



FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy
THE GOVERNING BOARD

DECISION OF THE GOVERNING BOARD OF FUSION FOR ENERGY ADOPTING A POLICY ON INTELLECTUAL PROPERTY RIGHTS AND DISSEMINATION OF INFORMATION

THE GOVERNING BOARD,

HAVING REGARD to the Statutes annexed to the Council Decision (Euratom) No 198/2007¹ of 27/03/2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "Fusion for Energy") and conferring advantages upon it (hereinafter "the Statutes") and in particular to Article 6(3)(p) thereof,

WHEREAS the Governing Board should adopt rules drawn up by the F4E Director on industrial policy, intellectual property rights and the dissemination of information in agreement with the Commission

HAS ADOPTED THIS DECISION:

Article 1

The annexed policy on intellectual property rights and the dissemination of information are hereby adopted.

Article 2

This Decision shall have immediate effect.

Done at Barcelona, 28th March 2012

For the Governing Board

Stuart Ward
Chair of the Governing Board

¹ O.J. L90, 30.03.2007, p. 58.

ANNEX

FUSION FOR ENERGY'S POLICY ON INTELLECTUAL PROPERTY RIGHTS AND THE DISSEMINATION OF INFORMATION

1. ESTABLISHING AN INTELLECTUAL PROPERTY POLICY FOR FUSION FOR ENERGY: BRIDGING THE GAP FROM FUNDAMENTAL TO APPLIED RESEARCH

The specificity of the ITER project as compared with previous fusion research programs is that ITER aims at demonstrating the **technical and economic feasibility** of the production of energy through nuclear fusion. Accordingly, most of F4E's Research Innovation and Development actions aim to bridge the gap between fundamental² and applied research in the fusion area. This new step in fusion research represents an evolution that needs to be taken into account by both interested industries and institutions in their respective strategies.

This approach to fusion research is reflected in F4E's activities which aim to fulfil its obligations towards ITER, while establishing a solid basis for building a future "*European fusion industry*". These guiding principles are however subject to the time dimension inherent to the construction of the ITER machine. The foreseeable long delays before significant gains from the construction of fusion commercial facilities are viable are sometimes regarded as a deterrent for the involvement of industry.

To compensate it, Fusion for Energy takes full responsibility for performance, outcomes and, in the case of procurement, also for financial support, so that industry and the Fusion research centres can participate in developing new technologies and gain cutting-edge knowledge and expertise without the associated commercial risks. This approach also mitigates the need of suppliers to include security margins in their prices.

However, such a "win-win" interaction can only work if it is coupled with an Intellectual Property (IP) policy that makes attractive for the industry its participation in the big laboratory that constitutes the ITER project. In return, industry and Fusion research centres shall also understand that the benefits of their involvement in the fusion endeavour can go far beyond the immediate economic gain by providing them with some high tech knowledge acquired without any commercial risks.

The key element of F4E's approach is based on the principle of **sharing knowledge and its potential benefits**, both with Fusion research centres and industry. Contrary to the previous approach where the results of our procurement activities were always owned by us, F4E is now proposing a custom-made approach for each contract which includes the possibility for contractors to become owners of the results under some specific conditions.

² By fundamental or basic research we understand that undertaken primarily to acquire new knowledge of the underlying foundations of phenomena without regard for a particular application.

In exchange F4E encourages its partners to protect and exploit any knowledge arising from their work. This is at the same time their right and their responsibility. If for any reason contractors or beneficiaries are not interested in either protecting or exploiting the results of their activities F4E has the right to protect such results itself and/or have them exploited through licenses with third parties.

2. THE ESSENTIALS OF F4E'S INTELLECTUAL PROPERTY POLICY

2.2.1. *Intellectual Property within F4E's contracts*

A major challenge for F4E is to put in place contract clauses and conditions that achieve an effective balance between protecting the interests of our contractors and those of the Joint Undertaking, while enhancing the competitive position of the European industry as a whole. The main objectives of our clauses are the following:

- The fulfilment of our obligations established by the ITER agreement (i.e. grant access to our Intellectual Property to ITER IO and the ITER Members as established in the Annex on Information and Intellectual Property³).
- Secure the results of our contracts: the F4E's result-oriented approach requires that we obtain full details of the technologies developed with our support. This is achieved by a close monitoring of the reporting activity associated with the implementation of our contracts.
- Foster competition by reducing the risk of technological monopolies in areas such as fusion where the "entry ticket" for newcomers is sometimes high and can suffocate research. One of our goals is that instead of suffocating the market Intellectual Property serves to stimulate it by enabling, where necessary, access to technologies.

2.2.2. *Ownership of results and access rights*

F4E's does not have as a primary objective to own and exploit intellectual property. It has nonetheless a mandate to ensure the sound financial management of its assets, including the IP assets resulting from its activities. Accordingly depending on the nature of the contract (supply of raw material, R&D, build-to-print, manufacture, etc...) F4E intends to modulate ownership conditions that may allow our contractors to become owners of the results. This, however, does not imply that contractors will become as a rule owners of the results.

Nevertheless, while F4E can have a flexible attitude as regards the ownership of the knowledge resulting from its contracts it needs to make sure that such strategy does not result in the creation of monopolies that can later hinder the viability of our activities. Consequently F4E shall always keep sufficient rights to use the intellectual property generated in its contracts for publicly sponsored fusion R&D or as an instrument to avoid the creation of monopolies that obstruct competition. This includes the possibility for F4E or EURATOM to sublicense knowledge to third parties.

³ Annex on Information and Intellectual Property of the "Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project". O.J. L 358 of 16.12.2006, p. 73

The above strategy should allow industry to focus on the commercial side of fusion research while giving to F4E the necessary rights to ensure its participation to the ITER project in a competitive environment.

2.2.3. Sharing of information with the ITER partners.

The Annex on Information and Intellectual Property provides for the conditions under which the ITER Members and the ITER International Organization shall share information. F4E, as the European Domestic Agency for ITER, has the mandate to ensure that our contractors comply with such rules. However, we shall also guarantee that our interests and that of our contractors are not put at stake by such rules. As a result, we manage any request for access to information to our knowledge to prevent any abuses. This is the case in particular when access to background information is requested. Such access is, by definition, restricted to some specific conditions and our contractors are involved in the discussions to guarantee that their interests are safeguarded.

2.2.4. Protection of results

The above referred flexibility as regards ownership is coupled with the obligation of protecting such assets. F4E's contractors are therefore asked to seek for the protection of registered rights rather than relying on know-how or trade secrets. To foster this scheme contractors may become owners of registered rights resulting from their activities, while F4E will keep ownership of unprotected results. This emphasis in the protection of results shall be coupled with specific measures that permit sharing the costs and benefits of the resulting rights. Furthermore, whenever our contractors fail to protect an IP asset, F4E may decide to substitute them in the protection of such assets (e.g. by filing a patent application).

2.2.5. The case of Grants

Grant's beneficiaries have always been the owners of the results resulting from the activities co-financed by F4E and only minor changes shall be expected to these contracts.

3. THE PRACTICAL IMPLEMENTATION OF THE IP POLICY

The above Intellectual Property regime aims to ensure the right balance between the interests of industry and Fusion research centres and F4E. This policy shall be implemented through an ad-hoc approach permitting F4E to apply tailor made solutions to its contracts.

A number of measures need to be taken for that policy to materialize. Such measures can be summarized as follows:

A. INTEGRATION OF INTELLECTUAL PROPERTY INTO F4E'S OVERALL STRATEGY

1. Integrating Intellectual Property considerations at the source of the decision making process to ensure a coherent F4E IP and procurement strategy.
2. Making use of the management of Intellectual Property assets within F4E's contracts to further the objectives of the organization (e.g. by ensuring the value for money in contracts, avoiding the abuse of monopoly situations, ...).
3. Setting up a protocol to identify those actions that may have particular relevance for Intellectual Property. The early identification of potential hurdles should permit F4E and its contractors to address critical issues well in advance.

B. DEVELOPMENT OF A COMMON UNDERSTANDING TO F4E INTELLECTUAL PROPERTY RULES.

Reinforcing the awareness of our contractors to Intellectual Property through the:

1. Implementation of a partnership with the IPR Helpdesk (www.iprhelpdesk.eu) to provide for a privileged channel for SMEs to Intellectual Property information related with fusion activities.
2. Providing e-Learning for training on specific F4E Intellectual Property related issues to both our staff and our potential contractors.
3. Providing a site devoted to Intellectual Property issues within F4E's web page. The site may include, inter alia, a "Frequently Asked Questions" section summarizing the most relevant Intellectual Property questions raised by our contractors, model clauses and detailed information about F4E's procedures related to Intellectual Property.

C. F4E INTELLECTUAL PROPERTY TERMS AND CONDITIONS

1. Providing ownership conditions of results generated (i.e. Foreground) in the contracts carried out for F4E to facilitate the exploitation of such results by those which have generated them.
2. Emphasizing the need to protect generated results as Intellectual Property Rights (e.g. patents) where possible to facilitate technology transfer and commercial exploitation of such results.
3. Providing relevant IP clauses to address the specific needs of the different contracts placed by F4E [e.g. ad hoc clauses for R&D (including feasibility studies, pre-design, design, and preparatory work for establishing technical specifications), manufacture of mock-up/prototypes, series production, supply of off-the-shelf products, supply of raw material].
4. Guaranteeing through contractual provisions that F4E retains sufficient rights to background and foreground for it to fulfil its obligations in relation to EURATOM, the ITER Project and Broader Approach.

D. FACILITATING THE PRACTICAL IMPLEMENTATION OF INTELLECTUAL PROPERTY POLICY

1. Creating value by implementing optimal strategies for the protection or exploitation of the Intellectual Property assets resulting from a contract.
2. Providing "Clearing reports" on obstacles for the manufacturing or commercializing of a product within a particular territory with the objective to avoid the infringement of third party rights. Such reports may help to diminish the risks for both F4E and its partners when implementing F4E's contracts.
3. Setting up of model license agreements and joint-ownership agreements to facilitate the management of the Intellectual Property assets after the finalization of the contracts.
4. Provide for electronic tools to facilitate the management of Intellectual Property related forms (i.e. Background, Foreground, Publication forms).
5. Deployment and operation of a database with data from F4E and Euratom contractors in the form of intellectual property rights and scientific publications for effective management of IPR.