中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

合作完成成果的知识产权权利分配原则和依据

Allocation of Intellectual Property of Cooperation Achievements

北京市华意律师事务所
合伙人 主任 王汉坡
WANG Hanpo
Partner and Director
Beijing East Rain Law Firm
March 5, 2012, Haikou

© TemplatesWise.com

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

摘 要： 王汉坡律师主要分析了合作完成成果的知识产权权利分配原则和依据。谈到产学研合作中合作完成成果的知识产权分配形式，他指出产学研合作中的法律关系应当包括诸多技术合作的集成，产学研合作在知识产权方面不同于单纯的知识产权联盟，即所谓的“专利池”，并介绍了在政府投入与产学研合作完成成果的知识产权权利分配中，应当遵循的法律和条款。他指出合作完成成果知识产权权利的分配，应当以现有法律法规、国际公约和商业惯例为基点，从更大的视点上构架新型的知识产权合作关系。

Abstract: Mr. WANG Hanpo mainly analysed the principles and rationale in the allocation of intellectual property of cooperation achievements. He pointed out that when allocating intellectual property from joint research, the legal relations of industry-academia-education cooperation should inculde the integration of various technical cooperation, and the resulted IP differs from IP consortium, or “patent pool”. He also briefed the audience on the laws and regulations for IP allocation of government-funded and industry-academia-education collaborated projects. Mr. WANG suggested that a new IP cooperation mechanism should be set up based on existing laws and regulations, international conventions and commercial practices.

© TemplatesWise.com

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

产学研合作中合作完成成果的知识产权分配形式

I ntellectual property of cooperation achievements in industry-university-and-research cooperation (IUR cooperation) is allocated in the following forms

一、产学研合作中的法律关系应当包括诸多技术合作的集成。

1、当事人约定优先；

2、相关法律规定；

3、当事人各方约定研发成果为共有。

I.Legal relations in IUR cooperation comprise integration of various technical cooperation.

1. Agreement between the interested parties takes priority;
2. Relevant legal provisions;
3. Interested parties agree to share R&D achievements.

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

如果当事人各方约定研发成果为共有的，其申请专利等知识产权的权利一般属于合作各方单位共有，并可以按照下列原则办理：

If interested parties agree to share R&D achievements, IP rights including the right of patent application are shared by all collaborative parties and can be practiced based on the following principles:

⑴各方合作单位在本国领土内代表全体合作方申请专利、以及在获得专利后许可他人实施该项专利，由此获得的经济利益，应按协议约定的比例分配。

(1) If the organization of any party applies for patent right within the territory of its own country on behalf of all cooperation parties or permits others to exploit the patent after the right is obtained, any economical benefits thus acquired shall be allocated proportionally in accordance with the agreement.

⑵申请专利时成果完成人的名次排列，应当按照成果完成者的贡献大小确定。难以分清贡献大小时，在本国领土内申请专利的，可以本方成果完成人为第一完成人，在第三国申请专利权，由双方协商决定，或以负担专利申请费与维持费一方的成果完成人为第一完成人。

(2) Rank of achievement accomplishers in patent application should be decided based on their contribution. When it is difficult to identify the magnitude of their contribution, the accomplisher that applies for patent right within his own country territory shall rank the first, and when patent application is conducted in a third country, the rank shall be decided through negotiation or the accomplisher from the party that bears the application fee and maintenance fee shall rank the first.

⑶合作各方如有一方声明放弃专利申请权，另一方可以单独申请，或者由其他各方共同申请。成果被授予专利权以后，放弃专利申请权的一方可以免费实施该项专利。

(3) If a party to a cooperative development waivers its joint right of application for patent, any or all of the other parties to the cooperative development may make exclusive or joint application. If the patent right is obtained by the applicant(s), the party that has waived its right of application may exploit the patent free of charge.

⑷合作各方中，一方不同意申请专利的，如理由充分，另一方或者其他各方不应申请专利。

(4) If one party to a cooperative development does not agree to apply for patent right for good reason, the other party or parties may not apply therefore.

⑸合作各方中任何一方向第三方转让共有的专利申请权或共有的专利权时，应当通知其他合作方，合作的其他各方有优先受让的权利。

(5)If any party to a cooperative development transfers the joint right of IP application or the joint IP right to a third party, it shall notify the other parties, and the other parties shall have priority in getting the right.

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

⑹合作方中任何一方同第三方订立专利实施许可合同，应事先征得其他各方的同意，并由合作各方共同确定专利使用费标准。由此产生的经济利益，合作各方应当根据协议规定，合理分享。

(6) If any party to a cooperative development makes license contract of patent exploitation with a third party, it shall secure the other parties' agreement in advance, and the standard of patent exploitation fee shall be jointly fixed by all interested parties to the cooperation development. Any economical benefits thus acquired shall be shared in accordance with the agreement.

⑺确定专利使用费分享的比例时，应当考虑各方在合作中所提供的人力、资金、仪器、设备、情报资料等物质条件多少等因素。

(7) Interested parties shall take into account factors including the contribution of manual power, fund, instrument, equipment, intelligence information etc. to determine the proportion of sharing patent exploitation fee.

二、产学研合作在知识产权方面不同于单纯的知识产权联盟，即所谓的“专利池”。

II. With regard to IP rights, IUR cooperation is different from IP consortium, namely the so called “patent pool”.

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

专利池：一种由专利权人组成的专利许可交易平台。

Patent Pool: a patent licensing transaction platform made up of patentees.

特　点：

平台上专利权人之间进行横向许可；

以统一许可条件向第三方开放进行横向和纵向许可；

许可费率由专利权人决定。

Features:

Crosswise licensing between patentees on the platform;

Crosswise and longitudinal licensing with a third party according to unified licensing requirements;

Licensing fee is determined by patentees.

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

产学研联盟的知识产权合作：

产学研联盟的知识产权合作是从战略目标的确定、优势的组合、项目的研发，直到产业化是一个完成的创新过程。专利池功能只是其中的一部分。

IP collaboration in industry-university-and-research consortium:

IP collaboration in industry-university-and-research consortium is a complete innovation process including the establishment of strategic targets, combination of strengths, R&D of the project and the final industrialization. Patent pool is only a part of the IP collaboration.

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

三、政府投入与产学研合作完成成果的知识产权权利分配关系。

III.Allocation of IP of cooperation achievements in government-funded and IUR collaboration.

美国：“拜杜法案”　介入权

The United States: “Bayh-Dole Act”　March-in right

中国：《科技进步法》

China: Law of the People's Republic of China on Science and Technology Progress

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

《国家科技重大专项知识产权管理暂行规定》第二十二条：

Article 22 of Provisional Regulations on Intellectual Property Management of Major National Science and Technology Projects:

重大专项产生的知识产权，涉及国家安全、国家利益和重大社会公共利益的，属于国家，项目（课题）责任单位有免费使用的权利。

IP right developed in major special projects which involve national security, national interests and major public interests, shall be owned by the nation, and the units managing the projects (research subjects) shall have the right of exploitation free of charge.

中美清洁能源联合研究中心知识产权研讨会
CERC Workshop on Intellectual Property

对合作完成成果知识产权权利的分配原则，应当以现有法律法规、国际公约和商业惯例为基点，从更大的视点上构架新型的知识产权合作关系。

Allocation of IP of collaborative achievements should be based on existing laws and regulations, international conventions and commercial practices so as to establish new IP cooperation relations from a broader perspective.

谢　谢

THANK YOU

王汉坡 wanghanpo@gmail.com

13601328633