FUSION FOR ENERGY

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

THE GOVERNING BOARD

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

THE GOVERNING BOARD,

HAVING REGARD to the Statutes annexed to the Council Decision (Euratom) No 198/2007 of 27th March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "Fusion for Energy") and conferring advantages upon it[1] and in particular Article 6(3)(p);

HAVING REGARD to the approval of the Commission of 17 May 2013 of the draft Policy on Intellectual Property Rights and Dissemination of Information adopted by the Governing Board

HAS ADOPTED THIS DECISION:

Article 1

The Policy of on Intellectual Property Rights and Dissemination of Information of Fusion for Energy annexed hereto is duly adopted.

Article 2

This Decision shall have immediate effect.

Done at Barcelona, 27 June 2013

For the Governing Board

Stuart Ward

Chair of the Governing Board

For the Secretariat

Digitally signed by (SIGN) RAYMOND MONK
DN: c=ES, o=FUSION FOR ENERGY. EUROPEAN AGENCY FOR ITER PROJECT, cn=(SIGN) RAYMOND MONK
Date: 2013.07.03 10:19:15 +02'00'

Raymond Monk

Secretary of the Governing Board

[1] O.J. L 90, 30.03.2007, p. 58.

ANNEX

POLICY ON INTELLECTUAL PROPERTY RIGHTS AND 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 fundamental[2] 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 achieved are sometimes regarded as a deterrent for the involvement of industry.

To compensate this, 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 with little 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 F4E, it is now proposed a new approach for each contract which includes the possibility for contractors to become owners of the results under some specific conditions.

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

2.1.1. 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 these clauses are the following:

[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.

- The fulfilment of F4E's obligations established by the ITER agreement (i.e. grant access to F4E's Intellectual Property to ITER IO and the ITER Members as established in the Annex on Information and Intellectual Property[3]).
- Secure the results of F4E's contracts: the F4E's result-oriented approach requires to obtain full details of the developed technologies. This is achieved by a close monitoring of the reporting activity associated with the implementation of F4E's 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 hinder significantly the exploitation of R&D results. One of F4E's goals is therefore to stimulate the market by enabling, where necessary, access to technologies and IP.

2.1.2. Ownership of results and access rights

F4E has a mandate to ensure the sound financial management of its assets, including the IP assets resulting from its activities. Nonetheless, depending on the nature of the contract (supply of raw material, R&D, build-to-print, manufacture, etc…) and under specific conditions, F4E intends to modulate ownership conditions that may allow F4E's contractors to become owners of the results. This, however, does not imply that contractors will become as a rule owners of the results and F4E intends to establish a protocol to ensure that an informed decision as regards the right ownership regime is taken internally prior to the launch of any procurement activity.

Nevertheless, while F4E can have a flexible attitude as regards the ownership of the knowledge resulting from its contracts, it needs to ensure that such strategy does not result in the creation of monopolies that can later hinder F4E and Euratom 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. This includes the possibility for F4E or Euratom to sublicense knowledge to third parties.

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.

2.1.3. 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 its contractors comply with such rules. However, F4E shall also guarantee that its interests and that of its contractors are not put at stake by such rules. As a result, F4E manages any request for access to information to F4E's knowledge to prevent any abuses. This is the case in particular when access to background information is requested. This access to background is, by definition, restricted to some specific conditions.F4E's contractors are actively involved in defining the conditions of such access to guarantee the safeguard of their interests.

2.1.4. Protection of results

The above referred flexibility as regards ownership is coupled with the obligation of protecting research results and technical develomments. F4E's contractors are therefore asked to seek protection through registred IP rights (e.g. patents, utility models) rather than relying on know-how or trade secrets. This emphasis in the protection of results shall be coupled with specific measures that permit sharing the costs and benefits of the resulting IP rights. Furthermore, whenever F4E's contractors decide not to protect an IP

[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

asset, F4E may decide to take ownership and seek for the protection of said asset (e.g. by filing a patent application).

2.1.5. The case of Grants

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

3. THE PRACTICAL IMPLEMENTATION OF THE IP POLICY

The above-described Intellectual Property regime aims to ensure the right balance between the interests of industry and Fusion research centers 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 materialise. Such measures can be summarized as follows:

3.1. 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 IP assets within F4E's contracts to support the objectives of the organisation (e.g. by ensuring the value for money in contracts or by avoiding the abuse of monopoly situations).
3. Setting up a protocol to identify actions that may have particular relevance for Intellectual Property. Early identification of potential hurdles should allow F4E and its contractors to address critical issues well in advance.

3.2. Development of a common understanding to F4E Intellectual Property rules.

Reinforcing the awareness of F4E's contractors to Intellectual Property through the:

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

3.3. F4E Intellectual Property terms and conditions

1. Providing ownership of results generated (i.e. Foreground) under contracts carried out for F4E to facilitate the exploitation of such results by those which have generated them.
2. Emphasising the need to protect generated results using IP Rights (e.g. patents) when 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 activities (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 to fulfill its obligations in relation to Euratom, the ITER Project and Broader Approach.

3.4. Facilitating the practical implementation of Intellectual Property policy

1. Creating value for the society by implementing optimal strategies for the protection and exploitation of the Intellectual Property assets resulting from a contract.
2. Providing "Clearing reports" on obstacles for the manufacturing or commercialisation of a product (Freedom to Operate or FTO Reports) within a particular territory with the objective to avoid infringement of third party rights. Such reports may help to diminish the risks for both F4E and its partners when implementing F4E's contracts. It is advisable that such assessments are initiated early enough so as to identify as soon as possible legal obstacles to the exploitation of certain results.
3. Setting up of model license agreements and joint-ownership agreements to facilitate the management of the Intellectual Property assets after the finalisation of the contracts.
4. Providing electronic processes to facilitate the management of Intellectual Property (e.g. online submission of Background, Foreground, Publication forms).
5. Deploying and operation of a database containing data related to IPR and scientific publications from F4E and Euratom, allowing for a more effective management of IPR.