

Guidelines on protection and exploitation of Intellectual Property Rights emanated from the collaborative Research Programme of CEFIPRA

Preamble:

Indo-French Centre for the Promotion of Advanced Research (CEFIPRA) is India's first and France's only bilateral organization, committed to promote collaboration between the scientific communities of the two countries across the knowledge innovation chain. The Centre was established in 1987 with the support from the Department of Science & Technology, Government of India and the Ministry of Foreign Affairs, Government of France. The governments of both the countries wish that the rights of the intellectual property resulting from the joint research should be duly protected. Accordingly these guidelines have been laid down with the objective of developing the scientific and technical cooperation between the collaborators of the two countries.

Before starting the project, the partners shall jointly prepare an Intellectual Property management plan and submit it to CEFIPRA after duly signed by the all the partners & head of all the institutes / Industries. The Intellectual property Management Plan may be jointly modified later if needed. Each partner shall be free to determine the sharing of the rights, interest and royalties as well as the liabilities between itself and its employees as per the legislation and practices applicable to the said partner. The model Agreement for Intellectual Property management plan for Collaborative Scientific Research programme and Industry- Academia Research & Development Programme is in Annexure-I and Annexure-II. Both the annexure-I & annexure-II are model templet. Collaborator may modify it according to their need by following these guidelines.

1.0 Scope and Objectives:

- 1.1 These guidelines are applicable to the intellectual property arising from the collaborative research projects supported by CEFIPRA and jointly carried out by the partners.
- 1.2 These guidelines define the modalities of protecting and exploiting the intellectual property and allocating the rights, interests and royalties among the partners.
- 1.3 The partners are bound by the provisions of these Guidelines.
- 1.4 The Agreement for Intellectual Property Management Plan for Collaborative Scientific Research programme and Industry- Academia Research & Development Programme shall be based on the provisions of this Guideline.

2.0 Definitions: In this Guidelines, unless the context otherwise requires,-

- 2.1 “CEFIPRA” means Indo-French Centre for the Promotion of Advanced Research, also known as Centre Franco-Indien pour la Promotion de la Recherche Avancée-registered as a society under the Indian Societies Registration Act, 1860, having its registered Office at B, Ground Floor, India Habitat Centre, Lodhi Road, New delhi-110003, India.
- 2.2 “programme” means the Collaborative Scientific Research programme and Industry-Academia Research & Development Programme
- 2.3 “collaborative project” means the collaborative projects supported under Collaborative Scientific Research programme and Industry- Academia Research & Development Programme of CEFIPRA & jointly implemented by French and Indian partners.
- 2.4 “partners” means the institutions / industries of the French and Indian collaborator carrying out the “collaborative project”
- 2.5 “intellectual property” means patents, copyright, registered design, trademark, knowhow for a process/product/design and computer software in accordance with the domestic laws of the respective countries.
- 2.6 “background information” means technical information and knowhow owned or controlled by the partners before the starting of the collaborative project, in the same or related field as the subject matter of the project and necessary for the execution of the project.
- 2.7 “background intellectual property” means the intellectual property owned or controlled by the partner before the start of the project , in the same or related field as the subject matter of the project and necessary for the execution of the project.
- 2.8 “result” means all kind of information and intellectual property generated by the partners for implementation of the project.

3.0 Modalities of Securing and Maintaining Intellectual property Rights

- 3.1 The rights of intellectual property arising from the collaborative project shall be in principle, the joint property of the partners. In respect of each result which is to be protected, the partner shall decide the modalities of protecting the rights and prepare necessary document in mutual consultation with each other.
- 3.2 Without prejudice to the law of the country of each partner, the application for securing the rights of the intellectual property is to be made in the names of the partners.

The first application for securing the rights of the Intellectual Property, particularly for the patents should preferably be made under the procedure of the Patent

Cooperation Treaty (PCT), to get the benefit of the period described therein, during which the priority is protected in the member countries of the PCT.

In case the partners decide not to file the application in India and/ or France, the reason shall be intimated to CEFIPRA

Usually the first filing is made in the country where invention was performed. The other partner may, in turn, file in its own country.

The list of third states in which must be carried out other filing is determined by mutual agreement between the partners.

In the event that one partner cannot or does not wish to file application, the other partner will give him in return a non-exclusive, irrevocable, royalty-free license.

- 3.3 Within one month from the date of the filling of application the partner shall forward all the copies of application along with all documents to the other partner(s). The details of such application and the grant and maintenance of the rights shall also be intimated to one another as and when become available.
- 3.4 The partners shall forward to details of application to CEFIPRA for information. Further the partners shall forward to CEFIPRA details of application, if any relating to the same or substantially the same subject matter of the project filed after the completion of the project.
- 3.5 In all such application, the persons who have directly contributed intellectual inputs, shall be mentioned as inventors by the partners.

4.0 Commercial Exploitation of Intellectual Property Rights

- 4.1 The partner shall take all necessary steps for the commercial exploitation of the rights obtained, to the fullest possible extent that is reasonably practicable, without undue delay. They shall jointly determine the modalities of commercialization of the intellectual property protected in the concerned countries.
- 4.2 If any partner (s) has/ have the capacity to commercially exploit the rights of intellectual property by itself / themselves, such partner (s) will have the right to preemption. The period of such exploitation will be decided mutually by the partners.
- 4.3 The partner(s) shall include in the terms and conditions of commercialization provision for making available the IP protected products to the public at reasonably affordable cost taking care of the legitimate interest of the person commercializing the protected IP.

4.4 The parties shall publish on their website the details of the intellectual property acquired, assigned, or licenced by the parties and such other information as may be prescribed by CEFIPRA.

5.0 Expenditure

5.1 The expenditure connected with securing and maintaining the rights of intellectual property shall be borne by the partners.

6.0 Maintenance of Account

6.1 The partners shall maintain detailed accounts in respect of the expenditure incurred in securing and maintaining the rights of the intellectual property, and the revenue earned therefrom separately in respect of each application filed by them.

6.2 Annual statement of accounts duly authenticated shall be exchange by the partners between themselves. Partners should provide information to CEFIPRA if required.

7.0 Sharing of the Revenue Accrued on the commercial exploitation of Intellectual Property Rights

7.1 The net revenue earned through the commercial exploitation of the rights of the intellectual property shall be shared among the partners. The method of sharing among partners shall be explicitly mentioned in the Intellectual Property Management Plan.

7.2 In some cases any profit made by each partner in its territory of exclusive rights belongs to the partner who obtained these profits. However everything could be stated in the management Plan.

8.0 Renunciation

8.1 If any of the partners renounces to obtain protection for the rights of intellectual property or to ensure its maintenance, or declines to participate in the expenditure connected therewith, the said partner (s) shall immediately notify the other partner (s). The other partner (s) may proceed to obtain such protection in its / their sole name (s) and / or to ensure its maintenance. The expenditure connected therewith shall be exclusively borne by the said partner (s). The renouncing partner (s) shall extend all assistance to the other partner (s) for completing the above said action. The partner (s) who proceed (s) to obtained the protection and / or to ensure its maintenance shall be entitled to the revenue accrued by the commercialization.

8.2 The partners shall decide on a list of the countries where they intend seeking protection of the rights of intellectual property. The list shall be incorporated in the Intellectual Property Management Plan. The partners shall simultaneously enter into

an agreement that if one partner does not desire to seek protection in countries other than those identified in the above mentioned list, the other partner (s) may proceed for seeking such protection in the said countries solely in its / their own name (s). The partners (s) who proceed (s) to obtain the protection and / or to ensure its maintenance shall be entitled to the revenue accrued by the commercialization.

9.0 Publications

- 9.1 Each of the partners has the right to publish the results emanating from the programme. However, before such publication (s), the partners shall ensure in consultation amongst themselves that no rights are compromised.
- 9.2 The publications resulting from the programme shall bear the names of all the authors unless any author explicitly declines to be names.
- 9.3 Due acknowledgement shall be given in such publications emanating from the project (s) supported by CEFIPRA for carrying out the project activities.

10.0 Confidential Information

- 10.1 Each partner shall identify as soon as possible the information furnished or created in the framework of a project that it wants to preserve from being disclosed, taking into account especially the following criteria:
- The information is not generally known by experts in the field or easily available to them through legal means
 - The information has an effective or potential commercial value related to its confidentiality
 - The partners have taken due step to protect the confidentiality of the information.
- 10.2 The partner receiving in the framework of a project, information not to be disclosed, shall respect the confidentiality of the information.
- 10.3 Without prior written consent, none of the partner (s) shall disclose any confidential information provided by the other partner (s) except to the concern employees and government personnel, who shall keep it confidential.
- 10.4 The information whose disclosure is authorized shall be used solely within the limits of the programme

11.0 Commercialization of IP

11.1 The partner(s) shall include in the terms and conditions of commercialization provision for making available the IP protected products to the public at reasonably affordable cost taking care of the legitimate interest of the person commercializing the protected IP.

11.2: The partners should include the term & condition of the sublicensing intellectual property

12.0 Infringement

12.1 CEFIPRA shall not be liable to the consequences of any infringement by the partner (s) or by a third party, relating to the action of securing and / or protecting the rights of the intellectual property. Any expenditure and / or damages on account

12.2 The partners may make appropriate provisions for this purpose in the Intellectual Property Management Plan.

13.0 Disputes Settlement

13.1 The partners shall try to resolve any dispute regarding the rights of intellectual property arising from the programme through mutual discussion. If they fail to reach the agreement, the head of the institute (s) / Industries (S) should be involved to resolve the problem. If they fail to reach an agreement, the dispute shall be referred to the two co-chairmen of the Governing Body of CEFIPRA for settlement. If no settlement out of the court is possible, the applicant shall ask for the settlement of the dispute before an arbitrate court such as the International Chamber of Commerce. Partners should agree upon and should be clearly mention in the Intellectual property Management Plan by an arbitration clause.

14.0 Periodical Review: These guidelines should be reviewed by the CEFIPRA after a period of five years or as when required whichever is earlier.