

# KARNATAK UNIVERSITY DHARWAD



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## INTELLECTUAL PROPERTY RIGHTS

**2021-22**

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## 1. PREAMBLE:

Karnatak University, Dharwad was established by the Bombay Legislature of the erstwhile Bombay Presidency through the Karnatak University Act, 1949; and became a statutory university on 1<sup>st</sup> March, 1950. It is a premier institution of higher education, post-graduate teaching and research in north Karnataka. It is both a residential and an affiliating university. In conceiving the future course of the University, the objectives enshrined in the Karnatak University Act 1949, emphasized that the new University would make provision for imparting education and promoting research in the humanities, learned professions, sciences, especially of applied nature and technology. In the responsibility of producing and disseminating knowledge there is inherent need to encourage creativity and scholarly works for the developments of new and useful materials, devices, processes and other intellectual property. In the University, faculty members, research scholars and the students are engaged in research and development work of considerable importance. Such works may lead to evolution of intellectual property know-how, copy-rights, designs, instruments, devices, processes, specimen, software and other inventions having potential for commercialization with or without the registration under different Acts enacted by the Government for protection of intellectual properties. The creation of intellectual property not only contributes to the professional development of the individuals involved, but also enhances the reputation of the University, provides educational opportunities for students and promotes public welfare. Particularly, a commercial exploitation of the intellectual property can be of considerable socio-economic benefit to the country. The University, therefore, supports and encourages the efforts directed towards bringing the fruits of University research in diverse fields of knowledge to public use and benefit while protecting the interests of the scholars.

To meet the goals envisaged in the preamble of the Act, the university is committed to providing an environment where scholarship and innovation

can flourish and those participating in these endeavors can be suitably rewarded for their efforts. At the same time, the university also recognizes that certain intellectual properties can be developed as a result of the environment and the facilities provided by the University and there exists a special relationship between the University and its staff and scholars. As such also the University wishes where appropriate to gain benefit from intellectual property so created by the faculty and students. Such benefits may not only be monetary, but also in the form of the transmission of such knowledge to the future generations of students, scholars and faculty. At the discretion of the individuals to develop the knowledge, the request for the registration of a patent/copy-right will be considered prior to its commercial exploitation. In order to establish the respective rights and obligations of the University, its faculty, research scholars, students and other employees in intellectual property of all kinds now and hereinafter existing, the University is adopting this ordinance governing intellectual property policy (hereinafter referred to as 'the IPR Policy'). The policy shall govern the intellectual property rights of the University, faculty members, research scholars, students and other connected with the work, product, ideas and inventions created in connection with the activities of the University.

**The IPR policy shall be amended/revised/updated as per the directive of state and central government authorities from time to time.**

## **2. PURPOSE:**

The purpose of the IPR Cell is to:

- Facilitate, encourage, promote, and safeguard scientific enquiry, research pursuits, and the academic freedom of its faculty, researchers, and students.
- Provide a clear understanding of the rights and responsibilities of the faculty staff and students to protect their research work.
- Create an innovative culture which fosters the creation and development of IPR at the institution.

- Establish an IPR management policy and procedural guidelines for converting the knowledge generated to wealth.
- Enable the institute to make beneficial use of intellectual property (IP) so as to confer maximum benefit to the inventors, the institution, and the society at large.
- Any other as required (can be added)

### **3. THE POLICY OBJECTIVES:**

The University has formulated this intellectual property policy for the management of intellectual property to:

- i. Foster, stimulate and encourage creative activities in the widest sense in the areas of Technology, Science, Arts and Management.
- ii. Protect the legitimate interests of the University, faculty, scholars, students and other members of the University and the society at large and to help resolving possible conflicts of opposing interests.
- iii. Put in place a transparent administrative system for the ownership control and assignment of intellectual properties and sharing of the revenues generated by the intellectual properties developed and owned by the University.
- iv. Evolve an organization structure and procedures through which inventions and discoveries made in the course of university research may be made readily available to the public through channels of commerce.
- v. Establish standards for determining the rights and obligations of the university, creator of intellectual property (for example inventions, developers, authors) and their sponsors with respect to inventions, discoveries and works created at the university.
- vi. Ensure compliance with applicable laws and regulations and enable the university to secure sponsored research funding at all levels of research; and

- vii. Enhance the reputation of the university as an academic research institution and a member of society by pursuing the highest ideals of scholarship and teaching and by conferring the benefits of that scholarship and teaching on the university community and society.
- viii. The IPR policy provides the mechanism for preservation and use of intellectual property and procedures through which invention and discoveries made in the course of university research are disseminated to the public through the transfer of technology. As the scope of intellectual property and the mechanism for the transfer of technology are vast, it is not possible to address all the possibilities in this policy. However, the university aims to generate intellectual property for society use and benefit while raising income to support research and education.

#### **4. DEFINITIONS:**

In these statutes:

- (i) Assignment** means the transfer of rights or title in the Intellectual Property in writing.
  
- (ii) Karnatak University or the University** shall refer to Karnatak University established under the Karnatak University Act of 1949 and to any other entity associated with it.
  
- (iii) Copyrightable Materials** Copyright and Copyrightable materials areas defined in the Indian Copyright Act. These shall include the following in original: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other visual aids; (4) video

and audio tapes or cassettes; (5) livevideo

and audio broadcasts; (6) programmed instructional materials; (7) research notes, research data reports, and research notebooks; and (8) other materials or works other than software which qualify for protection under the Indian Copyright Act,1957.

**(iv) Creator(s)**

mean the faculty, staff, and other persons employed by the University whether full or part-time; visiting faculty and researchers; and any other persons, including students, who create intellectual property using University resources.

**(v) Confidential Disclosure**

means an agreement between disclosing and recipient parties, or a term in a Research Contract or License Agreement.

**(vi) Direct Expenses**

are the costs associated with the development, protection, maintenance and licensing of intellectual property. Such costs do not include the regular payment of salaries or other overhead costs of the University.

**(vii) Educational Materials**

means the content and associated tool sand technologies for delivery of content, including materials developed for traditional “face to face” classroom courses, as well as other delivery methods such as Internet web-base delivery or other distance learning media. For

the purposes of this Policy, Educational Materials do not normally include works such as textbooks, articles, papers, scholarly monographs, or artistic works produced in the normal course of academic scholarship.

**(viii) Invention Disclosure**

means a written description of an invention that is confidentially made by the inventor to the University.

**(ix) Intellectual Property**

Intellectual Property shall include Patents, Trademarks, Copyrights, Trade Secrets and other species such as computer software or printed material, any new and useful process, machine, composition of matter, life form, article of manufacture, software, copyrighted work, such things as new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, data sets, software, musical processes, or unique and innovative uses of existing inventions. For the purposes of these Ordinances Intellectual Property may or may not be patentable or copyrightable.

**(x) Know how**

means the knowledge, innovations, practices, expertise, processes or procedures, and secrets of individuals regarding the use of a material, product or resource, or the practice of a method, for a particular purpose.



- (xi) Project A/c Book** means the A/c Book in Annexure to these Ordinances.
- (xii) Publication** means a public enabling disclosure of an Invention, and may be verbal or printed. Printed publications include abstracts, student theses and, in certain instances, grant proposals.
- (xiii) Patent and Patentable Materials** are as defined in Indian Patent Act. These include discoveries and inventions of new products and process.
- (xiv) Sustainable Use of University Facilities or Resources** means the regular utilization of University facilities, equipment, personnel or other resources owned by the University.
- (xv) University Research** means any research or development activity which is undertaken by the University, or which is related to duties and responsibilities for which a person is compensated by the University, or which is conducted with substantial use of University facilities, or resources.
- (xvi) University Resources** means all tangible resources provided by University to Creators, including office, lab, studio space and equipment; computer hardware, software, support; secretarial service; research, teaching, and lab assistants;

supplies; utilities; funding for research and teaching activities, travel; and other funding or reimbursement. “University resources” do not include payment of regular salary, insurance, or retirement plan contributions paid to, or for the benefit of, Creators.

## **5. SCOPE OF THE ORDINANCES:**

These Ordinances governing Intellectual Property Policy apply to faculty, staff, graduate students, post-doctoral fellows, and non-employees (including visiting faculty, affiliate and adjunct faculty, industrial personnel, fellows, etc.) who participate in research projects in the University.

## **6. RESPONSIBILITY OF THE UNIVERSITY:**

The responsibility of the university is to make sure that IPRC functions smoothly. The function of the IPRC shall include, but would not be limited to, the following:

- a) The above mentioned eleven members shall constitute the quorum of IPR Cell.
- b) The IPR cell shall be reconstituted every 3 years from the time of formation.
- c) Meeting: the meeting of IPRC shall be convened once a month by the Member Secretary.
- d) Assigned Responsible Person: At least one person shall be assigned in IPRC office to operate it regularly. This person could be the Member Secretary, Dean R&D or any other person assigned with the responsibility. (should have

undergone training in IPR at RGNIPM in Nagpur or a similar Institute).

- e) Infrastructure: There shall be a separate space within the University for IPR Cell office. For Universities where Technology Transfer Centers have been established under RUSA or any other public funding source, IPCR will be established at that center. The required minimum infrastructure for proper functioning of the IPRC shall be made available. (Infrastructure-like room, computer terminals with access to xyz database)
- f) IP Counselling: IP Cell will counsel and interact with inventors of potential inventions? Intellectual properties/ Products and assist the in identifying/ assessing the IPR potentials.
- g) IP Management: filing, maintaining and monitoring and managing of patents and coordination between attorneys, faculty inventor(s), and other authorities.
- h) IP Transactions: Advising, drafting and monitoring of all IPR related MOUs.
- i) IP Policy Formulation: Framing of IP policy and amendments from time to time according to need. The IPRC shall lay down its own procedure for conduct of its works.

- j) Promotions IP Awareness: The IPRC will undertake such measures which promote awareness of IP rights and strive to develop an IPR culture within.
- k) Assistance inTechnologyTransfer:The Cell shall handle transfer and licensing of all IP developed in the University and at the technology transfer center.
- l) Reporting on IP Assets and IPR Management: IPRC will periodically submit reports on IP assets to the University for Consideration and advice.
- m) The IPRC shall make any other IP related recommendations to the Vice-Chancellor.
- n) The University shall provide adequate support for smooth functioning of the IPR cell.
- o) IPRC shall act to redress any conflict, grievance regarding ownership of I, processing of IP proposals, procedures adopted for implementation of IPR policy and interpretation of various clauses of IPR policy.
- p) Investigate the matters of violation/infringement of any Intellectual Property Rights.
- q) IPRC shall approach funding agencies, venture capitalists etc. for funds promotion of IPR activities, tie-up with organization for filing, licensing/assigning of IPR on revenue sharing basis,

to provide waivers and release of IPR to Inventors(s) and/or  
Third party (ies) within the framework of IPR policy.

r) Any other as required (can be added)

## **7. INTELLECTUAL PROPERTY AND OWNERSHIP:**

The following section deals with creation, disclosure, ownership, sharing, and payments towards Intellectual Property Rights, and related responsibilities/ obligations of various parties.

### **7.1 Disclosure Obligations:**

Covered persons are required to notify the university's IPR Cell of each supported invention, incidental invention through a disclosure document as prescribed by the IPRC.

### **7.2 Ownership Determination:**

Upon review of the disclosure document, IPRC will determine whether the invention is a supported invention or an incidental invention, and, in case of a supported invention, shall further determine, with assistance from patent counsel, who are the inventor(s), consistent with university patent policy. The university shall have the right to own and each inventor, at the university's request, shall assign to the university all of his/her rights, title and interest in a supported invention. Ownership of an incidental invention shall remain with its inventor(s), subject to any rights that may be granted to the university as required by this policy.

### **7.3 Filing of Patent Applications:**

IPRC shall be solely responsible for determining whether a patent application shall be filed on a supported invention; determinations may be made on the basis of commercial potential, obligations to and rights of third parties, or for other reasons which IPRC, in its discretion, deems appropriate. Inventor(s) of a supported invention for which patent applications are filed shall cooperate, without expense to the inventor(s), in the patenting processing

all ways required by the university or its agents or designee. IPRC shall take decision within one month of filing the patent application for its applicability.

#### **7.4 Interest of the Inventor:**

In case the IPRC decides not to pursue filing patent application for certain invention, and gives such decision in writing, the inventor(s) is free to pursue filing of patent by own funds and in own name.

#### **7.5 Commercialization:**

IPRC shall have the sole discretion with respect to the commercialization of a supported invention, but shall take into account the public interest. Where a supported invention is subject to an external agreement with a third party (for example, the Central or State Governments, or other funding sponsor), IPRC shall make decisions consistent with that agreement. IPRC shall make decisions concerning commercialization as it deems appropriate and shall make reasonable efforts to keep inventor(s) involved and informed of its commercialization efforts (and vice versa).

#### **7.6 Royalty Sharing:**

Where royalties are generated by the university as a consequence of commercializing a supported invention, royalties will be shared with the inventor(s) as described in the section on 'Royalty Sharing' of this policy. The university shall have the right to modify the royalty sharing section of this policy.

#### **7.7 Release of Inventions:**

Where the university determines that it will not file a patent application on a supported invention, abandons a patent application on supported invention prior to issue of the patent, or abandons an issued patent on a supported invention, the inventor(s) may request a release of the invention. Upon determining that releasing the invention to the inventor will not violate the terms of an external funding agreement and is in the best interests of the university and the public, IPRC may agree to a release and in such case will assign or release all interests which it holds or has the right to hold in the inventor(s) in equal shares, or such other shares as all the inventors may

agree. Release of supported inventions may be conditioned upon, among other things, agreement by the inventor(s) to the following:

- a. To reimburse the university for all out of pocket legal expenses and fees incurred by the university if and when the inventor(s) receive income from the invention.
- b. To share with the university 20% of the net income (income remaining from gross income after repayment of university expenses above and the inventor(s)' and licensing expenses) received by the inventor(s) from the invention. Income subject to this revenue sharing provision includes equity received by inventor(s), consideration for the invention but does not include financing received for purpose of research and development.
- c. Upon request, to report to the university regarding efforts to develop the invention for public use and, at the university's request, to reassign those inventions, which the inventor(s), their agents, or designees are not developing for the benefit of the public.
- d. To fulfill any obligations that may exist to sponsors of the research that led to the invention.
- e. To grant back to university an irrevocable, perpetual, royalty-free, non-exclusive, worldwide right and license to use the invention for its research, education, and other purposes (like clinical care) and a right to grant the same rights to other non-profit institutions.
- f. To agree to such limitations on the university's liability and indemnity provisions as the university may request.

### **7.8 University's Rights in Incidental Inventions:**

In recognition of the contribution the university and community as a whole makes in support of innovation at the university, inventor(s) agree to grant to the university an irrevocable, perpetual, non-exclusive, royalty free, worldwide right to use incidental inventions in the university's non-profit educational and research activities.



## 8. OWNERSHIP OF INTELLECTUAL PROPERTY

**(i) General Statement of Ownership:** Subject to the exceptions mentioned hereinafter, all intellectual property (including lab notebooks and other tangible intellectual property) created as a result of University research or created by substantial use of University facilities or resources shall be owned by the University and the Creator of intellectual property jointly and where there has been external Corporate, Foundation, Trust or Industrial funding it shall be owned by the University, Creator of intellectual property and Corporate funding agency, if any, jointly provided such corporate funding agency has provided Rs.10 lakhs or more for a particular research/invention/intellectual creation under a specific agreement with the University. Intellectual property rights of which the University is the co-owner shall be managed by the Intellectual Property Cell as defined hereinafter.

**(ii) Exceptions to the General Statement of Ownership:** The Creator at his option may retain ownership of the following:

- a. All intellectual property developed without substantial use of University resources.
- b. All rights in artistic, literary and scholarly intellectual property, such as scholarly books, articles, and other publications (including those in electronic form). Works of art, literature and music recordings are owned by their creators despite the use of University resources so long as such works are not the products of University research, neither created under the direction and control of the University, nor developed in the performance of a sponsored research or other third-party agreement; and

- c. All copyright in papers, theses and dissertations written as a student to earn credit in University courses or otherwise to satisfy University degree requirements.
- d. **(iii) Other Ownership Options:** Upon mutual agreement, a creator may assign intellectual property he or she would otherwise own to the University to be managed by the Intellectual Property Cell. If the University cannot, or decides not to, proceed in a timely manner to protect and/or license University-owned intellectual property, it shall assign ownership to the creator upon request to the extent permitted by these Ordinances and third-party agreements, if any.

**(iv) Publication:** The University faculty and students may freely publish results of their research provided such research does not lead to copyrightable/patentable intellectual property.

## **9. CREATION OF INTELLECTUAL PROPERTY**

Intellectual Property consisting of Patentable or Copyrightable material can be created in the University in the following three ways:

- a. University undertaking an assignment either from an external agency or by its own decision to take up creation of a specific Copyrightable or Patentable material and assign a team of its researchers to accomplish it.
- b. Individual researchers or a team of researchers may develop copyrightable or patentable material during the course of their research or as a specific Project.
- c. An external funding agency, be it a Foundation, Trust, Industry, Commercial undertaking or a company may enter into a specific agreement with the University and research/team of researchers to develop some specific Copyrightable or Patentable material.

## 10. RESPONSIBILITIES OF THE UNIVERSITY

The University Administration shall:

- a. At its discretion assign management including patenting/ copyrighting, negotiating and assigning or licensing commercial use of such intellectual property in which it has stake/share to the specified agency created for this purpose by CSIR and called ----- under such terms as university may consider reasonable or university may manage such intellectual property through IPC. Provided however that if the specialist CSIR agency or IPC, as the case may be, fails to serve patent/copyright within one year of Patentable/ Copyrightable material being made available by the inventor/ creator or fails to assign/license patented/copyrighted material to economic use, during further period of one year, the inventor/creator will have the right to withdraw right of management of patentable/copyrightable or patented/ copyrighted material to himself and take further action to manage it himself and thereupon the right of the specialist agency/IPC to manage it will stand terminated.
- b. Educate faculty members, staff and others regarding University's intellectual property. Provide support as it deems necessary or desirable to obtain legal protection of intellectual property in which University has stake/share. Facilitate the transfer of such intellectual property for economic use and develop mechanisms within these statutes for the assignment and management of Intellectual Property;
- c. Provide legal support as it deems necessary and desirable to defend and protect the interests of the University and the creators of the intellectual property against third party claims or unauthorized use; Share royalties, equity or other income

derived from intellectual property in which University as stake/share;

- d. Report to research sponsors as required by research and Licensing agreements, and applicable laws and regulations in a timely manner.
- e. Provide oversight of Intellectual Property management and technology transfer to ensure adherence to these Ordinances.
- f. Take appropriate actions to protect the Intellectual Property in which university has stake/share. The University acknowledges the importance of transferring its Intellectual Property in an appropriate, timely and cost-effective manner. To that end, the University shall establish efficient mechanisms for assignment of Intellectual Property, so as to maximize the value of the intellectual property for the creator/ funding agency if any and/or the University.

## **11. RESPONSIBILITIES OF THE CREATORS OF INTELLECTUAL PROPERTY**

The creator of the intellectual property shall

- a. make an invention disclosure in a thorough and timely manner of all inventions, discoveries and other works that are patentable/copyrightable and in which University has stake/share as described in these Ordinances.
- b. provide such assistance as may be necessary throughout the assignment process to protect and effectuate transfer of the intellectual property;
- c. arrange for the retention of all records and documents that are necessary to the protection of the intellectual property;
- d. abide by all commitments made in license, sponsored research and other agreements made in accordance with these Ordinances.

- e. have the further responsibility to properly consider, disclose and manage any possible conflicts of interest arising from agreements to commercialize intellectual property. If multiple agreements exist, for example, when a company funds University research and also has a consulting arrangement with the creator, there may be conflicts created with respect to intellectual property rights. The creator should work with the IPC to resolve such conflicts.
- f. to manage, including bearing patent/copyright, assigning it for economic use or licensing it similarly on terms to be finalized jointly by head of IPC, inventor/creator and financing agency if any for the research project which lead to such an invention/creation, in situation referred to in 9(a) when inventor/creator has withdrawn the right of management of intellectual property from the specialist agency of CSIR/IPC due to their non-performance. Provided that income from any such assignment/licensing for economic use will necessarily be receivable by the University in totality and distribution of inventor's/creator's and financing agency's share will be the exclusive responsibility of the University.

## **12. REGISTRATION OF PATENTS /COPYRIGHTS:**

### **12.1. Filing of Applications in India**

Creators/Inventors of the know how/products/instruments/devices/processes/specimens and other such IP, who want to get patent(s) for the patentable IPs, are required to make an application for the purpose to Dean (Research), KUD as per the procedure specified by KUD at the time. In case, a sponsor of the research leading to the IP has contractually undertaken the responsibility of filing of applications, the Creator/Inventor may interact with the sponsor for

the filing, after informing the Patent Cell/Central Research Facility of the same. The Creator is required to keep the Patent Cell/Central Research Facility informed of the progress of the application as it goes through various stages. In such instances, the details of the application such as Patent application number title, name(s) of Creators/Inventors, etc must be provided, although the invention details need not be provided as long as the details are not public knowledge in the patenting process.

Creator(s)/inventors are encouraged to file a provisional patent as soon as possible in order to protect their rights to the IP. As part of this process, a search report can also be obtained on existing patents that may relate to the key contributions of the proposed patent, to assist the Creator(s)/Inventor(s) in their decision regarding filing of an application with the help of KUD – IPR consultant. If the Creator(s)/Inventors can pay for the cost of provisional filing from (a) the funds of the research project resulting in the IP, or (b) personal financial resources of the creator(s), the permission for filing of provisional patent will be given automatically before evaluation of the application made by the creator(s)/inventor(s) by the IPR Committee. However, should KUD after due evaluation decide not to manage the IP, the provisional application will lapse, unless the creator(s) decide to take up the subsequent stages on their own. If Institute decides to jointly or fully own and manage the IP, it will bear all costs related to filing and protection after the date on which it decides to do so.

IP-related information will either not be disclosed at all, or be provided on a need-to-know basis to certain employees of KUD. All Institute employees associated with any activity of KUD shall treat all such IP-related information, which they may have access to as part of their official duties, as confidential. Such confidentiality shall be maintained till such time as required by KUD or by the relevant contract, if any, between the Institute and concerned parties, unless such knowledge is in the public domain or is generally available to public.

## **12.2. Filing of Applications in Foreign Countries**

KUD may consider requests for registration of Patents in foreign countries, based on the merit of the IP. Typically, the process to be followed in such cases is the filing of a provisional application, detailed evaluation of the commercial potential of the IP in the countries proposed for filing, filing of PCT application in case such potential is present, followed by national phase filing in the selected countries. During the time before the process reaches the national phase, the commercial potential will be continually assessed, and if at any time it appears that the commercial potential in a foreign country appears to be low, KUD may decide not to file in the particular country. During this period, the Creator(s)/Inventor(s) are also encouraged to apply for financial support for international filing being provided by several ministries / industries or other commercial organizations. If KUD decides not to file such a patent in any foreign country. KUD shall assign the rights for the IP in that country to the Creator(s)/Inventor(s) and permit the Creator(s)/Inventor(s) to protect the IP in that country either on their own or in partnership with a sponsor. Any revenue accruing to the Creator(s)/Inventor(s) as a result of exploitation of the rights assigned to the creator(s)/inventor(s) in that country will be subject to the rules for sharing of revenue with the Institute that are applicable to creator(s)/inventor(s) as per their employment / enrolment contracts. The creator(s)/inventor(s) may seek re-imburement of the costs borne by them for protection of the IP in that country from the revenue prior to sharing with the Institute.

In case the patenting costs are borne by the sponsor of a research project as agreed upon in the contract/agreement, the Patent Cell/Central Research Facility only needs to be kept informed of the progress of the international patent application(s) through various phases such as PCT, national phases, etc. The sponsor may choose any legal firm of their choice, for the filing. If KUD takes up the filing, the Creator(s)/Inventor(s) are required to engage KUD approved IPR Expert/Firm for filing from time to time.

## **13. TECHNOLOGY TRANSFER ACTIVITIES:**

### **13.1. Assignments, disclosure & confidentiality**

The creator shall make a confidential disclosure to the IPC in writing as soon as possible if the University has an ownership interest and if the intellectual property/technology may be patentable, copyrightable or has potential for commercialization and licensing. The IPC will provide disclosure forms on request. The creator may consult IPC with respect to his duties to disclose inventions and the manner and timeliness with which such disclosures should be made to the IPC. The disclosure should contain sufficient detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation and technical characteristics of the creation. The creator(s) should also be responsible to update the IPC in a timely manner of any developments involving publications, sale or use of which he becomes aware after the confidential disclosure.

### **13.2. Determination of Intellectual Property for protection and commercial development**

- a. If the creator claims an ownership interest in intellectual property or has a question about whether an assignment must be made to the University, the intellectual property shall be disclosed to the IPC and the claim or question clearly stated. The University, through the IPC, will provide a determination of rights within a reasonable time following submission, generally not to exceed 90 days. The determination may be appealed to the Vice-Chancellor for a final adjudication.
- b. The IPC will evaluate inventions and other intellectual property disclosed to the IPC to suggest the form of intellectual property protection, if any, that should be considered and also the potential



for commercial exploitation. Thereupon it shall either assign the task of securing patent/copyright in the intellectual property and of managing its subsequent economic use to the specialist agency of CSIR or do so itself in a timely and efficient manner. Direct expenses associated with obtaining protection for intellectual property in which University has stake/share shall be borne by the University if such intellectual property is being managed by the IPC, by the specialist agency of CSIR if University has entrusted management of a particular intellectual property to it and by the creator/inventor if he has withdrawn management of intellectual property from specialist agency of CSIR/IPC on grounds of non-performance.

**13.3. Agreement among the University, Creators and Companies, for financial research leading to invention/discovery and its economic use**

When a researcher in the University does research leading to invention/discovery/creation or when a public funding agency funds such research in the University there is no need for an agreement to be drafted and executed. However when an Industry, Company, Foundation or Trust provides full funding beyond the available resources and equipment in the University, an agreement between the University, Principal Researcher and authorized representative of the Funding Agency (Company, Industry, Trust or Foundation) must be executed in each case before such sponsored research is taken up. Such agreement must provide for:

- a. management of intellectual property as provided for in this Ordinance.
- b. that the funding agency shall have right of first and exclusive use of intellectual property created through such sponsored research and for share of the University and researcher in income to be

derived from economic use of such intellectual property to be determined on revenue sharing basis of which the details will be specified in the agreement. Provided that the funding agency may agree to license use of such intellectual property in the beginning itself or subsequently at any stage, to other commercial/ industrial bodies on terms to be decided jointly by the signing parties at the time of such agreement in each case.

- c. share of the University and of inventor/creator in income from funding agency or share of funding agency, University and inventor/creator in income from any other third party shall be receivable in all cases by the University only. It shall be upto the University to determine and distribute the share of inventor/creator subsequently in the first case and of funding agency and inventor/creator in the latter case.

#### **13.4. Indemnification**

The commercial entity funding the research will normally be required to indemnify the University with respect to general liability, product liability and/or infringement claims related to licensed intellectual property to be used in any product as a result of an agreement under these Ordinances.

## **14. ROYALTYSHARING**

### **14.1 Distributable Royalties:**

University shall employ a single uniform structure for distribution of royalties to inventors, authors, and contributors (for the purposes collectively, 'creators' and each a 'creator'). University will distribute Net Royalties received by the university from the licensing or other distribution of its intellectual property or technology covered by this policy, as and to the extent provided in this policy. Net Royalties are calculated based on gross receipts consisting of cash and securities or other equity shares in an enterprise received by university in return for use of its intellectual property, but do not include non-

cash benefits, sponsored research funding, or other financial benefits such as gifts. Net Royalties equal those gross receipts that university is entitled to less:

- (i) University's out of pocket costs and fees associated with securing, maintaining, and enforcing intellectual property protection such as patenting and litigation expenses
- (ii) Out of pocket costs incurred by the University in the licensing of the intellectual property, and
- (iii) Any out of pocket expenses in making, shipping, or otherwise distributing biological or other materials (including, without limitation, unpatented materials)

As used herein, the term 'creation' shall mean any invention, computer software, copyright, or unpatented material as to which Net Royalties are to be distributed in accordance with this policy.

#### **14.2 Standard Distribution Method:**

Except as otherwise provided in this policy, the following formula will apply to the distribution of Net Royalties among their respective research laboratories, departments/centres and schools, and the university, based on amounts received by the university (these are only guidelines, the actual recipients of the money and the % distribution may be decided by the university).

- a. Creator personal share: 60% (divided among the creators)
- b. Administrative fee: 10%
- c. Creator's Department/Centre share: 15%
- d. University share: 15%

#### **14.3 Alternative Distribution Methods:**

Net Royalties earned from licensing of 'creations' with multiple creators will be distributed as follows:

- a. Among multiple inventors and/or authors for a single patented invention or copyright: Personal shares will be allocated among

inventors and/or authors according to a written agreement among them or, if there is no agreement, in equal shares. Researcher shares, department/centre shares and school shares will be allocated equally where inventors or authors come from different laboratories, departments/centres or schools, regardless of the number of inventors/authors from each laboratory, department/centre or school, unless otherwise agreed upon by all inventors/authors.

- b. Among multiple contributors to a single unpatented material: Personal shares will be apportioned among the contributors as they mutually agree upon in writing, or if no agreement is reached among the contributors, according to the administrative determination of apportionment that shall be made by the head of the laboratory in which the unpatented material has been made. Research shares, department/centre shares and school shares will be allocated as per the above distribution.
- c. For multiple creations licensed as a package: First, Net Royalties will be allocated among the licensed creations as agreed upon in writing among all creators agreement, in equal shares among such creations. In the alternative, upon request of any of the creators, IPRC will determine the relative value to the package of each of the creations. The foregoing notwithstanding, where an executed license agreement assigns different values to different creations licensed as a package, that value shall be the value assigned for purpose of allocating Net Royalties among such creation. Second, the creator's personal share and the research, department/centre and the school shares of Net Royalties so allocated to each of the creations in the package will be allocated in accordance with the above distribution.

- d. Provision for 5% of the University share of income from this activity to be allocated and paid to all teaching and non-teaching staff every year.

## **15. CONFIDENTIALITY, DATA PROTECTION, AND PRIVACY**

All university personnel and non-university personnel associated with any activity of the university shall treat all IP related information which has been disclosed to the IPRC and/or whose rights are assigned to the university, or whose rights rest with the university personnel, as confidential. Such confidentiality shall be maintained till such date as is demanded by the relevant contract, if any, between the concerned parties unless such knowledge is in the public domain or is generally available to the public. Having filled the Disclosure Form, the creator shall maintain confidentiality i.e., refrain from disclosing the details, unless authorized otherwise in writing by the university, until the university has assessed the possibility of commercialization of the intellectual property.

Subject to the right of academic freedom, the university staff shall not directly, except in the proper course of their duties, either during or after a period of their appointment, disclose to any third party or use for their own purposes or benefit or the purposes of any third party, any confidential information about the business of the university unless that information is public knowledge or he/she is required by law to disclose it.

The following guidelines should be followed when dealing with confidential information in the context of third parties such as commercial organizations:

- a. The information given to prospective licensees before signing of any confidentiality or secrecy agreement should in no case exceed or fall outside that which is set out in the Disclosure Form for any particular Intellectual Property.
- b. When a third party is interested in commercializing an item of Intellectual Property on offer after inspecting the relevant

technology profile, they may apply in the prescribed form and with the deposition of the required fee for transfer of the technology. They will be required to demonstrate their capacity to commercialize the technology to the university's satisfaction. The university will then require the third party to sign contractual confidentiality or secrecy agreements undertaking to maintain the confidentiality of all information disclosed, before any further disclosure is made.

- c. Third parties must obtain written authorization from the university to commercialize/exploit the Intellectual Property. Confidentiality agreements will continue to be in force even if the commercialization process is aborted at any stage. However, it is recommended that no disclosure should be made if there is any doubt as to the outcome of the commercialization process.
- d. If running royalties are to accrue to the university and the creator, the licensees must be bound by their contract to take adequate measures to protect that matter from becoming known to others through the licensee's practice, and thereby made available to others whose activities may adversely affect royalty returns.
- e. Access to areas where university-owned Intellectual Property including confidential information is made available, seen or used and to confidential documents, records etc. is to be limited only to those who are creators or are bound by confidentiality agreements.
- f. Creators and/or university personnel must take care not to disclose confidential details of university-owned Intellectual Property in their publications, speeches, talks, and/or other communications.

## **16. INFRINGEMENTS, DAMAGES, LIABILITY, AND INDEMNITY**

In any contract with the licensee, KUD shall obtain indemnity from legal proceedings against KUD including its employees, without limitation, due to reasons including but not limited to manufacturing defects, production problems, protocol guarantee, upgradation and debugging obligation. Generally KUD shall obtain, through appropriate agreement, indemnification from the organization to which IP is transferred, against any direct or third party legal liability arising out of commercial exploitation of IP.

Any medical device developed and distributed by KUD either through public domain or commercially, shall have explicit disclaimer against any liability arising out of the use of such medical device by any user. University shall retain the right to engage in any litigation concerning patents and license infringements.

## **17. CONFLICT OF INTERESTS**

The Creator(s)/ Inventor(s) are required to disclose any conflict of interest or potential conflict of interest. If the Creator(s)/ Inventor(s) and/or their immediate family members have a stake in a licensee or potential licensee company then they are required to disclose the stake they and / or their immediate family have in the company. A license or an assignment of rights of any IP to a company in which the inventors have a stake shall be subject to the approval of Dean (Research) taking into consideration this fact.

### **17.1. Dispute Resolution**

In case of any dispute with regard to IPR policy, the decision of Vice-Chancellor, KUD shall be deemed final and binding.

### **17.2. Jurisdiction**

As a policy, all agreements to be signed by KUD will fall under the jurisdiction of courts of law in Dharwad, and shall be governed by appropriate laws in

India, exceptions to this may be allowed in certain cases by Vice-Chancellor, KUD on the recommendation of Dean (Research).

## **18. INTELLECTUAL PROPERTY RIGHTS CELL (IPRCCELL)**

### **A. IPR Cell: Administrative Set-up**

The IPR Cell will have a team of individuals having defined roles. The constitution of the IPR Cell may be as follows:

1.	There shall be a Professor in-charge appointed by the Vice-Chancellor, who shall be the head of the IPRC.
2.	One IP attorney having experience in the field of IP laws to be engaged by the university.
3.	At least one faculty member each from basic sciences, humanities, social sciences, and languages.
4.	The dean (faculty of law)
5.	University Finance Officer
6.	Two/ Three/ Four Research Scholars (preferably from different faculties)

The tenure of the members of the IPR Cell shall ordinarily be three years and since the activities of the cell demand expertise in the area of IP, the tenure of members may be renewed by the Vice-Chancellor, before the end of the term of their appointments, based on their performance in the IPR Cell. The IPR Cell will have the overall responsibility of guiding the university administration on all decisive issues relating to this IPR Policy and any other relevant matters relating to IP generated within the university.

### **B. Roles and Responsibilities of the IPRCell**

1. IPR Cell shall be responsible for overseeing the implementation of all recommendations and decisions pertaining to IP management in the university.



2. IPR Cell shall maintain all confidentiality related obligations. All the members, including the Chairperson, shall sign a non-disclosure agreement with the university.
3. IPR Cell shall be the responsible authority for guiding the university with regard to entering into agreements such as memoranda of understanding (MoU), confidential disclosure agreements (CDA), material transfer agreements (MTA), and IP licensing agreements.
4. IPR Cell may suggest changes in the IPR Policy or new policies as and when deemed necessary. This can happen with changes in governmental policies or national and international developments such as new treaties or legal judgments.
5. Screening of all requests for patent applications shall be done by the IPR Cell.
6. IPR Cell will support the university and the researchers for negotiating technology transfer and benefit-sharing agreements.
7. In cases where in a researcher wants to use university owned IP for creating a start-up, the researcher may place a request before the IPR Cell, and after taking into consideration all the relevant aspects, the IPR Cell may recommend the university to allow the researcher to use the IP. The IPR Cell may also put forward its recommendations on the extent to which the researcher can use the university owned trademarks with regard to the activities of that start-up.
8. Whenever required, the IPR Cell shall clarify to the researchers and the university whether the research in question can be considered as research with *incidental support* of university, research with *substantial support* of the university, and/ or research with *substantial support* of external partners.
9. IPR Cell will help in creating awareness about different open initiatives like open access, open data, and open source software

- and help the university and researchers comply with the open access mandates of the government/ funding agencies/university.
10. IPR Cell will keep proper records of all IP applications from the university.
  11. While replying to applications under the Right to Information Act 2005 (“RTI Act”), IPR Cell may ensure that the novelty of the innovations (for the purpose of patent protection) shall not be defeated. The relevant provisions of the RTI Act may be consulted in this regard.
  12. In cases of allegations of infringements of IPRs by any researcher of the university or any third party, the university may refer the matter to IPR Cell and seek its opinion on appropriate course of action.
  13. In cases where in any third party infringes upon the IPRs of university, the university may seek the opinion of IPR Cell on the appropriate action to be taken and the IPR Cell may make recommendations to the Vice Chancellor for any legal course of action.
  14. The IPR Cell may conduct periodic audit of university IP.

### **C. IP Protection through IPR Cells: Implementation Process**

1. Once IPR Cell receives a proposal from a researcher, the IPR Cell may initiate the process IP protection. In cases of all forms of IP protection, the IPR Cell may screen the applications as expeditiously as possible and provide necessary support for shortlisted applications to get necessary IP protection. In case of patent applications, the IPR Cell may take inputs from subject experts as well as legal experts where it is absolutely essential and cannot be assessed jointly by inventors and IPR Cell, such inputs to be taken after appropriate Non-Disclosure Agreement (NDA) between university and the expert, from within or outside the University, during the screening process.

2. In cases of urgency, the IPR Cell may also file patent applications through alternative means, *i.e.*, private patent agent/attorneys. All the expenses in this regard maybe met out of the IPR Cell budget or the budget of the relevant research project, depending on availability of funds.
3. In cases of joint patent applications of the university with the funding agency, the costs of filing shall be shared between the joint applicants and IPR Cell may facilitate the filing of applications, as per the agreement between the parties. However, if the funding body does not want to file the patent application through the University IPR Cell, the funding body will be required to bear the entire expenses towards joint patent application and prosecution.
4. The IPR Cell shall always ensure that the IP protection measures it suggests are not in conflict with the open access/ open data policies of the university/ government and it shall take due measures to help the researchers comply with such policies.
5. The IPR Cell shall undertake due measures for creating awareness about different open initiatives like open access, open data, and open source software, through different channels including awareness and training programmes.
6. Decisions with regard to maintenance of IP will be based on the guidelines evolved by the IPR Cell and it shall be based on the need and potential of the IP.
7. The IP protection abroad will be evaluated by a high powered committee chaired by the Vice-Chancellor or his/ her nominee. This committee may consist of the Registrar, Head of the Finance Section, Chairperson of the IPR Cell, two members of the IPR Cell, and two external experts.

#### **D. IPR Cell: Appeal Procedure with regard to Decisions of the IPRCell**

In case of any grievances regarding any of the decisions taken by the IPR Cell, including, but not limited to, ownership of IP, processing of proposals, procedures adopted for implementation of IPR Policy, any aggrieved person may file an appeal to the Vice-Chancellor of the university and the decision taken by her/ him shall be final.

#### **19. APPLICABILITY**

This IPR Policy will be applicable to the university, its constituent colleges, PG Centres, or any activity under the direct control of the university administration. Mere affiliation for examination purposes will not make it obligatory on part of colleges to comply with this IPR Policy. However, they are encouraged to use it as a model IPR Policy when framing their own guidelines in this respect. While it is not mandatory for affiliated colleges to follow this IPR Policy, they are also encouraged to adopt the principles suggested in this policy, wherever applicable.

#### **SOME USEFUL INFORMATION ON PATENTS AND COPYRIGHT**

##### **1. What is Intellectual Property Right(IPR)**

IPR is a general term covering patents, registered design, trademarks, copyright, and layout design of integrated circuits, trade secrets, geographical indicators and anti-competitive practices in contractual licenses.

##### **2. What are the legislations covering IPRs in India?**

Patents:

The Patents Act, 1970 (amended in 2005)

Ref Link: [http://www.ipindia.nic.in/ipr/patent/eVersion\\_ActRules/sections-index.htm](http://www.ipindia.nic.in/ipr/patent/eVersion_ActRules/sections-index.htm)

Design

The Design Act 2000

Ref. Link:

[http://www.ipindia.nic.in/ipr/design/design\\_act.PDF](http://www.ipindia.nic.in/ipr/design/design_act.PDF)

Trademarks:

The Trade and merchandise Marks Act, 1999 (amended in 2010)

[http://www.ipindia.nic.in/IPActs\\_Rules/tmrAct/TMRAct1999.htm](http://www.ipindia.nic.in/IPActs_Rules/tmrAct/TMRAct1999.htm)

copyright:

The Copyright Act, 1957 and Copyright rules 2013

Ref. link: <http://copyright.gov.in/Documents/CopyrightRules1957.pdf>

Layout Design of Integrated Circuits: No Legislation exists.

### **3. Who are responsible for administration of IPRs in the country?**

Patents, designs and trademarks are under the charge of the Controller General of Patents, Designs and Trademarks which is under the control of department of industrial Development, Ministry of Industry. Copyright is under the care of Ministry of Human Resource Development.

### **4. What is a patent?**

A patent is a legal monopoly which is granted for a limited time to the owner of an invention. Patent rights are granted by the state. Merely to have a patent does not give the owner the rights to use or exploit a patented invention: that right may still be affected by other laws such as health and safety regulation, or the food and drugs regulation or even by way, inherited, sold, licensed and can even be abandoned. As it is conferred by the state, it can be revoked by the state, it can be revoked by the state in certain cases even after grant, and whether or not it has been in the meantime sold or licensed. There is no such thing as world patent.

### **5. What is the distinction between patented invention and know-how?**

The law does not require that the information disclosed in the patent specification be sufficient for commercial exploitation of the invention. Thus, a patent usually will not disclose sufficient information for commercialization.

Known-how on the other hand, covers all information necessary to commercialize the invention e.g. setting up a production plant. Such information would include for example, details of the production methods, the design drawings etc. It is this known-how developed around an existing patent and commercialized subsequently will be an infringement of the patent unless the patentee had agreed to commercialization on mutually agreed terms.

## **6. How is an invention interpreted?**

To be patentable the invention must not only be novel but must involve an inventive step. An invention involves an inventive step if it is not obvious to a person 'skilled in the art' having regard to any matter which forms part of the state of the art but disregarding unpublished pending patent applications. Simplicity is not necessarily an objection for securing a patent. The means whereby the object is attained may be perfectly simple and common, yet there may be an inventive step if the inventor has developed a variant which will render more useful results as disclosed. It is immaterial whether the invention comes into existence by accident, but there must be some inventive step.

## **7. What are patentable inventions under the patent Act,1970?**

Invention means any new and useful:

- Art, process, method or manner of manufacture
- Machines, apparatus or other article
- Substances produced by manufacture, and include any new and useful improvements of any of them and an alleged invention. However, inventions claiming substances intended for use; or capable of being used, as food or as medicine or drug or relating to substances prepared or produced by chemical processes (including alloys, optical glass, semiconductors and inter-metallic compounds) are not patentable.

## **8. How is the novelty of and invention determined?**

The novelty is judged taking into consideration the knowledge available in India and elsewhere in the time of filing the application for a patent. In other words, the invention should not be known anywhere in the world prior to filing of the application for a patent.

## **9. What are the types of inventions which are not patentable?**

- a. An invention which is frivolous or which claims anything obviously contrary to well-established natural laws e.g. different types of perpetual motion or machines which violate the third law of thermo dynamics.
- b. An invention the primary or intended use of which be contrary to law or morality or injurious to public health e.g. a process for the preparation of a

beverage which involves use of a carcinogenic substance, although the beverage may have higher nourishment value .

c. The mere discovery of a scientific principle of formulation of an abstract theory e.g. Raman Effect.

d. The mere discovery of any new property or new use of a known substance or the mere use of a known process, machine or apparatus unless such a known process results in a new product or employs at least one new reactant.

e. A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance.

f. The mere arrangement or rearrangement or duplication of features of known devices each functioning independently of one another in a known way.

g. A method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient.

h. A method of agriculture or horticulture.

i. Any process for medicinal, surgical, curative, prophylactic or other treatment of human beings, or any process for a similar treatment of animals or plants.

j. Invention relating to atomic energy

#### **10. When should an application for a patent be filed?**

Filing of an application for a patent should be completed at the earliest possible date and should not be delayed until the invention is fully developed for commercial working. An application filed with provisional specification disclosing the essence of the nature of the invention helps to register the priority by the applicant. Delay in filing an application may entail some risks like (i) other inventors might forestall the first inventor in applying for a patent for the said inventor (ii) there may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/her.

#### **11. What are the essential patent documents to be generated and submitted by a potential patentee?**

There are two types of patent documents usually known as patent specification namely

**I) Provisional Specification:**

A Provisional Specification is usually filed to establish priority of the invention in case the disclosed invention is only at a conceptual stage and a delay is expected in submitting full and specific description of the invention. Although, a patent application accompanied with provisional application does not confer any legal rights to the applicants, it is, however, a very important document to establish the earliest ownership of an invention. It is essential to submit the complete specification within 12 months from the date of filing the first application. This period is extendable by 3 months. The provisional Specification is a permanent and independent scientific cum legal document and no amendment is allowed in this.

**II) Complete Specification:**

Submission of Complete Specification is necessary to obtain a patent. The contents of the specification would include information regarding the field to which the invention relates, background of the prior art giving drawbacks connected to the hitherto known details of the invention, the best mode of carrying out the invention and claims defining the scope of the invention. The contents of the complete specification should enable a reasonably skilled person in the art to work the invention without the help of the inventor.

**12. What are the criteria for naming inventors(s) in an application for patent?**

The naming of inventors is normally decided on the basis of the following criteria:

- I) All persons who contribute towards the development of patentable features of an invention should be named inventors(s)
- II) All persons who have made intellectual contribution in achieving the final results of the research work leading to a patent, should be named inventor(s)
- III) A person who has not contributed intellectually in the development of an invention is not entitled to be included as an inventor



IV) A person who provides ideas needed to produce the germ of the invention” need not himself/herself carry out the experiments, construct the apparatus with his/her own hands or make the drawing himself/herself. The person may take the help of others. Such persons who have helped in conducting experiments, constructing apparatus or making the drawings of models without providing any intellectual inputs are not entitled to be named inventors. Quite often difficulties are experienced in deciding the names of inventors. To avoid such a situation, it is very essential that all scientists engaged in research should keep a factual, clear and accurate record of daily work done by them in the form of a diary. The pages in the diary should be consecutively numbered and the entries made should be signed both by the scientists and the concerned leader.

### **3. Can a published or disclosed invention be patented?**

NO. Publication or disclosure of the invention anywhere by the inventor before filing of a patent application would disqualify the invention to be patentable. Hence inventors should not disclose their inventions before filing a patent application. If published after filing of the patent application, the number and date of the patent application should be given by way of information to public.

### **14. What is considered the date of patent?**

The date of patent is the date of filing the complete specification. This is an important date because it is from this date that the legal protection of an invention covered in the patent takes effect. The term of the patent is counted from this date

### **15. What is the term of a patent in Indian system?**

Term of every patent in India is 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. However, in case of applications filed under PCT the term of 20 years begins from International filing date.

### **16. How does one keep a patent in force for the full patent terms?**

A patent has to be renewed from time to time by paying the prescribed renewal fees. If the patent is not renewed, it will cease to remain in force and the invention becomes open to public.

### **17. What is expected from a patentee?**

A patentee must try to ensure that the patent is worked in India on a commercial scale and without undue delay. The patent is not granted to allow the patentee to enjoy a monopoly for the importation of the patented article. In other words, a patentee cannot sit over an invention and block the use of that invention.

### **18. What is the nature of information needed while consulting a patent attorney?**

- An explanation of the history of the invention, where you got the idea from, how you developed it, any early failures and possible prototypes, with all your laboratory notebooks, etc. This will help the patent agent to explain the inventive step which is necessary to establish to obtain the patent, and it also increases his or her understanding of the invention so as to maximize the skill with which he or she can draft claims and specifications for it.
- What you think is the central part of it, the most inventive element or most useful aspect, together with what other similar prior inventions you know of or have developed the idea from an improved upon. If you have developed an improved version of your competitor's products, admit it, be totally honest. It is vital to be such so that the patent agent can define your invention properly in making the application and avoid excessive claims which might be struck down.
- A detailed description of the best way of putting the invention into practical use, results of your tests and trials, etc., including all the failures and defects.
- Alternative ways of using the invention, and the substitutes for parts of it – i.e. will one chemical compound do as well as any other in the process, is there an optimum size, etc. it may be worth drafting the

patent widely enough to cover less satisfactory alternatives, if this is possible, to prevent rivals from marketing a less satisfactory competing product which because of its defects might bring the whole genre of product into disrepute.

- Both after an initial search and during the course of the patent application it is important to respond quickly and accurately to queries which the patent agent may have, to help patent application on the way and to save you money. Thus the client should in particular keep the patent agent informed of any new developments or improvements or other changes made to the invention and any rivals which appear etc.

### **19. What are the different types of work covered under copyright?**

Copyright covers:

- I) Literary, dramatic and musical work. Computer programmes/software are covered within the definition of literary work
- II) Artistic work
- III) Cinematographic film includes sound track and video film
- IV) Record- any disc, tape, perforated roll or other device

### **20. What are the rights of a copyright holder (which when violated lead to infringement)?**

a) In the case of literary, dramatic or musical work, not being a computer programme:

- I. To reproduce the work in any material form including the storing of it in any medium by electronic means
- II. To issue copies of the work to the public not being copies already in circulation
- III. To perform the work in public, or communicate it to public
- IV. To make any cinematograph film or sound recording in respect of the work
- V. To make any translation of the work

VI. To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to(vi)

b) In the case of computer programme:

i) To do any acts specified in clauses(a)

ii) To sell or give on hire, or offer for sale or hire any copy of the computer program, regardless of whether such copy has been sold or given n hire on earlier occasions

c) In the case of an artistic work-

I. To produce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work.

II. To communicate the work to the public

III. To issue copies of the work to the public not being copies already in circulation

IV. To include the work in any cinematograph film

V. To make any adaptation of the work

VI. To do in relation to an adaptation of the work, all of the acts specified in relation to the work in sub-clauses (i) to(iv)

d) In the case of a cinematograph film

I. To make a copy of the film including a photograph of any image forming part thereof

II. To sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions

III. To communicate the film to the public

e) In the case of sound recording

I. To make another sound recording embodying it

II. To sell of give on hire, or offer for sale of hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions.

III. To communicate the sound recording to the public  
Explanation, For the purpose of this section, a copy which has been sold once shall be deemed to be a copy already in circulation

**21. How is computer defined for the purpose of copyright?**

Computer includes any electronic or similar device having information processing capabilities.

**22. What is the definition of a computer programme?**

Computer programme means a set of instruction expressed in words, codes, schemes or any other form, including a machine readable medium, capable of computer to perform a particular task or achieve a particular result

**23. What is the term of a copyright?**

- a) If published within the life time of the author of a literary work the term is for the life of the author plus 60years.
- b) For cinematographic films, records, photograph, posthumous publication, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar year following the year in which the work was published.
- c) For broadcasting the term is 25 years from the beginning of the calendar year following the year, in which the broadcast was made.

## **THINGS TO REMEMBER**

### **Publication/ Display in Public Exhibition of Invention before Filing for Patent:**

- (i) Generally, an invention, if published or publicly displayed (i.e., journals or conferences or seminars) cannot be patented, as such publication or public display leads to lack of novelty.
- (ii) Inventions/ Innovations that cannot be patented: Innovations/ Inventions falling under the category of Sections 3 and 4 of the Indian Patents Act, 1970 cannot be patented in India.
- (iii) Acts that do not constitute copyright infringement: Section 52 of the Indian Copyright Act, 1957, specifically state certain acts as not being infringement of copyright. The “doctrine of fair dealing” envisaged under section 52 of the Indian copyright law allows certain use(s) of copyrighted works in special cases such as: private use for the purpose of education, research, critique, review, etc.

### **Attribution or Citation should be done wherever references have been sourced from other work(s):**

Copying or using any work from an already published or non-published work, whether digital or in physical form, should be rightly attributed and referenced to the original source. Unless allowed as “fair dealing”, copying should not be done without obtaining required permissions/ licences from the author/ creator. Remember, plagiarism is not only immoral, it is also illegal.

### **Rain check regarding names/ brands before choosing a trade mark:**

A prior public search for trademarks would prove beneficial before choosing a name or a brand name. This would aid in checking whether the same has been registered already as a trademark.

### **Keep a record of all legal and related documents:**

All agreements which are to be entered into with co-creators/ inventors / third parties should be documented properly to establish the ownership of any IP created. Additionally, keep a record of all documents relating to the IP, since the expressed inception of the idea.

### **Use of technology protected by IPRs like patents and designs:**

It is possible that researchers may have to use diverse technology/ design/ software, as part of their research. Under all such circumstances, due care and attention must be given, for not infringing the IP rights of third parties. Some of the licenses may have restrictions with regard to kind of usages permitted. It is important to ensure that due and necessary permissions are obtained from IP owners prior to engaging in any use which moves beyond the terms of license or as permitted under the relevant statute(s) in India.

### **Use of copyrighted materials:**

Whenever researchers use copyrighted material for teaching or research purposes, it needs to be ensured that the use is within the permission obtained from the concerned copyright holder(s) or is within the boundaries of exceptions provided under the Indian copyright law.

### **IP licensing and assignment:**

Licensing and assignment of IPRs to a third party are the most common modes of IP transfer that can lead towards commercialization of IP. While both licensing and assignment involves giving certain rights to another party, the key difference is that assignment involves transfer of ownership, while licensing is limited to permitting certain uses. In general, the mechanism of licensing may be used, so that ownership rights on the IP may be retained without hindering the prospects of commercialization. Given below are some types of licensing:

1. Exclusive licensing: The licensor licenses the IP solely to one licensee. In other words, the licensee will be the only one authorized by the licensor to use and exploit the IP in question. To the extent possible, exclusive licenses should be avoided.
2. Non-exclusive licensing: The licensor is permitted to enter into agreements with more than one entity for use and exploitation of the IP. In other words, the same IP may be used by different licensees at the same time for the same purpose or for different purposes.

3. Sub-licensing: This is applicable when a licensee wishes to further license the IP to another party(s). Permissions pertaining to sub-licensing need to be clarified explicitly in the agreement between the BDU(s)/ researchers and licensee(s).

### **Referred References:**

- 1) **Intellectual Property Policy, IPR Cell, Bharathidasan University**
- 2) **Ordinances governing Intellectual Property Policy, Banaras Hindu University, Varanasi**
- 3) **Intellectual Property Rights – A manual (2007), Entrepreneurship Development and IPR Unit, BITS –Pilani**
- 4) **Model guidelines on implementation of IPR Policy for academic institutions –CIPAM**
- 5) **IPR Policy for Universities, Department of Science and Technology, Government of Rajasthan**
- 6) **Intellectual Property Rights Policy (2017), Delhi Technological University, Delhi**
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## Evaluator's Report

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*Available at:* [www.wipo.int/about-ip/en/universities\\_research/documents/ip\\_toolkit/guidelines\\_template.docx](http://www.wipo.int/about-ip/en/universities_research/documents/ip_toolkit/guidelines_template.docx).  
For a database of University IP Policies, also see: [https://www.wipo.int/aboutip/en/universities\\_research/ip\\_policies/](https://www.wipo.int/aboutip/en/universities_research/ip_policies/).

