

# **System Policy 17.01, Intellectual Property Management and Commercialization**

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## **Definitions**

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The following definitions apply to this policy and all regulations under this policy:

Background intellectual property – intellectual property, which is usually a patent or patent application, that was conceived or developed prior to or independently developed of a disclosure, research agreement or license agreement and is necessary for or necessary to practice the technology set forth in such disclosure, research agreement or license agreement. The phrase “necessary to practice” means that a party cannot make, use, sell or offer to sell a product or use a method covered by the technology without potentially infringing the claims of the background patent or pending patent application if that pending patent application issues with such claims.

Copyrightable work – an original work of authorship that has been fixed in any tangible medium of expression from which it can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, such as books, journals, software, computer programs, musical works, dramatic works, videos, multimedia products, sound recordings, pictorial and graphical works. A copyrightable work may be the product of a single author or a group of authors who have collaborated on a project, or may be a derivative work based upon one or more preexisting copyrightable works.

Cost of legal protection – cost of legal protection includes, but is not limited to, the following: (a) legal costs and fees for obtaining protection of intellectual property; (b) legal costs and fees for determining if there is a legal issue in the way of commercializing or the protection of the system, member(s), IP creator(s), and/or the intellectual property itself; (c) legal costs and fees for enforcement of intellectual property rights and/or settlement of intellectual property disputes; (d) legal costs and fees for investigating alleged or actual infringement of intellectual property; and (e) other legal costs and fees for obtaining opinions related to the intellectual property. Cost of legal protection does not include the legal costs and fees for the formation of companies and legal opinions and/or advice associated with system interests in companies where the system owns or may own interest.

Intellectual property – collectively, all forms of intellectual property including but not limited to issued patents, patent applications, patentable inventions, (including without limitation those inventions where the system has decided not to file for patent protection, or has deferred a decision to file for patent protection, or a patent application is not currently filed), plant variety protection certificates, copyrightable works, trademarks, mask works and trade secrets.

Intellectual property documents – legal documents relating to system’s rights in intellectual property, including, but not limited to, license agreements, letter agreements, option agreements, release agreements, inter-institutional agreements, confidentiality agreements, corporate agreements, applications, declarations, affidavits, disclaimers, and other such documents for the commercialization of system intellectual property.

Intellectual property family – all intellectual property described in a single disclosure (excluding any background intellectual property) and created by the IP creator(s). For more information on disclosures, see System Regulation 17.01.02, *Evaluation and Protection of Intellectual Property*.

Invention – any discovery, including without limitation, any art or process (*way of doing or making things*), methods, machine, devices, manufacture, design or composition of matter, or any new and useful improvement thereof, or any new plant or variety of plant, which is or may be patentable under the patent laws or protected under the Plant Variety Protection Act of the United States or other similar laws in foreign jurisdictions. An invention further includes those inventions that may not be eligible for patent protection, but are otherwise commercially valuable.

IP creator – an individual or an entity who invents, authors or otherwise creates intellectual property. If the intellectual property was authored or created under a works for hire, the IP creator will be the member or the system.

License fees – any type of monetary amount received for a grant of any intellectual property right or right associated with ownership or control of an intellectual property. Licensing Fees do not include material fees.

License or license agreement – any agreement that grants any type of intellectual property right.

Material fees – any fees or expenses incurred in the production, development, growing, maintaining, harvesting, and/or shipping of intellectual property. Material fees do not include any fees or expenses for tasks that would normally be in a sponsored research or sponsored services agreement.

Patent – a property right granted by a government to an inventor to exclude others from making, using, offering for sale, or selling the invention in a territory, or importing the invention into a territory, for a limited time in exchange for public disclosure of the invention when the patent is granted.

Published – produced or released for distribution or dissemination in paper or digital form.

Tangible research property (TRP) – tangible items produced in the course of system research that can be distributed to and/or used by a third party, including without limitation such items as biological materials, engineering drawings, integrated circuit chips, software, computer databases, prototype devices, circuit diagrams, and equipment. Individual items of tangible research property may be associated with one or more intangible properties, such as inventions, copyrightable works and trademarks.

Trademark (including service mark) – a distinctive word, design or graphic symbol, or combination word and design, that distinguishes and identifies the goods and services of one party from those of another, such as names or symbols used in conjunction with plant varieties or computer programs.

Works for hire – copyrightable works that are created by an employee who was hired by a member or the system specifically to create such works; or copyrightable works created within the scope of his or her employment to produce copyrightable works for institutional purposes; or copyrightable works created by a third party that was commissioned or contracted by a member and assigned to that member, or commissioned or contracted by the system and assigned to the

system. Example works for hire include, but are not limited to: work assigned to programmers employed by the system or one of its members; software developed for the member by staff working collaboratively as part of their job duties; and creation of brochures, training programs, videos and manuals developed by staff or faculty as part of their job duties. The general expectation that faculty teach, research and publish does not by itself make intellectual property a work for hire.