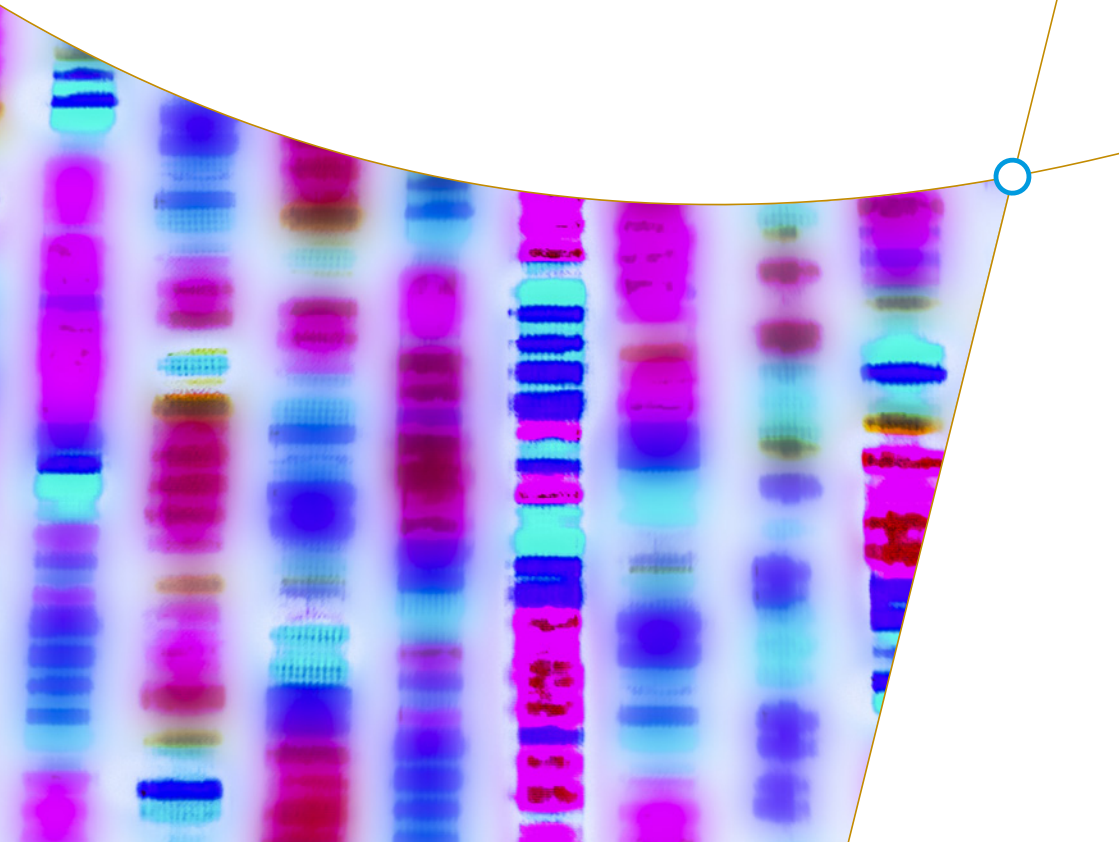




Intellectual Property Biotechnology

Healthchex is a large US biotechnology organisation, with international operations and USD800M of revenue globally. Like many life science companies, Healthchex has a growing Intellectual Property (IP) portfolio, which includes trademarks, copyright and patents.

One of its main income streams is a DNA sequencing and analysis software platform, which it licences to third parties for a wide range of uses such as cancer detection and treatment. These licensing contracts require Healthchex to indemnify the licensee for all costs associated with any allegation that the platform infringes a third-party IP right.



Case example

One of Healthchex largest new licencees is a Research & Development (R&D) company called Newline. Shortly after announcing this new partnership, Newline receives a warning letter from a competitor, alleging that the DNA sequencing and analysis software platform infringes their patent rights. Newline immediately notifies Healthchex, who are contractually required to take control of any defence and cover the associated costs.

Healthchex is driven to resolve the dispute to protect its relationship with Newline, and potentially its other licencees of the DNA sequencing and analysis platform. To defend both itself and Newline, Healthchex appoints legal counsel to review the claims and advise upon the best course of action. Intensive negotiations are ongoing for 10 months before a mutually agreeable settlement payment is determined, requiring Healthchex to pay USD800k in prior damages. The legal fees totalled USD1.15m.

Impact of IP policy

Healthchex purchased an IP policy from Tokio Marine Kiln (TMK), which covers infringement allegations brought against contractually indemnified customers. As soon as Newline alerted Healthchex to the warning letter, a notification was made against the TMK policy and coverage was triggered. TMK was able to assist Healthchex in appointing defence counsel and provided regular reimbursements for fees throughout the negotiations. The TMK policy also indemnified Healthchex for the prior damages owed as part of the settlement agreement (above the excess, net of co-insurance and subject to all policy terms and conditions).

Key takeaways

- Organisations should review and quantify contractual indemnity provisions in their licensing agreements to inform risk management and transfer decisions.
- IP disputes leveraged against an organisation's customers can bring additional commercial and financial pressures.
- IP litigation can be very expensive, even if the case never makes it to court.
- An IP insurance policy from TMK can provide financial peace of mind, alongside access to a wealth of expertise in handling IP disputes.

An IP insurance policy from TMK can provide **financial peace of mind and support** when it comes to managing complex disputes

To Be a **Good Company**

Tokio Marine Kiln

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority under Firm Reference Number: 204909. Registered office is located at 20 Fenchurch Street, London EC3M 3BY Registered Number: 729671. Tokio Marine Kiln is a trading name.