

Intellectual Property Policy and Procedures





**INTELLECTUAL PROPERTY
POLICY
AND
PROCEDURES**

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AGRI-FOODS AND BIOSCIENCES INSTITUTE (AFBI)
INTELLECTUAL PROPERTY POLICY and PROCEDURES

POLICY

1. INTRODUCTION

AFBI is a leading provider of scientific research and services to government, non-governmental and commercial organisations. With our unique breadth of facilities and scientific capability in agriculture, animal health, food, environment, biosciences and economics AFBI conducts a wide range of valuable projects for both the public and private sectors.

AFBI owns the intellectual property rights on discoveries made by scientists, technicians and others employed within AFBI. AFBI Innovations has been established as a section of the Chief Executive's Office to carry out a range of commercialisation activities as described in this policy.

The Intellectual Property Policy sets out the procedure for protection and exploitation of intellectual property within AFBI and describes how AFBI will market and commercially develop ideas generated within AFBI.

2. AFBI POLICY STATEMENT

The aims of the Intellectual Property Policy are to:-

Ensure AFBI retain control of any IPR arising in the course of the work of AFBI

Achieve a high level of awareness and understanding of the need to identify, protect and exploit IPR in its staff

Establish an effective procedure for the protection of IP

Facilitate the exploitation of IP through technology transfer and other commercial development

Reward staff appropriately for any inventions and other IPR commercially exploited by AFBI

3. DEFINITIONS

Intellectual Property is ideas, information and knowledge. It is usually generated within AFBI as the result of scientific or technological research. Intellectual Property is referred to as **IP**.

Intellectual Property Rights or **IPR** are legal rights by which owners of IP can protect their inventions or ideas. IPR usually consists of one of the following:-

- **Patents.** A patent gives the owner a legal monopoly on the invention. It is vital that the invention remains confidential otherwise the opportunity to patent will be lost in most parts of the world including the UK.
- **Copyright.** Copyright arises automatically in literary, artistic and other works.
- **Database Right.** Applies to databases (which are not covered by copyright)
- **Design Right.** Relates to shape or form of an article.
- **Trade Mark.** This is a distinctive sign or logo associated with a brand.
- **Confidential Information or Know-How** is the information that you possess and which is not public.
- **Others.** Within AFBI we also protect plant and seed varieties and obtain plant patents.

Foreground Intellectual Property is any Intellectual Property that arises or is developed in the course of a particular project and is usually used to describe any IP which is developed in the course of collaborative research with third parties or research performed for a third party.

Background Intellectual Property is anything that is not Foreground Intellectual Property and is usually used to describe Intellectual Property that already exists and is owned by a party and used in the context of a collaborative research project or a research contract.

IPR can be sold or licensed exclusively or non-exclusively.

4. PERSONS COVERED BY THIS POLICY

All AFBI employees whether full or part time and whether the idea or invention is generated at work during the normal working day, or outside working hours or away from the place of work where the IP relates to employees' area of employment by AFBI.

Where AFBI enters into arrangement or agreements with third parties, including collaborative research agreements, consultancy agreements, agreements for the provision of services, etc, these agreements will define the ownership of IPR created during the course of that work (which will be Foreground Intellectual Property). Contracts and collaborative agreements should be signed by Division Heads. Where AFBI members of staff have proprietary background know-how or experience that may have commercial value, care should be taken not to publically disclose this Background Intellectual Property as any such disclosure could compromise AFBI's right to future commercialisation. AFBI staff should seek advice from AFBI Innovations where required in order to protect Background Intellectual Property. AFBI may be entitled to Foreground Intellectual Property in collaborative agreements or research contracts but this may not be appropriate in every case. AFBI Innovations can advise staff on a case by case basis.

Staff recruited through agencies are for the purposes of this policy considered as members of AFBI staff.

Where non-AFBI staff work at AFBI's sites confidential information should not be disclosed by AFBI staff unless an agreement protecting confidentiality is in place. Examples of non-AFBI staff might include students, visiting researchers and inwardly seconded staff. Unless otherwise agreed, AFBI will not automatically own any IPR generated by non-AFBI staff. In instances where the latter generate IP, AFBI will consider supporting commercialisation in certain circumstances. Again, AFBI Innovations will advise staff on a case by case basis.

5. THE ROLE OF THE AFBI INNOVATIONS

AFBI Innovations is responsible for ensuring that IP is properly captured and exploited. AFBI Innovations will work with Heads of Divisions, managers, supervisors and employees to support the evaluation of IPR and where appropriate, to protect and support commercial exploitation.

The Chief Executive Officer within AFBI retains the overall responsibility for the protection of IPR within AFBI.

The work of AFBI Innovations will include helping researchers and scientists in the following:-

Identifying results of research which have commercialisation capability

It is important that inventive, novel and innovative results are identified early and AFBI Innovations will work with management and staff to ensure that commercial applications of research and other work is identified as early as possible to maximise the potential for commercial exploitation.

Evaluating the potential for commercialisation

AFBI Innovations will work with inventors to understand and evaluate the likelihood of any invention being successfully marketed and what financial return can be expected.

Ensuring the results of the research are properly protected

Protection of IP by way of patents can be time consuming and costly, and AFBI Innovations will seek to ensure that inventions are fully protected where appropriate.

Negotiating and marketing inventions

It is essential that when working with partners the ownership of resulting IP is clearly defined and understood from the outset. Likewise, exploitation through licensing of AFBI IP, spin-outs, joint ventures and other commercial arrangements with regard to IPR all need to be negotiated.

In addition, AFBI Innovations is responsible for the following:-

- Preparation and implementation of detailed procedures on all aspects of the Intellectual Property Policy.

- Providing co-ordinated and consistent management of the Intellectual Property Policy to ensure that AFBI as a whole has clear and effective mechanisms to identify, protect and exploit IPR.

- Obtaining external assistance in protection and exploitation of IPR such as patent agents, AFBI legal advisers etc.

- To provide advice and to determine action to be taken and to monitor the progress of exploitation.

- To report to the Chief Executive Officer and to provide information in relation to the nature, extent, cost and income relating to AFBI IPR.

6. THE ROLE OF EMPLOYEES

AFBI operate a bottom up approach to identifying and developing commercial opportunities; it is AFBI Innovations role to support staff in the commercialisation process.

All members of staff have a role and a responsibility in implementing AFBI's Intellectual Property Policy by disclosing to AFBI Innovations all Intellectual Property created or arising during their employment and as a result of their research and collaborations to AFBI Innovations.

All members of staff must observe strict confidentiality and must not disclose unprotected IP arising from their work as to do so can jeopardise any subsequent application for IP protection, particularly patents. No public disclosure of proprietary know-how or other IP should be undertaken without first either protecting the IP via AFBI Innovations or putting in place agreements with regard to confidentiality with the party to which the know-how or IP is to be disclosed to. Public disclosure will include publication in print, on the internet, oral presentation, poster presentation and communication either verbally or in writing with third parties; this list is not exhaustive.

As with all AFBI policies, failure to adhere to the IP Policy will lead to disciplinary action.

7. PROTECTION OF INTELLECTUAL PROPERTY

Confidentiality

The opportunity to obtain a patent will normally be lost if the underlying research is published. It is therefore vitally important that no invention information should be placed into the public domain prior to a patent application being filed.

AFBI Innovations will work with the inventor to ensure that a patent application is prepared and filed as quickly as possible.

Patents

In order to be patentable, an invention must be new, inventive, capable of industrial application and must not be in an excluded category. AFBI Innovations and its advisors will assist in determining whether an invention is patentable. This can be an expensive and time consuming process. However, if inventions are not properly protected, rights may be lost.

Formal IPR Protection

AFBI Innovations require full information to enable them to assess the potential for registering IPR and, if appropriate, to instruct external advisors to prepare and file for IP protection.

This information should be provided by way of the Technology Disclosure Form, this is available from AFBI Innovations

Inventors & Contributors

The inventors and contributors to the IP should be listed in the Technology Disclosure Form. One member of staff should take a position as lead inventor/promoter. The Technology Disclosure Form requires AFBI staff to identify all inventors and their contributions. In certain cases, non-inventors may earn contribution rights as a result of creative input in developing the technology toward commercialisation. Contribution rights can be derived from technical inventions and the creation of commercially important materials such as antibodies, antigens and plant varieties. The AFBI lead inventor must inform AFBI Innovations of any such contributions as soon as they considered evident.

Patent Application Procedure

Most AFBI patent applications will be filed initially in the UK in order to establish an international priority date. International protection can then be sought.

8. EXPLOITATION OF INTELLECTUAL PROPERTY

Commercial Exploitation

Once potentially valuable IP has been identified and protected, AFBI Innovations will work with the inventors to commercialise the technology. IP can be exploited in many ways, including by way of licensing or assigning the IP to third parties, working with third parties by way of a joint venture or forming a new company to commercially exploit the IP.

AFBI Innovations will work with the inventors or creators to:-

- identify a partner for the commercial development and exploitation of the technology
- manage the commercial exploitation process
- review progress towards commercial exploitation.

AFBI will have a limited fund to invest in commercialisation, it is therefore important that resources are focused in areas where commercial opportunity can be validated. The decision as to whether to support or to continue to support IP protection and commercial exploitation is solely that of AFBI Innovations. Where disputes occur, the AFBI Executive Management Team and ultimately the CEO will have final decision.

Confidentiality

It is very important that AFBI staff do not discuss their inventions with third parties without the protection of a confidentiality agreement. This is the case whether or not a patent application has been filed. AFBI Innovations will work with AFBI staff to ensure that all information is kept confidential and that appropriate confidentiality agreements are put in place.

Assignment

This is a transfer of ownership of IP from AFBI to a third party, usually in exchange for a single payment.

Licensing

Licensing enables AFBI to maintain ownership and control of its IP but at the same time generating income for the use of its IP by third parties. A licence is an agreement involving the transfer of rights by AFBI as licence holder to the third party. These rights commonly control the use of an IPR.

Income under a licence can be generated in different ways. A licence may include a lump sum payment with the right to exploit an invention, which may be in a particular market or for a particular purpose plus a royalty on the sales of the product.

Licences can also arise in the context of collaborative research contracts or consultancy arrangements.

RELATED DOCUMENTS

- 1.** Rewards to Staff Scheme – Rewards to Inventors Policy
- 2.** Rewards to Staff Scheme – Rewards to Inventors Operating Procedures
- 3.** Introduction to AFBI Innovations
- 4.** AFBI Innovations – The Stage Gate Process to Commercialisation (Overview of Commercialisation Process)
- 5.** Guidance Note on Managing Income from Intellectual Property
- 6.** Guidance Note on Confidentiality Agreement or Non-Disclosure Agreements (NDA)
- 7.** Guidance Note on Protecting Intellectual Property (IP) in Collaborative Agreements
- 8.** Guidance Note on Relationship Management and Conflict Resolution
- 9.** Technology Disclosure Form
- 10.** Guidance Note on AFBI Costing and Charging