

## Advisory Committee on Enforcement

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#### MODEL TECHNOLOGY RESEARCH AND COMMERCIALIZATION AGREEMENTS AND DISPUTE RESOLUTION CONSIDERATIONS

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1. Intellectual Property Agreement Guide (IPAG) is an Austrian project of the Austrian association of universities (*österreichische Universitätenkonferenz*) and is supported by the national contact point for intellectual property (ncp.ip) in the Federal Ministry for Science and Research (*Bundesministerium für Wissenschaft und Forschung*), by the Federal Ministry for Economy, Family and Youth (*Bundesministerium für Wirtschaft, Familie und Jugend*), and by the Federal Ministry for Transport, Innovation and Technology (*Bundesministerium für Verkehr, Innovation und Technologie*) as well as by Austria Wirtschaftsservice, an Austrian federal development and financing bank for the promotion and financing of companies. The purpose of the project is to improve the cooperation and to reinforce and foster the knowledge transfer between science and industry.
2. The exchange of knowledge and technology between universities and undertakings often requires complex contractual relationships. Thus, in order to create a basis for an efficient process of technology transfer which is also based on legally approved contractual clauses, representatives of Austrian universities, together with experts from the industrial sector, public research institutions and Austrian ministries developed the Intellectual Property Agreement Guide. This Guide is an online manual containing relevant model agreements, various contractual model clauses with variants and many enlightening comments which are provided to the public for free. The model agreements are deemed to be examples of how technology transfer agreements could be drafted and also reflect the special needs of contractual relationships between publicly funded research institutions and industrial partners. These model agreements can be found under [www.ipag.at](http://www.ipag.at).

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\* The views expressed in this document are those of the author alone, and not those of the Secretariat or any of the Member States of WIPO.

3. The model agreements and model clauses are provided in German and English language. The comments are only in German. In order to satisfy various needs in the science and/or industrial sector, the model agreements are available in three different variants, *i.e.* a rather short standard model agreement, and two enlarged standard model agreements, one reflecting the comments of representatives from universities and the other reflecting the comments of the industrial partners. Of course, the involved stakeholders are free to use part or all of the model agreements and may at any time adapt them to their special needs.

Under the IPAG project the following model agreements can be found:

- Paid-for research and development agreement;
- Research cooperation agreement;
- Confidentiality agreement;
- Material transfer agreement;
- IP-license agreement; and
- IP-purchase agreement.

4. Great care was devoted to dispute resolution. In each model agreement the same dispute resolution variants were integrated. The following variants are included:

- Exclusive jurisdiction of a state court and choice of law clause;
- WIPO Arbitration (WIPO Expedited Arbitration Rules); and
- WIPO Mediation and Arbitration (WIPO Expedited Arbitration Rules).

5. During the preparation of the model agreements every stakeholder noted that the variant of the exclusive jurisdiction of a state court is not sufficient at all to satisfy their needs. The reasons are that specifically in cross-border transactions the agreement on an arbitration clause and/or a combined mediation – arbitration clause is a preferred alternative to national courts. Only for cases of purely national disputes the stakeholders had a preference for the agreement on a state court.

6. The decision for alternative dispute is based on the following considerations:

- speed: in the research and development phase the parties do not really have time to spend years solving disputes. Therefore the offer of a quick solution was extremely decisive.
- confidentiality: in most cases, research and development projects involve many secret procedures which should not be shared with the public – also with a view to the novelty requirement for patent filings with regard to inventions made during such a project.
- neutrality: the mediator or arbitrator should have a very neutral view on any aspects of disputes in the course of a project.
- expert knowledge: the parties have the opportunity to appoint a mediator or an arbitrator who has specific knowledge on research projects and on the subject of research as such. There is no need that a mediator or arbitrator be a lawyer or a judge.

7. Specifically the mediation clause was well-received as it offers the parties the opportunity to involve a knowledgeable mediator who understands the often quite complex relationships and issues and assists the parties to solve their disputes very quickly and at reasonable costs. Specifically, also the choice for the expedited arbitration procedure was clear regarding effectiveness, cost and confidentiality. It was also seen as a big advantage to concentrate disputes involving various jurisdictions in one proceeding which is an opportunity to avoid diverging decisions in various countries. The fact that the parties have more influence on the choice of a mediator or arbitrator and also have greater influence on the entire procedure as such was considered a big advantage.

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