

Approved

# IPR Policy

of

Punjab Agricultural University  
Ludhiana

Draft 2.1 – February 7, 2007

## Intellectual Property Rights Policy For Punjab Agricultural University, Ludhiana

### 1 Preamble and Objectives

#### 1.1 Preamble

The Punjab Agricultural University ("PAU" or "University") was established in 1962 to fulfill three comprehensive missions in line with Land Grant Institution in USA: Teaching, Research and Extension through its five constituent colleges i.e. College of Agriculture, College of Agricultural Engineering, College of Basic Science & Humanities, College of Home Science and College of Veterinary Science (now elevated to the level of a separate university) located at three campuses. The headquarters of the University were based at Ludhiana, the heartland of Punjab Agriculture. The other two campuses located at Hissar and Palampur ensured growth of agriculture in dry lands and North Himalayan region, respectively. With the reorganization of Punjab, the campuses located at Palampur and Hissar were allocated to the states of Haryana and Himachal Pradesh, respectively in 1970. The University is recognized throughout the world for its excellence in Agriculture and commitment to the Indian farmers for providing cost effective technology in order to increase agricultural productivity on sustainable basis. Additional information on the University and its governance can be downloaded at the website <http://www.pau.edu>

The research activities of the faculty and students of the University are central to the creation of new knowledge and innovations, achieving its mission and to create national and international leadership in agriculture. The promotion of research sponsored by public and private sources and transfer of research results to public application are fundamental to the intellectual property Rights (IPR) policy of this University and the regulations that follow. Therefore the IPR policy of the University has been developed with the following objectives:

#### 1.2 Objectives

- 1.2.1 To encourage the University and its faculty and researchers to engage in innovative research and development resulting in intellectual properties for transfer to application for the benefit of the research sponsor (where applicable), university faculty, researchers, farmer trade, industry and other members of state and nation.
- 1.2.2 To facilitate for the timely disclosures of inventions to the university by its faculty and researchers, in order that protection of the intellectual property may be sought.
- 1.2.3 To allow the faculty and researchers of the university maximum scientific and professional freedom consistent with this policy and any obligation to research sponsors
- 1.2.4 To provide incentive to the teachers and researchers of the university to participate as full partners with the university in creation of inventions, protection of intellectual property, and transfer of the intellectual property to commercial application.

- 1.2.5 To provide transparent guidelines for the protection of PAU intellectual property, and for the licensing and transfer of PAU Intellectual property for commercial application, for the benefit of the public.
- 1.2.6 To encourage Public-Private partnership in technology generation and transfer.

## 2 Intellectual property policy

### 2.1 Management of IPR

#### 2.1.1. Legal Framework of IPR policy

The IP rights accruing to PAU in various forms would be embodied in the following Indian Acts, as amended from time to time:

1. The Copyright Act, 1957 as amended in 1983, 1984, 1992, 1994 and 1999 along with Rules 1958 and the international copyright order, 1999, 2000 (copyright Act)
2. The Patent act, 1970 as amended in 1999, 2002, 2004 (ordinance), 2005 and 2006 along with Rules 2005 (Patent Act)
3. The Trade mark Act, 1999 along with Rules 1999 (Trade Mark Act)
4. The Design Act, 2000 along with Rules 2001 (Designs Act)
5. The Geographic indication of Goods (Registration and Protection) Act, 1999 along with Rules 2002 (GI Act)
6. The semiconductor Integrated Circuits Layout – Design Act, 2000 along with Rules 2001 (IC Layout – Design Act )
7. The Protection of Plant Varieties and Farmers Rights Act, 2001 along with Rules 2003 (PPV & FR Act)

The Biological Diversity Act, 2002 along with Rules 2004 (Biodiversity Act) specifies procedure for access to biological/genetic materials for agricultural research and their IPR protection.

Of the various IPRs covered under the respective IPR Acts, PAU will have the most common recourse to patents, protection of plant varieties, and copyright. Protection of undisclosed information (trade secrets) will be through entering into suitable confidentiality agreements on case- to- case basis.

#### 2.1.2. Protection of Extant Varieties of PAU

All the extant varieties of PAU that were notified under section 5 of the Seed Act, 1966 that have not completed 15 years from their notification date are registerable. There will be protected as IP under the PPV & FR Act.

#### 2.1.3. Responsibility and Authority for managing IP

The responsibility and authority for management of IPR under this policy, as well as implementation of the regulations that follow, is hereby assigned to the PAU Director of Research (DR), implemented through Technology Marketing and IPR Cell (herein after referred as IPR cell) reporting directly to the PAU Director of Research. An appointed IPR Advisory committee shall advise the IPR Cell from time to time. The Director of research, or his/her designee(s) as authorized in writing, is the only University official with authority to execute research agreements, license agreements or other official documentation required for implementation of this policy and regulations.

### 2.2 Ownership

Except as stipulated in the policy, PAU shall be the owner of all invention(s) and creative work including software, designs and integrated circuit layouts and plant varieties created at PAU.

## 2.2.1 Joint ownership of IP

2.2.1.1 Collaborative Research: IP generated by PAU under collaborative/sponsored research projects will be jointly owned by PAU and its collaborators/partners on mutually agreed terms. PAU through DR will ensure that in all future collaborative/ sponsored activities, the contract should have clause favoring PAU as the owner in partnership for the intellectual property developed during the course of such contract.

2.2.1.2 Post Graduate Research : IP generated in research by post graduate scholars in PAU will, in principle, be jointly owned on mutually agreed terms in the following cases:

1. If the terms and conditions of scholarship from the external funding agency so require.
2. If the post graduate research is conducted at institution(s) outside PAU.

## 2.2.2 Inventions, Designs, IC Layouts and other creative work

Ownership in case of inventions, designs, IC layouts and other creative work created by PAU personnel without significant PAU resources and not connected with profession, for which employed at PAU, shall be owned by both PAU and inventor.

PAU shall be the owner of all Invention(s) including software, designs, integrated circuit layouts and plant varieties developed/created by teams of PAU and non-PAU personnel, associated with any activity of PAU. Non-PAU personnel who create invention(s) including software, designs or integrated circuit layouts, plant varieties at PAU but without intellectual contribution of PAU personnel /use of PAU — resources, shall be the owners of such invention(s).

## 2.2.3 Protection of plant varieties

Protection of plant varieties will be sought under "Protection of Plant Varieties and Farmer's Rights Act" 2001. Ownership of varieties will lie with PAU. In case of genetic material/variety sourced from outside agencies, the ownership of varieties will be governed by contract/material transfer agreement.

## 2.2.4 Copyrightable Work

Ownership of copyright of all copyrightable work shall rest with the author(s) with the following exceptions:

- a) If the work is produced during the course of sponsored and/or collaborative activity, specific provisions related to IP made in contracts governing such activity shall determine the ownership of IP.
- b) PAU shall be the owner of the copyright of work, including software, created by PAU personnel with use of PAU resources.

- c) PAU shall be the owner of the copyright on all teaching material developed by PAU personnel as part of any of the academic programs at PAU. However, the authors shall have the right to use the material in her/his professional capacity. As the traditional exception, PAU shall not claim ownership of copyright on books and publications authored by PAU personnel.
- d) PAU shall be the owner of copyright of work produced by non PAU personnel associated with any activity of PAU with the intellectual contribution of PAU personnel. However, the authors shall have the right to use the material in his/her professional capacity.

#### 2.2.5 Trade Marks / Service Marks

Ownership of trade mark(s)/service mark(s) created for PAU shall be with PAU

In case of PAU, PAU shall retain a non-exclusive, free, irrevocable license to copy/use IP for teaching and research activities, consistent with confidentially agreements wherever entered into by PAU.

#### 2.2.6 Geographical Indications (GI) As such GI pertains to communities. Therefore PAU will have no claim on any type of GI except for a plant variety developed by the University using a GI

### 2.3 Disclosure, Confidentiality and Assignment of Rights

For sponsored and/or collaborative work the provisions of the contract pertaining to disclosure of creative work will be applied.

For all other invention(s) produced at PAU, if the inventor(s) wish to protect the invention(s) they produce, then they are required to disclose the creative work to the IPR Cell at the earliest date using an Invention Disclosure Form.

Disclosure is a critical part of the IP protection and it formally documents claims of inventorship, the date of the invention and other details of the invention. The inventor(s) shall assign the rights of the disclosed invention to PAU.

All PAU personnel and non-PAU personnel associated with any activity of PAU shall treat all IP related information which has been disclosed to the IPR Cell and/or whose rights are assigned to PAU, or whose rights rest with PAU personnel, as confidential. Such confidentiality shall be maintained through non-disclosure agreement till the date as demanded by the relevant contract, if any, between the concerned parties unless such knowledge is in the public domain or is available to the public.

### 2.4 Assessment of Innovation for Protection

To facilitate assessment, an IP Assessment Committee (IPAC) shall be formed by the DR consisting of a chairperson, members of the Technology marketing & IPR Cell (hereby referred to as IPR Cell) and at least three additional faculty members with domain expertise or familiarity/experience in areas related to the creative work. The creator(s) would be free to suggest names of faculty (not more than 2) who are qualified to evaluate the creative work who may be invited by the DR to be a part o

the IPAC. In case of disagreement on the patent-ability of the invention, the matter will be presented before IPR Advisory Committee.

The IPAC shall assess the disclosure and shall make recommendations to the DR about the patent-ability of the invention according to the provisions of this policy. The IPAC may make one of the following recommendations:

- i) That PAU shall take the responsibility of protection of the IP, in which case PAU will initiate appropriate processes.
- ii) That PAU shall not take the responsibility of protection of the IP, in which case, the rights to the disclosed invention shall be promptly reassigned to the inventor(s). The inventor(s) may then choose to protect the creative work on their own. The inventor will be required to either file the application for protection of IPR or shall submit the research results for publication within two months failing which the IPR Cell will put the research results on the website of PAU.

Filing of IP Applications in foreign countries: Within six months of filing the complete IP application in India, PAU shall, based on available information decide on the suitability of protection of the invention in foreign countries. If PAU opts not to undertake such protection in any specific country requested by the inventor(s), PAU shall assign rights of the IP in that country to the creator(s) for the purpose of such protection.

Renewal of IP Rights: A decision on the renewal of IP rights will be taken by the IPR Advisory Committee. If PAU decides not to renew the IPR in any country, then it will assign the rights of the IP in that country to the creator(s) upon a request to that effect from the creator(s). In case of patents, the process of reassignment will be completed in a period of three months before the due date for its renewal.

In all cases where IP Rights in any specific country have been reassigned to the inventor(s), PAU shall not claim any share of proceeds earned through that IP in that country.

## 5 Negotiation of License Arrangement for Technology Transfer

- 2.5.1 In accordance with the principles set forth in the IPR Policy, the University strongly encourages the development of industry relationships that grant to a third party the right to use, develop and otherwise make commercial application of PAU-owned Inventions. The IPR Cell has the primary responsibility for negotiating license agreements with parties interested in commercializing PAU-owned Inventions.
- 2.5.2 Final terms of a license agreement for a University-owned Invention must be approved by the University's Vice Chancellor on recommendations of the DR. Only the Director of Research, with the help of empanelled patent attorneys, has the authority to execute license agreements on behalf of the PAU.
- 2.5.3 PAU encourages the development of start-up ventures in which one or more of the University inventors intend to participate personally. In the latter scenario, an entity owned in whole or in part by an inventor may gain license right to the invention under negotiated terms similar to those that might be offered to any company.

#### 2.5.4 Agreements when there is more than one institution – Collaborative Institution Agreement" – .

The institution-to-institution agreement will be negotiated by the PAU IPR Cell with the appropriate authorities of other party. Inventor will assist the IPR Cell to gain an assessment of the relative contributions of PAU to the IPR and to assist the IPR Cell in its negotiation with the third party, but ultimately, the IPR Cell negotiates. If additional help is required by the IPR cell, it can request the experts from within and outside the university.

#### 2.6 Obtaining of IPR

If PAU opts to protect the creative work, it shall provide an IPR Advisor/Patent Attorney for drafting the IP application as appropriate. PAU shall pay, if required, for access to the relevant IP information databases and other associated costs. The inventor(s) shall conduct IP searches, study the prior art and provide the necessary inputs to assist in the drafting of the IP application. PAU shall bear all costs of drafting and filing an Indian IP application. If PAU chooses to file IP applications in other countries, then it shall bear the cost of application and other associated costs. PAU shall be free to enter into agreements with overseas/ domestic institutions for funding for protection and licensing / commercialisation of the IP with mutually agreed terms and conditions.

#### 2.7 Revenue Sharing

The revenue sharing among researchers will depend upon the path followed for the protection of the invention. In case the protection/commercialization has been sought through an external agency like NRDC, not more than 30% of the royalty should be shared with external agency. Rest of the royalty, income, emoluments or remuneration accrued from the commercialization of the invention will be distributed among the inventors, University and partners as per the following pattern :

|                                  | Head                                                                | Amount     |
|----------------------------------|---------------------------------------------------------------------|------------|
| 1.                               | Revenue (Commercial benefits accrued from licensing fees/royalties) | A          |
| 2.                               | Service Tax/ other levies, sharing with NRDC and/or other agencies  | B          |
| 3.                               | PAU                                                                 | C=30% of A |
| 4.                               | Net revenue to be shared as Incentive (A-B-C)                       | X          |
| Amount X will be shared as under |                                                                     |            |
|                                  | Stakeholder category                                                |            |
| 1.                               | PAU scientists and team members                                     | 60%        |
| 2.                               | *PAU Technology Marketing and IPR Cell                              | 15%        |
| 3.                               | Department (PAU)                                                    | 25%        |

\* To establish revolving fund for IP activities and to meet expenses to protect IP. However, this revolving fund will have to be provided from the need based support from the funds from the University i.e. funds shown as C.

Co-creators of IP shall sign at the time of disclosure, a Distribution of IP Earnings Agreement, which shall specify the percentage distribution of earnings from IP to each co-inventor. The inventors may at any time by mutual consent revise the distribution of IP Earnings Agreement.

## 2.8 Infringements, Damages, Liability and Indemnity Insurance

As a matter of policy, PAU shall, in any contract between the licensee and PAU, seek indemnity from any legal proceedings including without limitation manufacturing defects, production problems, non germination of seeds or less germination percentage, design guarantee, upgradation and debugging obligation.

PAU shall also ensure that PAU personnel have an indemnity clause built-into the agreements with licensee(s) while transferring technology or copyrighted material to licensees.

PAU shall not infringe IP of any other organization within and outside India.

PAU shall retain the right to engage or not in any litigation concerning patents and license infringements.

## 2.9 Conflict of Interest

The inventor(s) are required to disclose any conflict of interest or potential conflict of interest. If the inventor(s) and/or their immediate family 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 for a patent to a company in which the inventors have a stake shall be subject to the approval of the DR taking into consideration this fact.

## 2.10 Dispute Resolution

In case of any disputes between PAU and the inventors regarding the implementation of the IP policy, the aggrieved party may appeal to the Vice Chancellor of PAU. Efforts shall be made to address the concerns of the aggrieved party. The VC's decision in this regard would be final and binding.

## 2.11 Jurisdiction

All agreements to be signed by PAU will be subject to jurisdiction of Ludhiana City.

## 2.12 Management of Plant and other Biological material

Traditional knowledge and biological resources, any exchange of biological material must respect the governing laws of the donor or recipient countries. Biological Diversity Act, 2002 aims to regulate access to biological resources of the nation, to further respect and protect knowledge of traditional communities; to facilitate

protection and rehabilitation of threatened species and involvement of government institutions in implementation.

Some inventions can be adequately protected without patents such as a) plant varieties/animal breeds/microbial strains. These will be protected under the Protection of Plant Variety and Farmers' Rights Act or by registration with NBPGR/NBAGR/culture depositories. b) the community rights are safe guarded through international disclosure of biological origin used in patent application or transfer agreement of the biological material.

#### 2 13 Right to review publications

In order to ensure that no patent opportunities are missed, any agency supporting or collaborating in research may also be granted the right to review manuscripts prior to publication or public disclosure. This right of review does not include the right to alter publications, except to the extent necessary to remove any company owned confidential information. The company generally will have the right to ask the University to delay publication for a reasonable period of time (usually not more than 90 days) sufficient to allow patent action to be taken.

#### 2 14 Right to Review the Policy

As and when required, PAU will review and bring about necessary changes in the IPR policy in light of changing scenario.

### 3 Glossary

For the purposes of implementing this regulation, the technical terms are defined as follows:

3.1 Invention : A process/method, device, plant, germplasm or other biological material, composition of matter or other discovery that reasonably appears to qualify for protection under the Trade Related Aspects of Intellectual Property Rights (TRIPS) within the framework of World Trade Organization (WTO).

3 2 Patent Rights: is an exclusive right granted by a country to the owner of an invention to exclude others from making, using or selling an invention within that country, provided the invention satisfies following conditions stipulated by the law:

- a) Novelty: An invention will be considered novel if it does not form a part of the global state of the art and, [a more precise legal definition is needed here]
- b) Inventiveness [sometimes called "non-obviousness"]: A patent application involves an inventive step if the proposed invention is not obvious to a person skilled in the art, i.e. skilled in the subject matter of the patent application and
- c) Usefulness: An invention must possess utility for the grant of patent. No valid patent can be granted for an invention devoid of utility.

3.3 Copyright or Copyrightable Work: An original work of authorship which has been fixed in a tangible medium of expression, from which it can be understood, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, such as books; software and other computer programs; sound recordings; literary, artistic, dramatic and musical works; cinematographic films, A copyrightable work may be the

product of a single author or a group or others who have collaborated on the creation of the work.

- 3.4 Industrial designs: A design used in commerce that is new and differs significantly from known designs or combinations of known designs. Design protection promotes market competition and encourages creativity by protecting aesthetically attractive products ranging from technical instruments, appliances, house wares, textiles and other goods.
- 3.5 Trademarks: (including Service marks): A distinctive work, artistic design, graphic symbol, or combinations of words and graphic design that distinguishes and identifies the goods or services of one party from those of another party, examples being plant varieties or computer programs.
- 3.6 Geographical indications (GI): GI identify a food, biological material or other good as originating in a region or locality of territory of a member country through a given quality, reputation or other characteristic of the goods. (GIs may not be directly used by the University system) but IPR Cell can provide data and other information available from their libraries to associations seeking GI registration for products. The University will file a Registration for GI if a plant variety of other good was developed by and is owned by the University.
- 3.7 Trade secrets: Assume an important role with increasing awareness about IP system in the universities. *[the freedom and open environment prevents universities from keeping true trade secrets, as defined in law (statutory and case law). Trade secrets are not the same as temporary or limited confidentiality, but have true legal requirements, which universities typically cannot maintain. Therefore this IPR policy will not cover Trade Secrets.]*
- 3.8 Plant Variety Protection (PVP) and Farmers' Rights (FR): Means the "Protection of Plant Varieties and Farmers' Rights Act, 2001.
- 3.9 Tangible Research Property: Tangible items produced in the course of research, including but not limited to such items as biological materials, computer databases, prototype machines or devices to improve agricultural processes. Tangible research property may be protected by contract, such as a Material Transfer Agreement, defining the rights of the recipient of the Tangible Research Property. Furthermore, Tangible Research Property may be associated with one or more intangible properties, such as trademarks, patent rights, or PVP applications and/or certificates.
- 3.10 Intellectual Property: Collectively, all forms of intellectual property of the University included in the specific definitions provided above.
- 3.11 The IPR Cell is the entity within PAU that provides the day-to-day management of the University-owned Intellectual Property and implementation of these regulations with tasks such as but not limited to receiving and maintaining Disclosure of Invention files, interfacing with the external agency in the patent application process, and encouraging the faculty to file Disclosures of Invention. Additionally, the IPR Cell is the entity

primarily responsible for technology transfer tasks, such as negotiating license agreements with prospective commercialization partners. The objectives of the IPR Cell are :

- a) To access and facilitate the inventive work for creation of Intellectual property.
- b) To generate awareness among the faculty, students, creator/group of creators and societies regarding the value of their ideas/IPK/Genetic wealth.
- c) To help such group/groups for submission of proposals for creation and protection of IP.

3.12 IPR Advisory Committee: An IPR Advisory Committee shall be established to guide and advise the IPR Cell. The Committee shall be comprised of the Vice-Chancellor as its Chairman; Director of Research as Secretary; Dean, Post-graduate Studies; Director Extension Education; Registrar; Deans of constituent Colleges; and two senior most professors as members.

3.13 Technology Marketing & IPR Cell: will be constituted as under

|                                                                                       |                 |
|---------------------------------------------------------------------------------------|-----------------|
| <u>Additional Director of Research (Agri.)</u>                                        | <u>Chairman</u> |
| <u>Concerned Coordinator of Research</u>                                              | Member          |
| <u>Concerned Head of Department</u>                                                   | Member          |
| <u>Concerned Scientist(s)</u>                                                         | Member          |
| <u>Incharge, Marketing Cell, Department of Economics</u>                              | Member          |
| <u>A senior faculty member from the</u><br><u>(Department of Business Management)</u> | <u>Convener</u> |