PROPERTY DAMAGE arises out of the furnishing by a Named Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility".
 - c. As used in this exclusion:
 - i. "hazardous properties" includes radioactive, toxic or explosive properties;
 - ii. "nuclear material" means source material, special "nuclear material" or by-product material;
 - iii. "source material", special "nuclear material" and "by-product material" have the meanings given them by the Atomic Energy Act of 1954 or in any law amendatory thereof;

- iv. "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
- v. "waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization and of a "nuclear facility" included under the first two paragraphs within the definition of "nuclear facility" below;
- vi. "nuclear facility" means:
- any "nuclear reactor";
 - any equipment or device designed or used for (a) separating isotopes of uranium or plutonium, (b) processing or utilizing "spent fuel", or (c) handling, processing or packaging "wastes";
 - any equipment or device used for the processing, fabricating, or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the Named Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - any structure, basin, excavation, premises or place prepared or used for storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

24. ASBESTOS Exclusion:

- a. This insurance does not apply to ASBESTOS LIABILITY. This Policy does not cover any obligation on Named Insured's part to indemnify any party for ASBESTOS LIABILITY; or, to indemnify any ASBESTOS LIABILITY assumed under contract;
- b. nor does it apply to any loss, claim or suit directly or indirectly resulting from, caused by or alleged to be caused by, ASBESTOS or ASBESTOS LIABILITY;
- c. Further, there is no obligation or duty on Company's part to investigate or indemnify CLAIM(S) or suits relating to ASBESTOS LIABILITY.

IV. CONDITIONS

A. Company's Authorization of a CIVIL PROCEEDING(S) to establish COVERED LITIGATION

1. As a condition precedent to the Company's review of the Named Insured's CLAIM(S), the Named Insured shall:
 - a. Submit to the Company in writing a properly completed and executed "Infringement Defense Claim" form provided by the Company. The CLAIM(S) shall include the MANUFACTURED PRODUCT(S) involved, a brief statement of the nature of the action brought against the Named Insured including the patents, copyrights, trademarks and/or trade dress alleged to be INFRINGED and the expected result; an explanation of how and when the alleged INFRINGING acts occurred and when the possibility of being involved in a CIVIL PROCEEDING(S) was first discovered by the Named Insured; and a projection quantifying the negative impact to the Named Insured if the CIVIL PROCEEDING(S) alleging INFRINGEMENT is successful.
 - b. Supply to the Company, no later than sixty (60) days from the date of the initial request for authorization, or any extension of time granted by the Company, the following:
 - i. A current FAVORABLE INFRINGEMENT OPINION letter written to the standards of the profession which sets forth the relevant claim, claims or protected rights of the patent, trademark, or copyright alleged to be INFRINGED and rendering an opinion of non-infringement favorable to the Named Insured. Such FAVORABLE INFRINGEMENT OPINION letter must be signed by independent, outside counsel selected from a list of firms, such list of firms provided by the Company, who will not be selected as Litigation Counsel and whose opinion was not considered by the Company when issuing this or a previous Policy for the Named Insured. Such FAVORABLE INFRINGEMENT OPINION letter must be obtained at the Named Insured's expense, or may upon agreement of the Company and the Named Insured be obtained from counsel selected and paid for by the Company. Regardless of the source of payment or choosing party, the Named Insured and the Company shall be joint clients of the opining counsel. The opinion letter should discuss validity of the patent, trademark, or copyright, the accusation(s) of INFRINGEMENT thereof by the accused Insured MANUFACTURED PRODUCT(S), and should conclude either there is no INFRINGEMENT, or the patent, trademark, or copyright is invalid, or there is no right of trade dress if trade dress is an issue;
 - ii. A description of the Named Insured's MANUFACTURED PRODUCT(S), including TRADEMARKS, TRADE DRESS and/or COPYRIGHTS; and, the trademark, trade dress, copyright, or in the case of a patent, the claims which are alleged to be INFRINGED, and whether the INFRINGEMENT is in the manufacture, sale, offer for sale, application, reproduction or use of the MANUFACTURED PRODUCT(S) or which, if any, combination thereof;
 - iii. Identification of the Plaintiff, together with all information Named Insured may have concerning such Plaintiff including a credit report, if available;
 - iv. Identification of the State, Federal District court(s) or foreign court(s), if applicable, having jurisdiction over the CIVIL PROCEEDING(S);
 - v. The Named Insured's preference for Litigation Counsel, who shall not have been prosecuting counsel for any intellectual property involved in the CIVIL PROCEEDING(S), nor whose opinion was considered by the Company when issuing this or a previous Policy for the Named Insured, nor who have or whose law firm has

acted as the author or contributor to a FAVORABLE INFRINGEMENT OPINION, nor who may act as coverage counsel for the Named Insured regarding this Policy, provided that such counsel must be admitted to practice and a member in good standing in at least one state or Federal judicial district or any foreign court having jurisdiction over the CIVIL PROCEEDING(S). The Company reserves the right to approve or disapprove counsel at its sole discretion.

- vi. A budget projection for LITIGATION EXPENSE(S), including, but not limited to, proposed attorney's fee arrangements, and estimated costs and expenses for expert witnesses, collection of evidence and items of proof, depositions, interrogatories, and discovery. The Company, however, reserves the right to approve the budget.
 - vii. A statement of any other relevant facts and circumstances relating to each patent, trademark, trade dress, copyright or CIVIL or INJUNCTIVE PROCEEDING;
 - viii. A copy of the complete prosecution file maintained by the U.S. Patent & Trademark Office and any summary or brief history of such file prepared by or on behalf of the Insured relating to each patent or trademark if applicable.
2. As a condition of being approved as counsel in any capacity, each attorney seeking approval shall agree, in writing, to the Company's Litigation Management Program Guidelines.
 3. The Company shall promptly acknowledge receipt of all material submitted under Section A.1. of this Article IV. The Company will, except as set forth in Section A.5. below, as soon as practicable, after receipt of all material required under Section A.1. of this Article IV., give its decision in writing on authorization of the CIVIL or INJUNCTIVE PROCEEDING in whole or in part to the Named Insured whereupon, if authorized, such authorized whole or part shall become COVERED LITIGATION. The Company's approval must be obtained in writing concerning the selection of Litigation Counsel and the budget for LITIGATION EXPENSE(S).
 4. The Company may deny authorization of a CLAIM(S) only under the following circumstances:
 - a. Fraud or material misrepresentation by the Named Insured.
 - b. Inability of the Named Insured to supply a FAVORABLE INFRINGEMENT OPINION from the independent outside counsel concerning validity and/or INFRINGEMENT as required in Article IV., Section A.1.b.i. above.
 - c. Disapproval by the Company of the Litigation Counsel, or the budget for LITIGATION EXPENSE(S). In the event of such disapproval, the choice of counsel and/or the budget may be submitted to mediation as provided in Article IV., Section I. below.
 - d. The CLAIM(S) is not covered by the terms and conditions of this Policy.
 5. The Insured must notify the party(s) bringing the COVERED LITIGATION within sixty (60) days after authorization of a CLAIM(S) that the MANUFACTURED PRODUCT(S) being charged with INFRINGEMENT are Insured under an Infringement Defense Cost and Damages Reimbursement Insurance Policy, unless such notice is waived in writing by the Company.
 6. The Company reserves the right to investigate the facts and circumstances surrounding Named Insured's CLAIM(S) prior to and after authorization has been given by the Company. If

authorization of a CLAIM(S) has been given, the Company reserves the right to investigate the facts and circumstances surrounding Named Insured's CLAIM(S), should the need arise, but only with the knowledge of the Named Insured and his Litigation Counsel.

B. Claims Made and Reported Coverage with Grace Reporting Period

1. This is a claims made and reported Policy. A CLAIM(S), on the appropriate Claim Form, must be reported to and received by the Company within the same POLICY PERIOD in which the CIVIL PROCEEDING(S) giving rise to the CLAIM(S) incepted for that CIVIL PROCEEDING(S) to be considered for COVERED LITIGATION status.
2. Notwithstanding Article IV., Section B.1. above, a Grace Reporting Period may apply, during which CLAIM(S) may be submitted based upon CIVIL PROCEEDING(S) incepted during the POLICY PERIOD:
 - a. If this Policy is renewed, or terminates by non-renewal, or if this Policy is cancelled or terminated by the Company for any reason other than nonpayment of premium or fraud or misrepresentation, the Company will accept for consideration CLAIM(S) on this Policy submitted to it within ten (10) days following the expiration of the POLICY PERIOD provided that the CIVIL PROCEEDING(S) is incepted no earlier than thirty (30) days prior to the expiration of the POLICY PERIOD.
 - b. If this Policy is canceled by the Named Insured for any reason, or cancelled by the Company for nonpayment of premium, fraud or misrepresentation, there is no Grace Reporting Period and the Named Insured may not submit any CLAIM(S) after the Effective Date of cancellation.
3. Any CLAIM(S) submitted during a Grace Reporting Period is governed by this Policy, and any LIMITS OF LIABILITY applicable to such CLAIM(S) will be a part of and not in addition to the LIMITS OF LIABILITY set forth on the Declarations Page of this Policy.
4. **COMPLIANCE WITH THE REQUIREMENTS FOR SUBMISSION OF A CLAIM(S) IN THIS SECTION IS A STRICT CONDITION PRECEDENT TO COVERAGE UNDER THE POLICY.**

C. Newly Added Products Subject to 90 Day Exclusionary Period

The Company will only accept and consider CLAIM(S) on CIVIL PROCEEDING(S) alleging INFRINGEMENT based in whole or in part on NEWLY ADDED INSURED MANUFACTURED PRODUCT(S) if such CIVIL PROCEEDING(S) are commenced no sooner than ninety (90) days after the Effective Date of the Endorsement adding such NEWLY ADDED INSURED MANUFACTURED PRODUCT(S) to this Policy.

D. Company's Right To Assume Named Insured's Defense

The Company shall have the right but not the duty to assume the defense of any COVERED LITIGATION against the Named Insured and, in such event, the Named Insured shall provide the Company with full cooperation and such information as the Company shall reasonably require. In the event the Company does not assume the defense of the Named Insured, the Company shall, nevertheless, have the right to effectively associate with the Named Insured in the defense and settlement of any matter that appears reasonably likely to involve the Company, including, but not limited to, exercising the right to effectively and meaningfully associate in the negotiation of a settlement and having its attorney made of record in the COVERED LITIGATION.

E. Company's and Named Insured's Other Rights and Obligations

1. The Company shall have no obligation to reimburse the Named Insured for LITIGATION EXPENSE(S) or to continue the defense (if the Company has assumed the defense) of the Named Insured after the then remaining applicable LIMITS OF LIABILITY in Item 4. of the Declarations Page has been exhausted.
2. The Named Insured shall not admit liability for, or settle any COVERED LITIGATION, stipulate to any judgment without the Company's prior written consent, which consent shall not be unreasonably withheld.
3. If the Named Insured refuses or fails, within thirty (30) days of mailing or delivering to the Named Insured a written recommendation from the Company, to consent to any settlement of COVERED LITIGATION within the Policy Limits recommended by the Company and acceptable to the claimant and such failure or refusal disadvantages or prejudices the Company, then:
 - a. the Company may withdraw from the defense of the Named Insured (if it has assumed the defense) by tendering control of the defense to the Named Insured, but irrespective thereof the Named Insured shall thereafter, at its own expense, negotiate or defend such COVERED LITIGATION independently of the Company; and
 - b. the Company's liability shall not exceed the smaller of
 - i. the then remaining applicable Limit of Indemnity, or
 - ii. the amount for which the COVERED LITIGATION could have been settled if such recommendation had been consented to, plus LITIGATION EXPENSE(S) incurred by the Company, and LITIGATION EXPENSE(S) incurred by the Named Insured prior to the date of such refusal.
4. Irrespective of whether or not the Insurer has assumed the duty to defend, the Insurer may always settle a CLAIM(S) by paying the amount of money demanded from the Named Insured by the claimant even if there is an ongoing risk of defamation or impairment of reputation or the like; and, making of such payment shall have the effect of satisfying in full the Company's entire obligation under this Policy with respect to such CLAIM(S).

F. False and Fraudulent Claims

If the Named Insured shall submit any CLAIM(S) knowing the same to be false or fraudulent, this Policy shall become void and all insurance hereunder shall be forfeited and all LITIGATION EXPENSE(S) incurred or reimbursed by the Company shall be returned.

G. Delayed Claims

After a period of one year from the expiration of the Policy the Company will not reimburse LITIGATION EXPENSE(S) or DAMAGES arising from any not authorized, but not withdrawn or denied CLAIM(S) (i.e., a delayed CLAIM(S)) in existence at the expiration of the Policy regardless of the reasons for such delay and regardless of blame or fault.

H. Cooperation of Named Insured

Commencing with the Named Insured's first knowledge of a potential CLAIM(S) and regardless of whether or not any CLAIM(S) has been submitted or authorized, the Named Insured shall fully cooperate with the Company in providing full information concerning any accusations or innuendos of INFRINGEMENT and all details relating in any way thereto including but not limited to demands and offers of settlement of such matters.

Throughout the course of any COVERED LITIGATION, the Named Insured shall fully cooperate with the Company in providing full information concerning the conduct of COVERED LITIGATION, including the selection and briefing of counsel, review of all attorney bills, choice of forum, if any, the general and specific conduct of COVERED LITIGATION, and any in or out of court settlement negotiations. Named Insured shall cooperate with Company in providing other documents and material as Company may request from time to time.

I. Mediation and Choice of Law

1. This Policy shall be interpreted according to the law of the state and federal judicial district of New York notwithstanding any rules for conflict of laws.
2. **Upon mutual agreement** any dispute between the Named Insured and the Company arising out of this Policy shall be promptly referred to mediation for settlement. Such mediation shall be held in New York unless waived by both parties.
3. No litigation against the Company under this Policy upon any CLAIM(S) or any other action relating to any CLAIM(S) shall be sustainable unless all the requirements of this Policy shall have been complied with, and unless commenced within twelve (12) months after the Company's authorization or denial of such CLAIM(S) or part thereof.
4. Matters referred to mediation under this Policy shall be heard by a single Mediator which shall be selected by the Company and the Named Insured from a mediation service mutually agreed upon by the parties.
5. For any dispute arising out of Article IV., Section A. of this Policy, the Mediator shall be admitted to practice before the US Patent & Trademark Office.
6. The cost of Mediation shall be shared equally between the Named Insured and the Company including any administrative fees, costs and Mediator's charges.

J. Waiver of Jury Trial

Named Insured and the Company acknowledge and agree that any controversy that may arise between them under this Policy is likely to involve complicated and difficult issues, and therefore each hereby irrevocably and unconditionally waives any right it may have to a trial by jury in any litigation directly or indirectly arising in connection with this Policy. Each party certifies and acknowledges that this waiver is made voluntarily and in reliance upon the conditions and representations of this Policy.

K. Recovery of Costs

In the event that any COVERED LITIGATION results in the Named Insured receiving:

1. RECOVERED COSTS, such recovery shall be shared between the Company and the Named Insured pro rata in proportion to their respective contributions to LITIGATION EXPENSE(S); and/or

2. an award, if any, of court costs and/or attorneys' fees, the same shall be shared between the Company and the Named Insured pro rata in proportion to their respective contributions to LITIGATION EXPENSE(S); provided that, in no event shall the Company be entitled to recover, under the above Paragraph 1. and this Paragraph 2. combined, a sum greater than the total of all its reimbursements in respect to the COVERED LITIGATION.

L. Subrogation

In the event of any payment under this Policy, the Company shall be subrogated to all of any Named Insured's rights of recovery therefore against any person or organization, and such Named Insured shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights for the Company. The Named Insured shall do nothing to prejudice such rights either before or after a CLAIM(S). Any amount recovered in excess of the Company's total payment shall be restored to the Named Insured, less the cost to the Company of recovery.

M. Termination of Coverage

1. Cancellation by Named Insured:
This Policy may be canceled at any time by Named Insured upon prior written notice to the Company stating the Effective Date of cancellation and return of the Policy to the Company, provided such Effective Date is the same or later than the date of the Company's receipt of such notice.
2. Cancellation by the Company
This Policy may be canceled by the Company at any time by the giving of not less than thirty (30) days' written notice to the Named Insured at the last known address; provided, however, that not less than ten (10) days' written notice shall be given for non-payment of premium and not less than two (2) days written notice for fraud or material misrepresentation.
3. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
4. If the Company cancels, earned premium shall be computed pro rata. If the Named Insured cancels, earned premium shall be computed in accordance with customary short rate tables and procedures.
5. In the event that this Policy expires or is canceled by the Company in accordance with Paragraph 2 of this Section, except for cancellation for fraud, material misrepresentation or nonpayment of premium, such cancellation or expiration shall not terminate the Company's obligation to continue to reimburse the Named Insured for LITIGATION EXPENSE(S) and DAMAGES (if included on the Declarations Page) incurred in respect to any CLAIM(S) existing at the time of expiration or cancellation; moreover, such cancellation or expiration shall not affect the Company's right to recovery of costs, as provided in Article IV., Section J.

N. Minimum Earned Premium

The minimum earned premium for this Policy is twenty percent (20%) of the premium stated in Item 3. of the Declarations and is not subject to short rate or pro rata adjustment in the event of cancellation by the Named Insured. In the case of multiple year policies, the minimum earned premium is twenty percent (20%) of the first year's premium.

Cancellation for nonpayment of premium after the Effective Date of this Policy shall be deemed a request by the Named Insured for cancellation of this Policy, thereby activating the foregoing minimum earned premium provision.

O. Transfer or Assignment

This Policy may not be transferred, sold, or assigned by the Named Insured. The Company may transfer, sell or assign this Policy only with the sale of substantially all of its assets.

P. Excess Insurance

The insurance provided under this Policy shall apply only as excess insurance over any other valid and collectible insurance available to the Named Insured unless such other insurance specifically applies as excess insurance over the Limits of Liability provided herein.

In the event any other Insurer, including but not limited to, any Professional Liability Insurer or any General Liability Insurer, denies coverage or indemnification as the case may be for any reason whatsoever for an INFRINGEMENT which may be covered under a policy issued by such Insurer and also covered hereunder, written notice shall immediately be given by or on behalf of the Named Insured to the Company. Such notice shall contain the reason for such denial as stated by such other Insurer. As a condition precedent to the Company authorizing a CLAIM(S) under this Policy, the Named Insured, upon the Company's request, shall initiate legal proceedings against said other Insurer to determine by final judgment the legality of its position. If such legal proceedings described above are unsuccessful, expense incurred by the Named Insured with the prior approval of the Company shall be considered LITIGATION EXPENSE(S).

Q. Excess Indemnity

The insurance provided under this Policy shall also apply only as excess indemnification over any other indemnification available to the Named Insured from whatever source. In the event any Indemnitor denies any indemnification for any reason whatsoever for an INFRINGEMENT which may be covered under an indemnification provision of an agreement between itself and Named Insured or legal obligation of indemnification for the benefit of the Named Insured including but not limited to provisions under the UCC, and also covered hereunder, written notice shall immediately be given by or on behalf of the Named Insured to the Company. Such notice shall contain the reason for such denial as stated by the Indemnitor. As a condition precedent to the Company authorizing a CLAIM(S) under this Policy, the Named Insured, upon the Company's request, shall initiate legal proceedings against the said Indemnitor to determine by final judgment the legality of its position. If such legal proceedings described above are unsuccessful, expense incurred by the Named Insured with prior approval of the Company shall be considered LITIGATION EXPENSE(S).

R. Conformity to Statute

In the event that any terms of this Policy are found to be in conflict with any terms mandated by the statutes of the jurisdiction in which this Policy is issued, such terms shall be deemed to be reformed to conform to those mandatory terms. The provisions of this Policy are severable, and the voiding of any provision by operation of law shall not void the entire Policy, but only such provision or provisions.