CERC *Intellectual Property*
中美清洁能源联合研究中心
知识产权

2013.2.27

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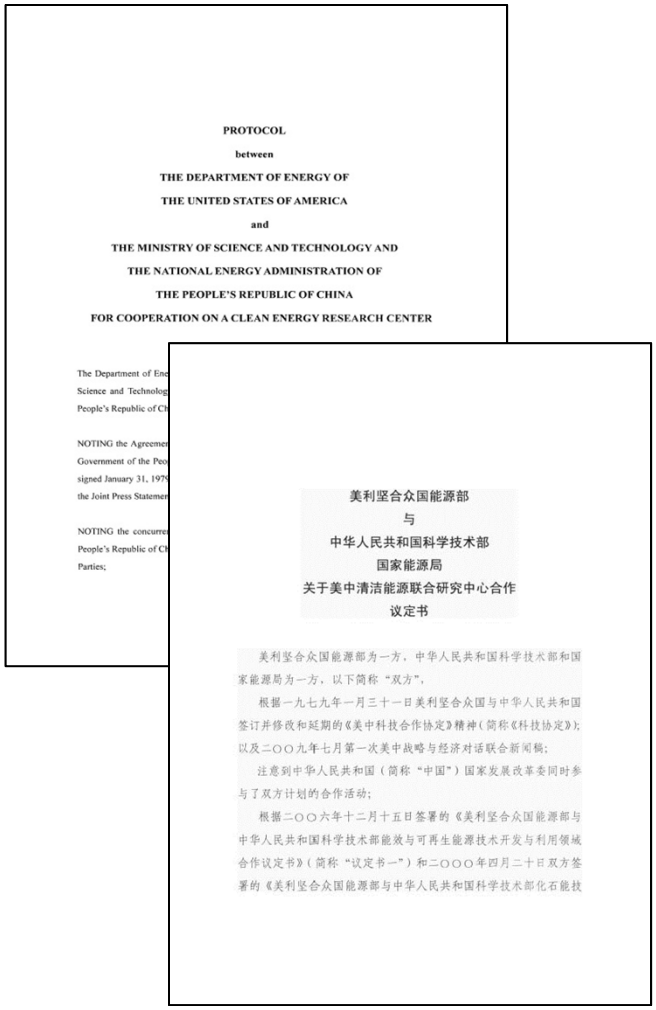
U.S.-China Clean Energy Forum
中美清洁能源论坛知识产权项目执行官

中美清洁能源论坛
US-CHINA Clean Energy Forum

Annotated TMP

技术管理计划附加说明

Provides guidance to IP experts drafting project and IP contracts
为知识产权专家起草项目草案和知识产权合同提供指南



PROTOCOL

between

THE DEPARTMENT OF ENERGY OF

THE UNITED STATES OF AMERICA

and

THE MINISTRY OF SCIENCE AND TECHNOLOGY AND

THE NATIONAL ENERGY ADMINISTRATION OF

THE PEOPLE'S REPUBLIC OF CHINA

FOR COOPERATION ON A CLEAN ENERGY RESEARCH CENTER

美利坚合众国能源部

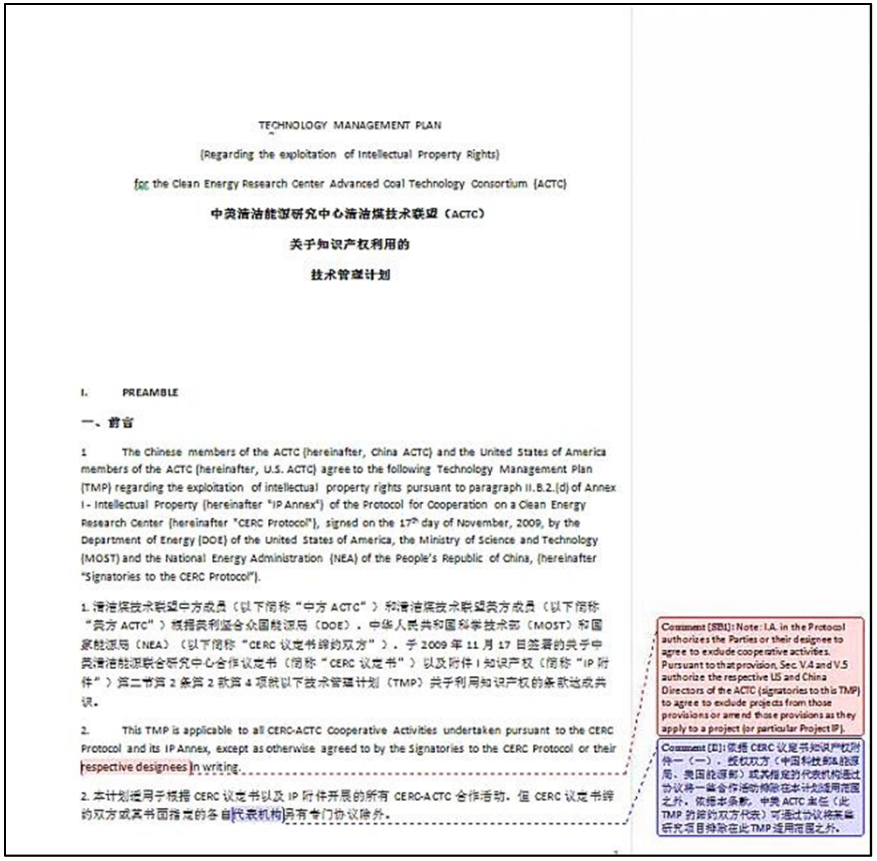
与

中华人民共和国科学技术部

国家能源局

关于美中清洁能源联合研究中心合作

议定书



TECHNOLOGY MANAGEMENT PLAN

(Regarding the exploitation of Intellectual Property Rights)

for the Clean Energy Research Center Advanced Coal Technology Consortium (ACTC)

中美洁洁能源研究中心洁洁煤技术联盟（ACTC）

关于知识产权利用的

技术管理计划

I. PREAMBLE

一、前言

1 The Chinese members of the ACTC (hereinafter, China ACTC) and the United States of America members of the ACTC (hereinafter, U.S. ACTC) agree to the following Technology Management Plan (TMP) regarding the exploitation of intellectual property rights pursuant to paragraph II.B.2.(d) of Annex I - Intellectual Property (hereinafter "IP Annex") of the Protocol for Cooperation on a Clean Energy Research Center (hereinafter "CERC Protocol"), signed on the 17th day of November, 2009, by the Department of Energy (DOE) of the United States of America, the Ministry of Science and Technology (MOST) and the National Energy Administration (NEA) of the People's Republic of China, (hereinafter "Signatories to the CERC Protocol").

1. 清洁煤技术联盟中方成员（以下简称"中方 ACTC"）和清洁煤技术联盟美方成员（以下简称"美方 ACTC"）根据美利坚合众国能源局（DOE）、中华人民共和国科学技术部（MOST）和国家能源局（NEA）（以下简称"CERC 议定书缔约双方"）、于 2009 年 11 月 17 日签署的关于中美清洁能源联合研究中心合作议定书（简称"CERC 议定书"）以及附件 I 知识产权（简称"IP 附件"）第二节第 2 条第 2 款第 4 项就以下技术管理计划（TMP）关于利用知识产权的条款达成共识。

2. This TMP is applicable to all CERC-ACTC Cooperative Activities undertaken pursuant to the CERC Protocol and its IP Annex, except as otherwise agreed to by the Signatories to the CERC Protocol or their respective designees in writing.

2. 本计划适用于根据 CERC 议定书以及 IP 附件开展的所有 CERC-ACTC 合作活动。但 CERC 议定书缔约双方或其书面指定的各自(代表机构)另有专门协议除外。

Comment [SBI1]: Note: I.A. in the Protocol authorizes the Parties or their designee to agree to exclude cooperative activities. Pursuant to that provision, Sec V.4 and V.5 authorize the respective US and China Directors of the ACTC (signatories to this TMP) to agree to exclude projects from those provisions or amend those provisions as they apply to a project (or particular Project IP).

Comment [E1]: 依据 CERC 议定书知识产权附件一（一），授权双方（中国科技部/能源局、美国能源部）或其指定的代表机构通过协议将一些合作活动排除在本计划适用范围之外。依据本条款，中美 ACTC 主任（此 TMP 的缔约双方代表）可通过协议将某些研究项目排除在此 TMP 适用范围之外。

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中美清洁能源论坛
US-CHINA Clean Energy Forum

Annotated TMP

技术管理计划附加说明

Answers questions that have been raised by CERC Participants.
清洁能源研究中心参与者们提出的问题和答案

2. "Background Intellectual Property," as used in this TMP, shall mean intellectual property created or invented outside the scope of the Joint Work Plan for Research on Clean Coal Including Carbon Capture and Storage (hereinafter ACTC Joint Work Plan), dated 18 January 2011.

2. 本计划中"背景知识产权"是指在 2011 年 1 月 18 日对清洁煤包括碳捕捉及储存的联合工作计划 (以下简称 ACTC 联合工作计划) 范围以外创造或发明的知识产权。

3. "Project Intellectual Property" shall mean Intellectual Property created or invented by a Participant in performance of work within the scope of the ACTC Joint Work Plan.

3. "项目知识产权"是指在 ACTC 联合工作计划范围之内从事工作的参与者创造或发明的知识产权。

4. "Cooperative Activities," as used in this TMP, shall mean any research and development work within the scope of the ACTC Joint Work Plan.

4. 本计划中"合作活动"是指 ACTC 共同工作计划范围之内的任何研究和开发工作。

5. "Jointly-Funded Research Project," as used in this TMP, shall mean Cooperative Activities whose scope of work/work plan involves Signatories to the CERC Protocol from BOTH countries providing collaborating research performers employed or sponsored by them and/or joint funding (including in-kind contributions) of such scope of work/work plan.

5. 本计划中"共同资助研究项目"是指其工作范围、工作计划涉及中美 CERC 议定书缔约双方及其雇佣或资助合作研究执行者，和/或共同为前述工作范围、工作计划出资（包括实物捐赠）的合作活动。

6. "Participant(s)," as used in this TMP, shall mean an entity or entities performing or providing funding or in-kind support for the performance of any of the research and development work in a particular Cooperative Activity, or administration thereof, within the scope of the ACTC Joint Work Plan agreed upon under the CERC Protocol, and includes, but is not limited to, contractor(s), subcontractor(s), awardee(s), sub-awardee(s), of MOST, NEA or DOE, or any other entity that provides significant funding or in-kind support as herein set forth.

6. 本计划中"参与者"是指执行下列事项或为执行下列事项提供资金或实物支持的主体：根据 CERC 议定书约定的 ACTC 共同工作计划范围内的专项"合作活动"中的任何研究和开发工作或上述工作的管理，而且还包括但不限于，MOST、NEA 或 DOE 的承包商、分包商、中标人、分中标人，或提供大量资金或实物支持的任何其他主体。

4

Comment [SB7]: Many people assume that Background IP has to be created "before" the contract, whereas it can be created during the period of the contract, thus, it is very important to be clear what is within the scope of work. Contracts regarding Background IP should contemplate improvements or future developments of that Background IP.

Comment [B]: 很多人认为背景知识产权必须是在合同签订前产生的，但事实上它同样可以在合同生效期内产生。因此，必须明确背景知识产权是在工作范围中产生的。这一点非常重要。针对背景知识产权的合同条款应当认真考虑对于背景知识产权的改进或将来的改进（权力归属利用等问题）。

Comment [SB9]: "Project Intellectual Property" is that which the creation of which is described (in the description of the project) in the ACTC Joint Work Plan. However, in the spirit of supporting the CERC Mission, where a Project Agreement describes creating IP in the project, project Participants may agree that such IP will be treated as "Project Intellectual Property" under this TMP.

Comment [B10]: "项目知识产权"是由 ACTC 联合工作计划项目描述中所规定工作的创新而产生。然而，根据 CERC 的精神，当一个项目所签署的合同描述"项目中创造的 IP"时，项目参与者应当同意该 IP 被作为"本 TMP 所规定的项目知识产权"来对待。

Comment [SB11]: This refers to the project agreement, in what ever form it takes. This could include the 10-Point Plan for the project.

Comment [B12]: 此处指的是项目协议中的工作范围、工作计划，而无论其以什么形式出现。它可以包括该项目的十点工作计划。

Comment [SB13]: Note: The term "Participant" includes any entity providing funding, in-kind contributions or in-kind performance to a CERC ACTC project (or the CERC ACTC, as contemplated by the inclusion of the term "administration thereof"). Such contributions could be those made to CERC for purposes beyond the ACTC (such as contributions that benefit all three CERC

Comment [B14]: "参与者"包括任何向 CERC ACTC 项目提供资金或实物支持（in-kind performance）的实体，或者 CERC ACTC 的管理机构，该该支持可以是超越 ACTC 针对 CERC 提供的（比如对 CERC 所有三个联盟的一个总体的支持）。

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CERC IP Guide

中美清洁能源联合研究中心知识产权指南

- Based on the widely adopted University of Michigan IP Handbook

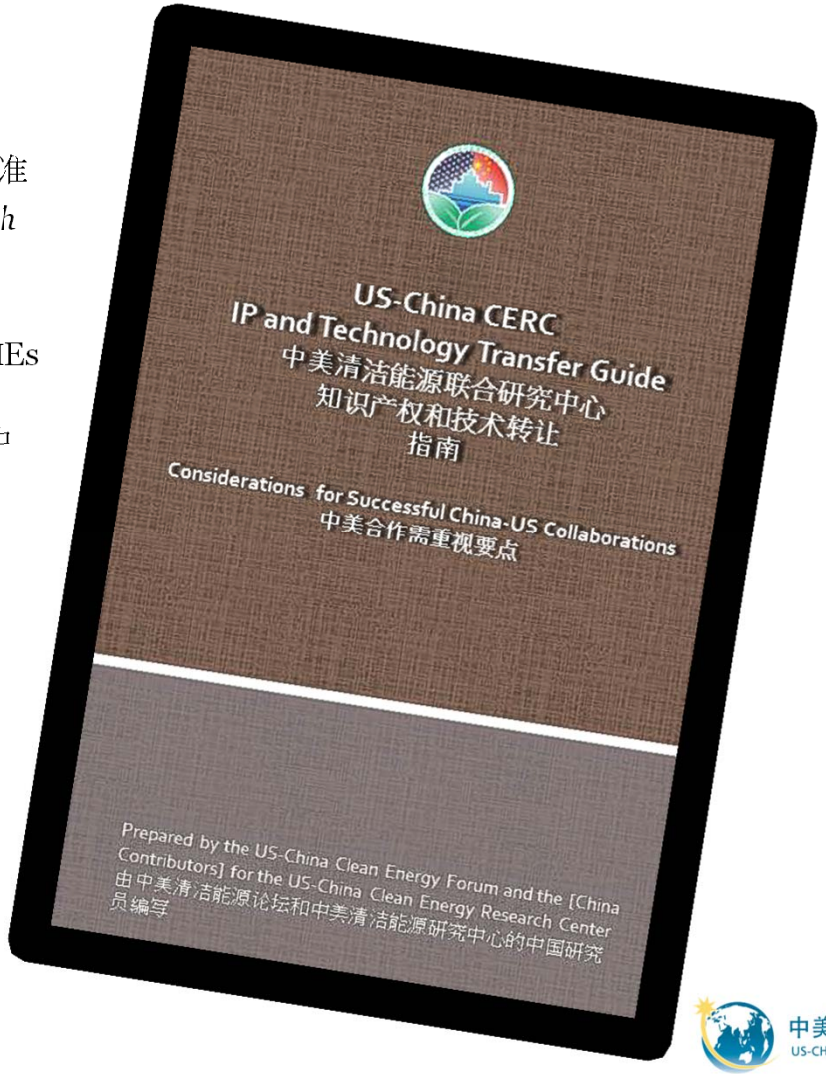
  以被广泛采用的密歇根大学知识产权手册为基准

- Addresses IP and Technology Transfer in *both* the US and China

  提到了美国和中国的知识产权和技术转让

- Describes the law and provides advice for SMEs and researchers

  描述了美国和中国有关知识产权的法律，给中小企业和研究者提出了相关建议



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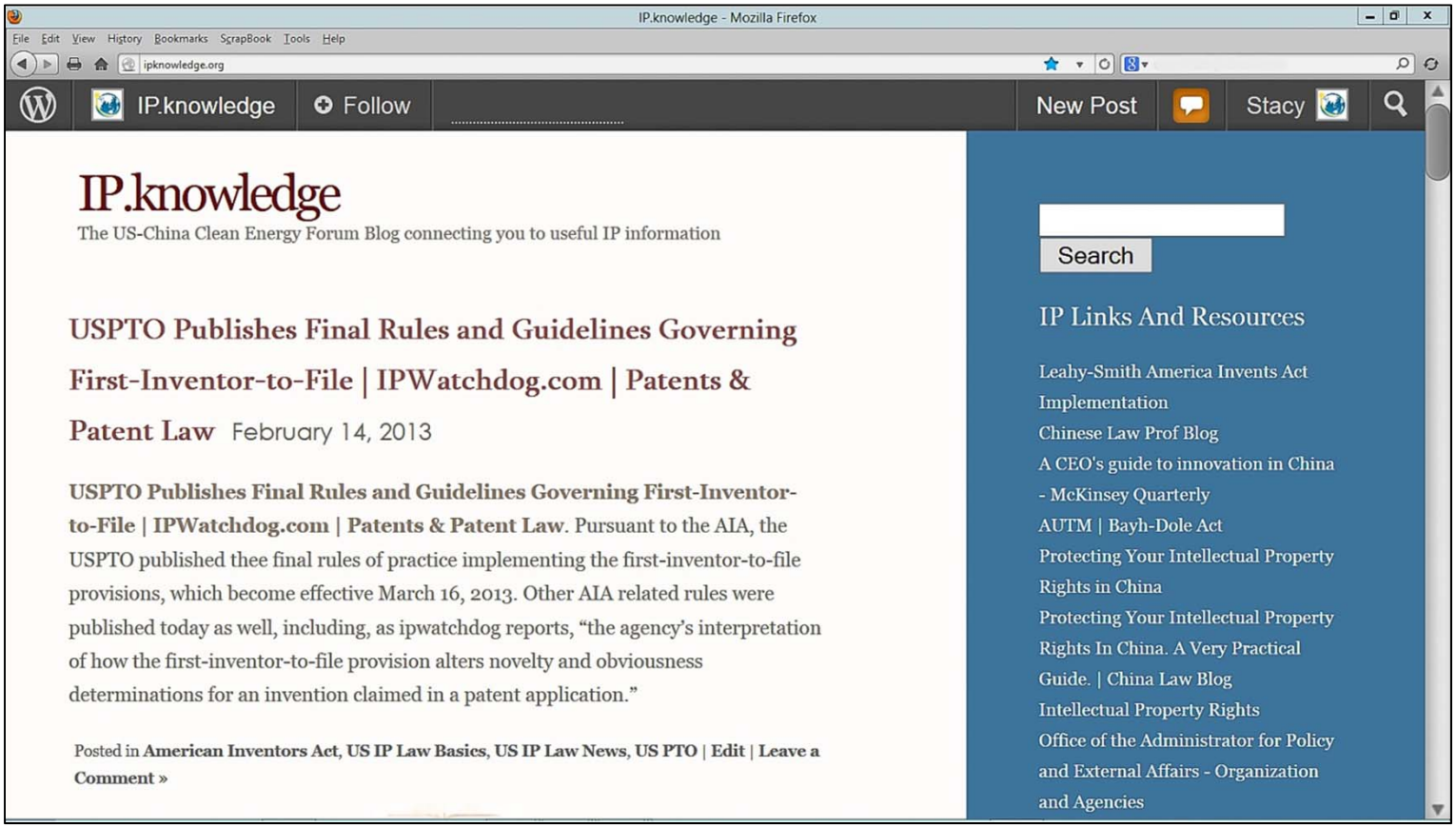
Website and Blog

网站和博客



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CERC IP Experts Group

中美清洁能源研究联合中心知识产权专家组

- **US DOE and China's MOST request:** A Joint US-China Intellectual Property Experts Group for the US-China Clean Energy Research Center (CERC) to identify ways to enhance intellectual property protection for CERC Participants.

  应美国能源部和中国科委的要求：中美清洁能源研究中心下的一个中美双方知识产权专家组，找到用以充分保护CERC项目参与者知识产权的方法

- **Leaders and experts** from Chinese and American businesses, law firms, research institutions, universities, and others, with support or participation of government, as needed.

  有政府支持或政府参与的，来自中国和美国企业界、律师事务所、研究机构、大学或者其他机构的领导和专家。

- **Explore and pursue innovative ideas:**

  探索和追求创新的理念：

  – Bilateral intellectual property risk insurance (similar to political risk insurance),

    双边知识产权风险保险（与政治风险保险类似）

  – New approaches to dispute resolution to minimize litigation risk and reduce the cost of disputes

    争端解决的新方法，以降低诉讼风险和减少争议的成本

  – Mechanisms to address damages or injunctive relief

    有关损害和禁令救济的机制

  – Ways to increase comfort for IP owners entering bilateral transactions

    找到如何提高知识产权所有者参与双边交易的舒适度的方法

  – Ongoing IP education for researchers and SMEs

    为研究者和中小型企业提供知识产权培训

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谢 谢!

Thank you!

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