

Basic Policy on Intellectual Property Management for the Global Startup Campus (GSC) Initiative

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Decision of Director for Global Startup Campus Initiative, the Cabinet Secretariat
Decision of Secretary General for Science, Technology, and Innovation Policy, the Cabinet Office

1. Purpose of This Policy

Under the Global Startup Campus (GSC) Initiative (hereinafter referred to as the "Initiative"), three pilot activities — (1) International Research Program, (2) Venture Builder Program, and (3) Talent Development Program — are implemented in an integrated manner, in collaboration with startups, overseas universities, and other relevant entities, with the aim of attracting outstanding talent and investment from around the world. These activities serve to give concrete form to the Initiative's mission of "establishing a hub for a world-class innovation ecosystem."

In order to realize the mission of the Initiative, all participants in the projects conducted under the Initiative are strongly expected to manage Intellectual Property (IP) rights arising from research and development (R&D) outcomes in an appropriate and strategic manner, and to make every effort to commercialize such outcomes.

This "Basic Policy on Intellectual Property Management for the Global Startup Campus (GSC) Initiative" (hereinafter referred to as "this Policy") sets forth the appropriate structure for strategic IP management under the Initiative. It has been formulated based on the principles described above, with reference to the "Operation Guidelines on IP Management in Commissioned R&D (in Japanese)" (Ministry of Economy, Trade and Industry, May 2015), and establishes the IP management processes, organizational structures, commission research contracts, and the structure for agreements on the handling of IP among project participants (hereinafter referred to as "IP Agreement").

It should be noted that the desirable approach to IP management under the Initiative should be reviewed in accordance with the progress of this Initiative. Therefore, this Policy shall be subject to continuous review in order to achieve further improvements in IP management under the Initiative.

2. Definitions of Terms Used in This Policy

(1) Inventions, etc.

"Inventions, etc." means inventions¹, devices, creation of designs, creation of a layout-design as defined in Article 2, Paragraph 2 of the Act on the Circuit Layout of a Semiconductor Integrated Circuits (Act No. 43 of 1985), breeding of varieties as defined in Article 2, Paragraph 2 of the Plant Variety Protection and Seed Act (Act No. 83 of 1998), creation of works, and the conception of technical information that can be kept confidential and has proprietary value (hereinafter referred to as "know-how").

(2) Inventors, etc.

"Inventors, etc." means those who have made inventions, etc.

(3) IP Rights

"IP Rights" means patent rights, rights to be granted a patent, utility model rights, rights to obtain utility model registrations, design rights,

rights to have design registrations, rights of layout design license, rights to obtain registration of establishment of circuit layout license, breeder's rights, the status of being entitled to variety registration as provided in Article 3 of the Plant Variety Protection and Seed Act, and copyrights (including all rights provided in Articles 21 through 28 of the Copyright Act (Act No. 48 of 1970)), rights and statuses in foreign countries equivalent to each of the above rights and statuses, and the right to use know-how.

(4) R&D program

"R&D Program" means a scheme or program that conducts R&D, including International Research Program implemented under this Initiative.

(5) Project

"Project" means individual commissioned R&D carried out under an R&D program (same as R&D themes adopted through open call).

(6) Project Participants

"Project Participants" means domestic companies, etc. (meaning companies registered within Japan, universities or research institutes within Japan, or researchers with Japanese nationality; the same shall apply hereinafter), foreign companies, etc. (meaning companies, universities, or research institutes in countries other than Japan or researchers with foreign nationality; the same shall apply hereinafter),

¹ The term "invention" also includes so-called "business-related inventions," which are inventions in which business methods are realized through the use of ICT (Information and Communication Technology).

and their subcontractors that conduct R&D in the project.

(7) Foreground IP

"Foreground IP" means IP rights obtained by project participants through the implementation of the project.

(8) Background IP

"Background IP" means IP rights held by project participants prior to the start of the project, as well as IP rights acquired after the start of the project independently of the implementation of the project.

3. IP Management Process in This Initiative

(1) Documents for Implementing IP Management

In implementing IP management under this Initiative, the Cabinet Office (hereinafter referred to as "CAO")/Japan Science and Technology Agency (hereinafter referred to as "JST")² presents this Policy at the time of open call, the development of IP Agreement based on this Policy among project participants is recommended, and the conclusion of a commission research contract based on this Policy between JST and project participants establishes the implementation details of IP management in the project.

(2) Structure for an IP Management Implementation

Project participants are required to implement an appropriate IP management based on this Policy. In doing so, the project participants are encouraged to establish a structure of appropriately implementing IP management, for example, a structure that can make decisions regarding the patenting, confidentiality, publication, and other policies concerning R&D outcomes, as well as coordinate matters related to licensing, with the cooperation of Venture Directors (VDs) and Partner Entities (such as an IP Structure composed of Principal Investigators (PIs), IP experts, and others).

In the following Policy, the implementation of IP management is outlined, with project participants being responsible for establishing such an IP Structure.

In addition, CAO/JST shall establish a Secretariat function (composed of, for example, IP personnel from CAO/JST and others) for the purpose of confirming that IP management is being implemented in accordance with this Policy.

During the project period, the IP Structure shall decide the handling of the R&D outcomes, including patenting, confidentiality, and publication, and shall report the results of such decision, along with the reasons, to the Secretariat. Based on the content of such reports, the Secretariat shall confirm that IP management is being implemented in accordance with this Policy. If the IP management being implemented is not in accordance with this Policy, the Secretariat shall take necessary measures to ensure that IP management is implemented in accordance with this Policy, such as requesting project participants to have IP experts participate in the IP Structure.

It should be noted that if the Secretariat is able to effectively grasp the policy for handling the R&D outcomes from the project and the deliberation results of the IP Structure, for example by participating the meeting held by the IP Structure as an observer, the above-mentioned obligation of reporting may be waived.

(3) Scope of this Policy

This Policy applies to R&D programs under this Initiative for which the open call begins after [Month] [Day], [Year], and for which commission research contract are concluded between JST and project participants.

4. Matters to Be Set Forth in the Commission Research Contract

(1) Application

① (Joint Applications) In principle, inventions, etc. arising from joint research conducted under this research funding shall be the subject joint patent applications by the entities to which the inventors and other contributors belong.

(2) Ownership of IP rights

① (Japanese Bayh-Dole provision (Article 17 of the Industrial Technology Enhancement Act (Act No. 44 of 2000))) JST shall not obtain Foreground IP from project participants, provided that the project participants comply with the following conditions ((2)④, (3)②-③, and (4)①) stipulated in each item of Article 17, Paragraph 1. However, if the project participants include foreign companies, etc., the provisions of (2)② shall apply.

② (Where project participants include foreign companies, etc.) Where project participants include foreign companies, etc., Foreground IP shall be jointly owned between such foreign companies, etc. and JST, provided that such foreign companies, etc. comply with the following conditions((2)④, (3)②-③, and (4)①). And at least 50% of the combined ownership of such foreign companies, etc. and JST shall be held by JST. The same shall apply to the ownership of the subcontractor in cases where a domestic company, etc. subcontracts to a foreign company, etc.

③ (Where it is difficult to determine ownership without compensation) Where the measure to determine ownership described in (2)② is difficult to implement without compensation due to the internal regulations, laws and regulations, or grant conditions of

² After the establishment of Agency for the Promotion of the Utilization of Advanced Technology Research Results (Tentative Name), "CAO/JST", "CAO", and "JST" shall be read as the Agency.

the relevant foreign companies, etc., the said foreign companies, etc. shall implement measures equivalent to those set forth in (2)② through consultations with the involvement of CAO/JST.

- ④ (Transfer of Foreground IP) Where transferring Foreground IP, except in case of transfer due to merger or similar corporate restructuring, prior notification to and approval from CAO/JST shall be obtained. In addition, CAO /JST will determine whether to grant approval within approximately 30 days after receiving prior notification.
- ⑤ (Transfer of Foreground IP to parent or subsidiary companies) Where a project participant intends to transfer or otherwise assign Foreground IP to its parent or subsidiary company (limited to cases where such companies are located outside Japan), prior notification to and approval from CAO/JST shall be obtained. In addition, CAO /JST will determine whether to grant approval within approximately 30 days after receiving prior notification.
- ⑥ (Merger, acquisition, or similar transactions involving project participants by third parties) Where a project participant is subject to a merger, acquisition, or similar transaction (including a significant change in shareholders), such participant shall promptly report the matter to CAO/JST. CAO/JST shall examine whether the Foreground IP held by such project participant will continue to be efficiently utilized in business activities after such merger or similar transaction, and shall, if necessary, ensure the use of such Foreground IP by third parties other than its holder following the merger or similar transaction.

(3) Licensing of IP Rights

- ① (Licensing to third parties) It is desirable that the eligibility for licensing IP rights shared among project participants to third parties, as well as the entity responsible for such licensing, be determined through mutual consultation among the project participants. Furthermore, even when either one of the project participants grants a license, it is desirable to obtain prior written consent from the other institutes. Furthermore, JST shall be entitled to grant licenses to third parties with respect to Foreground IP shared solely between JST and foreign companies, etc., and the foreign companies, etc. shall consent thereto.
- ② (Licensing for public interest) Where JST determine that it is necessary for the public interest, project participants shall grant a license of the Foreground IP free of charge to JST.
- ③ (Licensing of Foreground IP not used for a certain period) Where Foreground IP has not been utilized for a certain period, project participants shall license such Foreground IP to a third party based on a request from JST. Regarding the "certain period" here, JST shall use 10 years as a guideline for the certain period, which is calculated by adding a certain grace period to the time generally considered necessary from the end of a project to commercialization³, and shall then make adjustments to the certain period by taking into account the circumstances, such as cases where a time-based commercialization target has been set at the time of formulating the R&D plan.

(4) Others

- ① (Reporting of research outcomes) Project participants shall report to CAO/JST without delay when research outcomes are obtained.
- ② (Reporting of Policy for Handling R&D Outcomes) Project participants shall deliberate the management policy, including patenting/keeping confidential/publishing, etc., of R&D outcomes of the project, and shall report the policy of such deliberations to CAO/JST. Furthermore, project participants shall promptly report to CAO/JST the decision results regarding each R&D outcome (the handling of each research outcome in terms of patenting/keeping confidential/publishing, etc., and the reasons for such decisions) based on the aforementioned handling policy.
- ③ (Dealing with the System for Non-Disclosure of Patent Applications) Project participants shall comply with the provisions of "the System for Non-Disclosure of Patent Applications" in the "Act for the Promotion of Ensuring Economic Security Through Integrated Implementation of Economic Measures (Act No. 43 of 2022)".
- ④ (Coordination) Where matters are not provided in a contract or consensus cannot be reached between project participants, CAO/JST shall be involved in coordinating a reasonable resolution in light of the objectives of this Initiative.

5. Matters to Be Set Forth in IP Agreement among Project Participants (Recommendation)

From the perspective of preventing administrative burdens associated with project management from hindering the maximization of R&D outcomes, the necessity of drafting IP agreements among project participants should be considered, taking into account the scale, duration, and research funding amount of the R&D activities.

(1) Procedures for Reporting Inventions, etc. and for Determining Policies Regarding the Securing of Rights, etc.

When an invention, etc. is made through the implementation of the project, the details of such invention, etc. shall be immediately reported to the IP Structure by the project participants.

The IP Structure shall decide the reported invention, etc. and determine its handling, including whether to pursue rights through patent applications or confidentiality. In cases where rights are to be obtained through applications, the countries in which to file shall also be deliberated and determined, and in cases where the invention, etc. is to be kept confidential, the period of confidentiality and related matters shall likewise be deliberated and determined.

³ See "Research report on IP management in national R&D projects (February 2015)"(in Japanese).

With regard to the publication through academic papers, it shall be sufficient to provide notice to the IP Structure with adequate advance notice.

(2) Policy for Protection of R&D Outcomes through IP Rights

When seeking to protect R&D outcomes through patent applications, if market expansion is anticipated overseas, consideration shall be given to obtaining rights in countries other than Japan where protection is deemed necessary, taking into account factors such as market size and competitive landscape with other companies.

Furthermore, rather than emphasizing the number of rights secured through applications, the option of not pursuing patent protection shall also be considered, and the necessity of maintaining confidentiality should be considered in accordance with the nature of the relevant outcomes.

(3) Ownership of Foreground IP

Foreground IP shall be generally transferred to the project participant to whom the inventors and others belong, in accordance with the regulations or equivalent rules of such participants on employee inventions.

However, this shall not prohibit other arrangements, provided that the project participants have agreed in advance.

(4) Implementation of Jointly Owned Foreground IP

Project participants shall implement generally Foreground IP freely without charge, which is jointly owned with other project participants.

However, this shall not prohibit other arrangements, provided that the project participants have agreed in advance.

(5) No Enforcement of IP Rights and Licensing

① No Enforcement of Rights and Grant of License during the Project Period

Project participants shall not enforce their IP rights (including not only Foreground IP, but also IP rights held by project participants prior to the start of the project and IP rights obtained after the start of the project independently of the project; the same shall apply in ② below) against R&D activities conducted by other project participants within the project during the project period, and shall cooperate in the smooth execution of the project.

However, this shall not prohibit other arrangements, such as granting a license for consideration, provided that the project participants have agreed in advance.

② Licensing for the Commercialization of the Outcomes of The Project

In principle, project participants shall grant licenses for IP rights they hold to the extent necessary for other project participants to commercialize the outcomes of the project.

However, when exceptions to these principles are permitted, the scope of exceptions permitted beyond this shall be clarified to the necessary extent based on agreements among the project participants.

If negotiations between the parties regarding the scope of implementation, royalties, or other matters become difficult and there is a risk of impeding the commercialization of the project outcomes, the matter shall be coordinated through the IP Structure, and a reasonable resolution shall be sought between the parties.

③ Relationship with Licensing to Non-project Participants

When a project participant licenses Foreground IP it holds to another project participant, the terms and conditions of such license shall be equivalent to or more favorable than those applicable to licenses to non-project participants.

(6) Obligations Binding on Transferees of Foreground IP

Where transferring Foreground IP, project participants shall ensure that the transferee succeeds to obligations related to licenses and other matters in accordance with the IP Agreement imposed on the Foreground IP among the project participants.

(7) Measures to Changes in the Project Structure

Project participants shall continue to be bound by the obligations imposed upon them under the IP Agreement among project participants, even in the event of their withdrawal from the project. Furthermore, when the composition of project participants changes, and new participants are added, such participants shall, as a rule, have the same rights and obligations.

(8) Confidentiality Obligation

Project participants shall impose confidentiality obligations on those who engage in R&D activities and those who can access confidential information related to the project, in order to prevent the unintentional leakage of technical information and other materials pertaining to the outcomes of R&D.

(9) Prior Approval of Disclosure to the third party of project outcomes

The outcomes of the project shall not be disclosed or leaked to any third party other than project participants without the approval of the IP Structure.

(10) Structure for Sensitive Technology Management

Project participants shall establish a sensitive technology management structure and shall implement effective sensitive technology controls and related measures from the perspective of security export controls under the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) in order to prevent the leakage of technologies resulting from the project.

(11) Term of Validity of the Agreement

The terms of validity of the agreement shall be specified to the extent necessary, including after the end of project period in order to ensure no obstacles to the commercialization of the project outcomes,

(12) Review of Agreed Term

The terms agreed upon by project participants may be reviewed in accordance with changes in circumstances or other factors occurring after such agreement.

6. Approach to IP Strategy Formulation and IP Personnel

In order to maximize the commercialization of IP created under this Initiative, it is necessary to appropriately advance IP strategy formulation, such as the well-known "Open and Closed Strategy," which combines R&D with confidentiality, rights acquisition (patents, etc.), and standardization.

Furthermore, for appropriate IP strategy formulation, it is desirable to utilize analytical methods that combine market information with IP information (known as IP Landscape) from R&D stage, as well as to conduct preliminary research on market trends, standardization trends, and other relevant areas. When implementing these measures, IP personnel with expertise in strategically managing IP are indispensable.

Project participants are required to engage in R&D with the above points in mind, and are encouraged to make use of support related to IP strategy formulation and IP personnel development provided by CAO as needed.

7. Future Considerations to IP Management in This Initiative

As this Initiative progresses and R&D outcomes are generated, opportunities for collaboration between project participants and investors as well as industry stakeholders are anticipated to increase. In this context, it will be necessary to facilitate and effectively advance such collaborations while also taking appropriate measures to prevent the leakage of critical technologies. Taking into account these perspectives, as well as giving full consideration to the agility of business activities, this Policy will be reviewed in a timely and appropriate manner in line with the direction of IP management.

For example, we will continue to consider matters such as the following.

When IP created through projects under this Initiative leads to commercialization, it is important to maximize the retention of profits derived from such businesses within Japan, from the perspective of contributing to the maximization of national wealth.

For example, in some foreign countries, when profits arise overseas from IP created through publicly funded projects, measures are in place to return a portion of such profits to the originating country. However, there are both supporters and opponents of such policy.

Under this Initiative as well, we will consider how it would be most appropriate to handle profits that arise overseas as a result of the commercialization of created IP, including whether new systems are necessary.