

# Regulations governing the management of intellectual property rights and rules

## for the marketing of research results and development works

### at the Institute of Physics of the Polish Academy of Sciences

#### Chapter I

#### General provisions

#### §1

#### Definitions

The terms used in these Regulations mean:

1. **Office** - the Office for Intellectual Property at the Committee
2. **Intellectual Property** - subject to legal protection: inventions, utility models, industrial designs, trademarks, topographies of integrated circuits, plant varieties, as well as know-how, copyright works, the subject matter of neighboring rights and databases
3. **Intellectual Property of IF PAN** - intellectual property belonging to IF PAN
4. **Ph.D. student** - a participant in doctoral studies, as well as a person preparing a doctoral dissertation at IF PAN, who is not its employee
5. **IF PAN** - Institute of Physics of the Polish Academy of Sciences
6. **Head of the unit** - head of the scientific department or environmental laboratory of IF PAN
7. **Know-how** - information undisclosed to the public of a scientific, technical, technological, commercial, organizational nature or other with economic value (including, in particular, that useful for the commercialization of research results and research works) but not protected by exclusive rights
8. **Direct marketing** - sale of research results, development works or know-how related to these results or putting these results or know-how to use, in particular on the basis of a license, rental or lease agreement
9. **Indirect marketing** - taking up or purchasing shares or stock in companies in order to implement or prepare for the implementation of research results, development works or know-how related to these results
10. **Committee** - IF PAN Committee for Intellectual Property matters
11. **Costs directly related to marketing** - external costs, which include in particular costs of legal protection, expert opinions, valuation of the subject of marketing and official fees, excluding costs incurred prior to the decision on marketing and the remuneration referred to in Article 94c section 2 of the Act on the Polish Academy of Sciences
12. **IF PAN Support** - financial, technical, content-related or organizational support for activities resulting in intellectual property
13. **Publication of work** - multiplication of the work and public access to its copies (e.g.

publication in a journal, publication of a monograph)

14. **Employee** - a person in an employment relationship with IF PAN
15. **Project** means a project involving research or development work carried out under IF PAN.
16. **Commercial project** means a project including research or development works implemented under IF PAN on behalf of and for a private entity.
17. **Dissemination of work** - providing any public access to the work
18. **Special Purpose Vehicle (SPV)** - a sole-shareholder company created by IF PAN for indirect marketing
19. **Spin-off company** - a commercial law company established to develop or market the intellectual property of IF PAN or a special purpose vehicle. The company is appointed by IF PAN or a special purpose vehicle with the possible participation of the creator or investor.
20. **Marketing Funds** include license fees, payment for the sale of intellectual property, dividends or other financial resources paid by the company for which intellectual property was transferred in kind, payment due to the sale of shares in these companies, and other revenues indirectly or directly obtained as the result of marketing, including interest after deduction of due public-legal charges.
21. **Creator** - a natural person who created intellectual property. The creator also means all co-creators
22. **Resources** - all means of IF PAN used indirectly or directly to create intellectual property or its marketing, including financial resources, organizational resources, accumulated intangible assets, administrative personnel, materials, equipment, premises.

## § 2

### The objective scope of the regulations

1. The provisions of the Regulations apply to IF PAN employees employed under a contract of employment or appointment, whose scope of duty is wholly or partly based on the provision of intellectual work.
2. The provisions of the Regulations apply to other employees, if it results from the contracts being the basis for their employment or if they agree to it.
3. The provisions of the regulations also apply to Ph.D. students, students, trainees, scholarship holders and other persons who are not in an employment relationship with IF PAN (in particular those participating in scientific, research and development works), if the contract concluded between them and IF PAN or such persons submitted the relevant statement about binding to the Regulations. On behalf of IF PAN, the Head of the unit concludes and receives the relevant statements, under which Intellectual Property is to be established.

## § 3

### The subjective scope of the regulations

1. The provisions of the regulations apply to Intellectual Property created by an employee in the performance of duties resulting from the employment relationship and during the duration of this relationship (**employee intellectual property**).
2. The Intellectual Property created during scholarships, grants or academic leave financed from the funds of the IF PAN and funds obtained from outside under IF PAN are also considered to have been created as part of the performance of obligations resulting from the employment relationship.
3. The creation of Intellectual Property is also understood as a modification of an already existing property if it is so significant that it leads to the creation of a new property subject to protection under the applicable provisions of law.
4. Employment contracts concluded with IF PAN employees should contain a provision according to which the employee declares that he/she has read the Regulations and agrees to be bound by its provisions. The regulations become an integral part of the employment contract.
5. The conclusion of a contract regarding Intellectual Property arising from the performance of employee duties, which provides for deviations from the application of the Regulations, requires the consent of the IF PAN Director.
6. The provisions of the Regulations also apply to Intellectual Property:
  - a. Created by persons who are not employees of IF PAN, if it is the result of the contracts concluded by IF PAN with these persons,
  - b. created by the employee outside the scope of obligations arising from the employment relationship, if the parties so agree in the contract,
  - c. created with the Support of IF PAN
  - d. to which IF PAN acquired rights or a certain scope of rights
7. Any person undertaking scientific research under IF PAN, from which Intellectual Property may arise, should submit a statement on having read the Regulations and giving consent to be bound by its provisions. Such a statement may be part of the contract under which the work is carried out.

#### **§4**

#### **General rules on Intellectual Property**

1. By concluding contracts with persons who perform or are to perform specific activities on behalf of IF PAN on a basis other than an employment relationship, in particular on the basis of a contract for a specific task or contract for a similar task, which created or may arise in Intellectual Property, IF PAN should ensure the transfer of Intellectual Property rights to this property on itself.
2. IF PAN should conclude an agreement granting IF PAN the appropriate rights to the Intellectual Property in each case when it is probable that a person who is not an employee or employee outside their scope, using the Resources of IF PAN or with the Support of IF PAN can create an Intellectual Property. In the absence of any provisions in this regard, IF PAN has the right to use such a property on its own.
3. An employee may propose the acquisition of rights to Intellectual Property from IF PAN for

property that is not entitled to IF PAN on the basis of a law or contract. The scope of the transfer of rights and the principles of sharing property benefits resulting from the marketing of such a property will be specified in the contract. If IF PAN has taken over the rights to such a property according to the rules applicable to the employee property, the provisions of the Regulations regarding employee Intellectual Property shall apply accordingly.

4. The rights to Intellectual Property created by an Employee upon the order of a third party are determined by an agreement concluded between IF PAN and the ordering party, while the aim should be to grant IF PAN the exclusive rights to the so-created property and the ordering party has the right to use it.
5. The issue of Intellectual Property rights created by an employee delegated to work in another scientific or research institution in Poland or abroad should be specified in the agreement between IF PAN and the host institution.
6. The rights to Intellectual Property created during the cooperation of IF PAN with another entity in the framework of joint ventures should always be specified in the agreement between IF PAN and this entity.
7. Agreements concluded by IF PAN ensure respect for the Creator's personal rights, in particular the right to authorship.
8. Contracts entered into by IF PAN concerning Intellectual Property should include the obligation of parties to keep confidentiality, in particular when the disclosure of research results would make it difficult to obtain legal protection or market it.
9. Any use of IF PAN's Intellectual Property outside IF PAN each time requires the approval of the Director after the Head of the unit where the Intellectual Property was created expresses his/her opinion.
10. Unless these Regulations provide otherwise, agreements regarding Intellectual Property shall be concluded by the Director or a person designated by him.

## **Chapter II**

### **Copyright and neighboring rights and rights to databases**

#### **§ 5**

#### **Moral rights to works created as part of employee duties**

1. The author's moral rights to all works, subject to paragraph 2, are vested in the Creator and include the right to:
  - a. Authorship of the work
  - b. Marking the work with his/her name or pseudonym or anonymous sharing of the work
  - c. Inviolability of content and form
  - d. Deciding on the first public access to the work
  - e. Supervision over how the work is used
2. The author's moral rights to a computer program are vested in the Creator and include the right to:

- a. Authorship of the work
- b. Marking the work with his/her name or pseudonym or anonymous sharing of the work
3. If the author's economic rights in whole or in part belong to IF PAN, the creator undertakes to exercise his/her moral rights in a way that does not interfere with the property interests of IF PAN, in particular in a way that does not impede or make marketing the Intellectual Property impossible.
4. If the work was commissioned by IF PAN or was created for the needs of a research project or for the needs of a specific team, and the Creator objects to the first public release of the work, IF PAN may use the information and research results contained in the work, and may entrust the development of the work based on this information and results to another person.

## **§6**

### **Economic rights to employee non-scientific works**

1. The authors economic rights to non-scientific works (employee non-scientific works) are vested in IF PAN as soon as they are accepted in all fields of exploitation known at the time of creating the work, subject to the provisions of § 18 with respect to works resulting from development works suitable for marketing.
2. The works to which IF PAN acquires rights in accordance with sec. 1 are considered in particular:
  - a. Databases,
  - b. E-learning materials
  - c. Research work journals
  - d. Materials developed to carry out teaching tasks also when they pertain to scientific work
3. The author's economic rights to a computer program, also when it pertains to scientific work, created by an employee in the performance of his/her employment obligations, are granted by IF PAN at the time of its creation, subject to the provisions of § 18 with respect to works resulting from development works suitable for marketing.

## **§7**

### **Employee research works**

1. The author's economic rights to an employee scientific work are subject to the provisions of sec. 2 and 3.
2. The right to first publication of an employee scientific work that is a doctoral dissertation or postdoctoral dissertation or a monographic study belongs to IF PAN, unless IF PAN has not concluded a contract with the Creator for the publication of the work within 6 months of the delivery of the work. In the case of using IF PAN with the right of first publication of a scientific work, the publication and dissemination of the work takes place under the conditions specified in the publishing agreement between IF PAN and the Creator. IF PAN may waive the right of first publication in respect of the filed work.

3. IF PAN has the right to make a scientific work or scientific material contained therein available to third parties, if it results from a intention of the work agreed with its Creator or if the agreement concluded with the Creator stipulates so.
4. An employee may not Disseminate, in this Publish, a scientific work disclosing information about a scientific-technological solution or know-how, nor disseminate information about this solution or know-how (e.g. in the form of a presentation, lecture) if it would hinder or prevent the legal protection of the solution in a situation where the right to dissolve is vested in IF PAN. §8 applies.
5. The provisions of sections 1-4 apply to the scientific works of Ph.D. students and students not employed under a contract of employment.

## **§ 8**

### **Dissemination and Publishing**

1. In the event that the Creator is entitled to the right of Dissemination or Publishing, if the work contains information about a scientific and technological solution or know-how the rights of which are vested in IF PAN, before disseminating and publishing the work, the Creator is obliged to inform the Committee about it. The Committee may object to the Dissemination or Publishing within 7 days of receiving information on the intended Dissemination or Publishing, possibly requesting appropriate modifications in the event that the Dissemination/Publishing impedes or prevents the legal protection of the solution the rights of which are vested in IF PAN.
2. The provisions of sec. 1 applies to the works created by Ph.D. students and students not employed under a contract of employment.
3. In every case of Publishing, which is related to the work conducted at IF PAN, the employee, Ph.D. student, student or a person conducting work under a different civil law agreement is required to include the name "Institute of Physics of the Polish Academy of Sciences" next to his/her last name or inform provide information about his/her relationship with IF PAN (affiliation) in another way.

## **§9**

### **Using the material contained in the work**

1. IF PAN has the right to use the results of scientific research obtained by an employee, Ph.D. student or student without separate remuneration for research or teaching purposes.
2. In the event that IF PAN enables third parties to use the work or research results contained in the work for consideration, the Creator shall be remunerated in accordance with the provisions of the Regulations or the contract.

**§10**  
**Neighboring rights and rights to databases**

1. In the case of creations being a result of performing obligations under the employment contract, subject to protection through neighboring rights, the rules provided for in author's rights shall apply.
2. In the event that the database is created as a result of the performance of duties from the employment relationship, the rights of IF PAN are vested in it even if it is a scientific work. Regardless of copyright protection, databases are subject to the provisions of the Act of July 27, 2001 on the protection of databases (Journal of Laws 2001 No. 128, item 1402, as amended)
3. The Creators of the database are entitled to remuneration for the benefits obtained from marketing by IF PAN on the terms set out in the Regulations or a separate agreement.

**Chapter III**

**Industrial property rights**

**§11**  
**Industrial property**

Industrial property means the results of scientific research or development work, which are inventions, utility models, industrial designs, topographies of integrated circuits, bred or discovered and derived plant varieties, as well as know-how.

**§12**  
**Industrial property rights**

1. The rights to employee industrial property within the meaning of §11 in relation to § 3 sec. 1-3 belong to IF PAN, subject to § 18.
2. The rights to industrial property as defined in § 3 sec. 6 are set out by the contract concluded by IF PAN.
3. In the absence of different contractual provisions, the rights to industrial property arising from the performance of a contract, other than a contract of employment concluded between the Creator and IF PAN, are vested in IF PAN.
4. The Creator of the industrial property has the moral right to be listed as the creator in descriptions, registers and other documents and publications.
5. If the right to industrial property is wholly or partly owned by IF PAN, the Creator undertakes to exercise his/her moral rights in a way that does not interfere with the property interests of IF PAN, in particular in a way that does not impede or prevent the marketing of intellectual property.

6. In the event that IF PAN obtains the benefits of commercialization of industrial property belonging to IF PAN, the author is entitled to remuneration according to the rules specified in the Regulations.

### **§ 13**

#### **Material objects created as a result of scientific research or development works**

1. IF PAN acquires the rights to material objects created as a result of scientific research or development works performed in the scope of the Employee's obligations resulting from the employment relationship, as well as those made by Ph.D. students or students as a result of performing tasks. IF PAN also acquires rights to material objects created as a result of research conducted with the Support of IF PAN if this support contributed significantly to the creation of such an object.
2. The material objects referred to in sec. 1 may be made available to third parties only on the basis of written contracts concluded by the Director or a person authorized by him/her.
3. To manage the rights to material objects referred to in sec. 1, the provisions of the Regulations shall apply respectively.

## **Chapter IV**

### **Proceedings with intellectual property**

### **§ 14**

#### **The responsibilities of the Creator in connection with the achievement of Intellectual Property**

1. A Creator who may create industrial property, the rights of which may be vested in IF PAN, is obliged to keep a journal of research works.
2. The Creator is obliged to immediately file the intellectual property on the terms set out in § 16.
3. The Creator filing the Intellectual Property is obliged to provide the Committee with any additional information and documents at its request (e.g. research papers, submitted work) enabling the Committee to assess the filed Intellectual Property, its qualification as an employee or non-employee property, and evaluate its marketing potential.
4. The Creator filing the Intellectual Property, the rights of which are vested in IF PAN, is obliged to provide the Committee with all additional information and documents enabling or useful to IF PAN when applying for exclusive protection.
5. The Creator of the Intellectual Property, the rights of which are vested in IF PAN, is obliged to refrain from any actions that could hinder or hamper the acquisition of exclusive rights. In particular, the Creator is obliged to keep the reported solution and know-how confidential. Disclosure may only take place with the consent of the Director after prior consultation with the Committee.
6. The Creator of the Intellectual Property, the rights of which are vested in IF PAN, is obliged to cooperate with IF PAN in connection with applying for exclusive protection.
7. The employee who is the Creator of the employee intellectual property is obliged to submit



to IF PAN, along with filing the Intellectual Property, all information, works and own media on which the works were fixed as well as technological experiments needed to market the results. The transfer of all the above information, works, carriers of experiments is recorded via a protocol signed by the Creator and the person accepting it on behalf of IF PAN. IF PAN is obliged to protect the received media against damage.

8. An employee who is the Creator of employee intellectual property is obliged to cooperate with IF PAN in connection with the marketing of the property.
9. An employee who is the Creator of employee Intellectual property is obliged to refrain from conducting any activities without the knowledge and explicit consent of IF PAN aiming to implement the results
10. The obligation set out in sec. 5-8 lasts for the whole period of IF PAN's rights.
11. In addition, the employee is required to inform IF PAN about the funds he/she obtained from marketing in the event that the right to the results of scientific research, development works and Know-how was transferred to the employee under § 20. In this case, the employee is obliged to transfer to IF PAN the due part of the funds obtained from marketing in accordance with § 31.
12. At the moment of termination of employment, the Creator of the Intellectual Property the rights of which are vested in IF PAN is obliged:
  - a. Not to use this property for commercial purposes, unless it is done with the knowledge and consent of the Director
  - b. To respect the rights and interests of IF PAN in the use of intellectual property in further scientific activities
  - c. To preserve the principles of confidentiality set out in the regulations

## **§ 15**

### **Reporting a project**

1. The employee, and in the case of a Project carried out in a team - the project coordinator, is obliged to report to the Committee of
  - a. the commencement of the Project or Commercial Project carried out under the Institute, regardless of the source of financing for this project.
  - b. any significant changes to the subject, or the implementation method of the Project or Commercial Project
  - c. the completion of the Project or Commercial Project
2. The report referred to in sec. 1 is made via the project application form available on the IF PAN website. The form is submitted in written or electronic form.
3. The Committee may request additional information or inspection of documentation relating to the Project or Commercial Project.

**§ 16**  
**Filing Intellectual property**

1. The Creator of Intellectual Property who is:
  - a. An employee
  - b. A Ph.D. student or student
  - c. A person carrying out an internship or work experience at IF PAN
  - d. The Creator of the Intellectual Property the rights of which or certain scope of rights which are vested in IF PAN under the contractis obliged to immediately notify IF PAN about the creation of Intellectual Property being Industrial Property and about know-how related to it to which IF PAN may be entitled rights or a certain scope of rights. In the case of works, the obligation of notification applies only to works referred to in §6, §7 sec. 2, § 8 sec. 1 and a work to which the rights may be vested in IF PAN under an agreement other than a contract of employment. (filing intellectual property).
2. The Creator is exempt from the obligation set out in sec. 1 only if the intellectual property has no connection with the works carried out at IF PAN.
3. The Creator referred to in sec. 1a-c notifies the Head of the unit in which the property was created, while the Creator referred to in sec. 1d shall directly notify the Committee. The notification is made via the application form available on the IF PAN website. The form is submitted in writing. The applicant should indicate all co-authors of the given property.
4. Co-creators are obliged to agree on a common position in matters concerning them and to appoint a representative from their group to represent their interests before IF PAN.
5. By filing the Intellectual Property, the Creator simultaneously submits a declaration that the Intellectual Property does not violate any existing property or moral rights of third parties, and in the case of a work the rights of which are vested in IF PAN, that permission to use the work of third parties has been obtained.
6. The Head of the unit, after making an initial assessment of the Intellectual Property, passes it on to the Committee together with a general assessment of the innovativeness of the Property or the possibility of publishing the scientific work.
7. Information on the results of scientific research or development works and on the know-how related to these results is considered as received by IF PAN in accordance with Article 94c of the Act on the Polish Academy of Sciences of April 30, 2010 (Journal of Laws 2010 No. 96, item 619, as amended) on the day of its delivery to the Intellectual Property Committee (date of filing).
8. If the information provided by the Creator contains significant deficiencies, the Committee will call for it to be completed. Correspondence with the Committee may take place in electronic form.
9. Until the date of acquisition of rights to Intellectual Property by IF PAN, and in the case of intellectual property rights referred to in § 18 sec. 1 until the date of the decision on the marketing or non-acceptance of the offer to acquire rights by the Creator in the event of a decision of non-marketing or failure to take the relevant decision within the statutory three-month period, IF PAN is obliged to keep all information obtained from the Creator

confidential.

## **§ 17**

### **Decision on accepting the work**

1. The Head of the unit in which the work was created makes the decision on accepting the work, conditions the acceptance on making adjustments or not accepting the work referred to in §6 sec. 1. The decision should be delivered to the Creator not later than 6 months from the date of filing the work. If the decision is not delivered to the Creator within the above deadline, the work is deemed accepted. § 18 applies to employee works which are the result of development works and those that may be the subject of marketing.
2. In justified cases, especially when it is dictated by the interests of both parties, instead of a statement on accepting the work, an agreement may be concluded with the employee regulating the rights to the work and the rights to use it.
3. The decision to exercise the right of priority of publication of an employee scientific work referred to in § 7 sec. 2 is made by the Committee.

## **§ 18**

### **Decision on marketing**

1. With regard to employee intellectual property referred to in §6 in fine, §12 sec.1 and Know-how related to it, IF PAN makes a decision on the issue of marketing within 3 months from the date of the employee filing the intellectual property.
2. Until the date of the decision on the marketing or non-acceptance of the offer to acquire rights by the Creator in the event of a decision of non-marketing or failure to take the relevant decision within the statutory three-month period, IF PAN cannot conclude agreements with third parties on the subject of the submitted Intellectual Property.
3. The Committee within 45 days from the date of filing the Intellectual Property makes a preliminary assessment of the submitted Intellectual Property in terms of marketing possibilities. If the subject of the submission is a technological solution, the Committee takes into account the opinion of the patent attorney. If it is justified, the Committee may consult an external expert - a specialist in a given field, and consult with employees.
4. Immediately after preparing the opinion, but no later than 45 days from the date of submission of the Intellectual Property, the Committee presents an opinion to the employee. The employee may submit comments to the Committee within 15 days. The employee's comments are not binding.
5. The Committee shall, within 15 days, draw up a final opinion on the marketing of the filed Intellectual Property and present it to the Director together with the motion for a decision on the marketing or non-marketing of the solution. It may also include an opinion on the legitimacy of protecting the property with exclusive rights and the territorial scope of such protection.
6. The Director, within 15 days of the delivery of the opinion, issues a decision on the marketing or non-marketing of the property. The decision cannot be appealed.

7. Lack of any decision issued within 3 months from the date of filing the Intellectual Property is tantamount to a decision on non-marketing.
8. With reference to Intellectual Property filed with IF PAN other than that specified in sec. 1, IF PAN is not bound by a 3-month deadline for making marketing decisions. The persons involved in making decisions operate without unjustified delay. The Creator has the right to meet with the Committee to present additional materials regarding the submission. With respect to these properties, § 20 does not apply.

#### **§ 19**

##### **Decision on marketing Intellectual Property**

1. In the event that IF PAN decides to market an Intellectual Property, IF PAN shall exercise due diligence in its efforts to market this property.
2. Along with the decision to market the property or after making such a decision, IF PAN shall decide on applying for exclusive protection of the industrial property and territorial scope of such protection in accordance with the principles set out in § 22.

#### **§ 20**

##### **Decision on non-marketing of Intellectual Property**

1. In the event that IF PAN chooses not to market the Intellectual Property or fails to make a decision within 3 months from the date of filing the Intellectual Property, IF PAN is obliged to submit to the employee within 30 days an offer to conclude an unconditional and paid contract for the transfer of rights to the filed Intellectual Property referred to in § 18 sec. 1 together with the information, works and the ownership of the media on which these works were fixed and the technological experiments previously provided by the employee in accordance with § 14 sec. 7.
2. The remuneration due to IF PAN for the transfer of rights referred to in sec. 1 may not be higher than 10% of the minimum remuneration for work as of the date of concluding the contract. In the case of more than one Creator of a given Intellectual Property, this remuneration constitutes the total amount of remuneration due to IF PAN from all co-creators. The employee is liable to IF PAN for his/her commitment to the amount of the share due to him/her in the co-ownership of the Intellectual Property.
3. The offer referred to in sec. 1 must be made in writing under pain of nullity. It may contain the specimen contract that is to be concluded with the employee.
4. The offer may provide for a deadline for its acceptance by the employee after which it ceases to bind IF PAN.
5. Acceptance of an offer by an employee must be made in writing under pain of nullity and take place within the time specified in the offer, if it has been specified. The statement on accepting or rejecting the offer is submitted by the employee to the Committee. The offer may provide that signing the attached text to the contract by the employee deems acceptance of the offer.
6. The contract is deemed concluded when the employee's statement of acceptance

is delivered to the Committee or the contract document is signed.

7. The offer and the statement on accepting the offer sent in electronic form without a secure electronic signature verified using a valid qualified certificate does not meet the requirements of the written form.
5. If the offer is accepted, the rights to the Intellectual Property and Know-how related to it, including information, works and ownership of media on which these works have been fixed, and technological experiments, are transferred to the employee.
9. In the case of not accepting the offer or the ineffective expiration of the period for accepting the offer, the right to the Intellectual Property and Know-how related to it, including information, works and ownership of media on which these works have been fixed, and technological experiments, remain with IF PAN.

## **§ 21 Exclusion**

1. The provisions contained in § 18 and § 20 shall not apply to cases in which scientific research or development works were conducted:
  - a. on the basis of an agreement with the financing or co-financing party for this research or works, providing for the obligation to transfer rights to the scientific research results or development works for that party or for a party other than the contracting party (research or commissioned work)
  - b. with the use of financial resources which rules of granting or using determine a manner of using the results of scientific research or development works, as well as the know-how related to these results in a different way than in the Regulations.
2. In the above cases, the rights to the results of scientific research and development works as well as know-how related to these results are determined by agreements being the basis for financing research.
3. With reference to other Intellectual Property than that specified in § 18 sec. 1 and in sec. 1 of this article, the rights of which are vested in IF PAN, the Director, after consulting the Committee, decides on whether to market or not market the property. The provisions of § 18 sec. 1-8 and § 20 do not apply.

## **§ 22 Decision on the protection of Industrial Property Rights**

1. In the case of Industrial Property Rights, the rights of which are vested in IF PAN, and in relation to which a decision on marketing has been made, IF PAN decides to apply for exclusive protection, covering the solution with secrecy or not covering the solution with secrecy.
2. The decision is taken by the Director after hearing the opinion of the Committee and patent attorney. The Creator is immediately informed of the decision.
3. The Creator is obliged to keep secrecy until the solution is filed for protection in the event of a decision to apply for exclusive protection, and in the case of a decision on cover the

solution with secrecy for the entire period of covering the solution with confidentiality. The obligation to keep secrecy rests with the Creator also after the termination of employment.

4. In particularly justified cases, the deadlines referred to in sec. 3 may be extended on the basis of an agreement between IF PAN and the Creator.
5. If a decision is made to apply for protection, the territorial scope of the application shall also be determined.
6. If a decision is taken to cover the solution by secrecy, the Head of the unit together with the manager or team under which the Intellectual Property was created take organizational, legal and technical steps to maintain the confidentiality of the solution, in particular by defining the circle of people who have access to the solution and obtaining written obligations to keep the solution secret.
7. In the event of a decision not to cover the solution by secrecy, IF PAN is obliged, upon the request of the Creator, to transfer the rights to the solution free of charge, if such a contract does not conflict with the interests of IF PAN. The contract requires written form.

## **Chapter IV Marketing**

### **§ 23**

#### **Methods of marketing**

1. In relation to the Intellectual Property for which a decision on marketing was made, IF PAN undertakes activities aimed at marketing.
2. Marketing the Intellectual Property may consist in:
  - a. Direct marketing through:
    - i. The transfer of Intellectual Property Rights to a third party, in particular on the basis of a sales contract
    - ii. Putting into use Intellectual Property, in particular on the basis of a license, lease or rent agreement
  - b. Indirect marketing through
    - i. taking up shares or stock in companies established to implement or prepare Intellectual Property for implementation (spin-off company)
    - ii. acquisition of shares in companies for the purpose of implementing or preparing Intellectual Property for implementation
3. The decision on the method of marketing is made by the Director after consulting the Committee. This decision can be changed if circumstances justify it.

4. If it is justified by the effectiveness of marketing, IF PAN may transfer its Intellectual Property Rights or entrust them to a trustee for the Special Purpose Vehicle of IF PAN. In this case, the decision on the method of marketing Intellectual Property is made by the Special Purpose Vehicle, taking into account the principles set out in these Regulations.
5. In each case, the employee is obliged to cooperate with IF PAN in order to enable the most effective marketing possible. The resulting costs shall be borne by IF PAN, unless a separate contract with the employee provides otherwise.
6. The marketing process should be carried out taking into account the best practices and respect for the mutual rights of the Creators and the Institute.
7. The marketing agreement should ensure the right of IF PAN to free use of the Intellectual Property for research and scientific purposes.
8. Decisions regarding the method of marketing are made in a way that avoids conflicts of interest. In particular, persons related in person or in a material way with external entities in relation to IF PAN involved in the marketing of the property, in particular such as the licensee or the purchaser of rights, may not participate in making such decisions.
9. The provision provided for in sec. 8 shall not apply to the Creator in so far as:
  - a. he/she participates in the decision to create a spin-off company with his/her participation
  - b. presents a position on the method of marketing of the Intellectual Property
  - c. IF PAN grants permission for the use of the property for remuneration to a company created with the participation of the Creator of the Intellectual Property without the participation of IF PAN.
10. IF PAN may Support employee in the marketing of the Intellectual Property the rights of which are vested in the employee. IF PAN may provide such Support against payment, in exchange for part or all of the shares in the right to the Intellectual Property or in exchange for a share in profits from this right. In each case, the parties are required to conclude an agreement specifying their mutual rights and obligations.

#### **§ 24 Logo of IF PAN**

1. By concluding a contract for the marketing of Intellectual Property and deciding on the establishment of a spin-off company, IF PAN may grant the other party of the agreement or the spin-off company permission or impose the obligation to use the IF PAN logo as part of the activities related to the use of the Intellectual Property. The condition for using the logo must be information about the Resources used in the process of creating the property or information about the relation of the Intellectual Property with IF PAN (e.g. "created as a result of research at IF PAN").
2. The agreement permitting the use of the IF PAN logo may be terminated by IF PAN with immediate effect in the event of the violation of the agreed terms as to the use of the logo or terms indicating the relationship with IF PAN.

## **§ 25**

### **Direct marketing**

1. Direct marketing is conducted by IF PAN.
2. In the case of direct marketing conducted by IF PAN, the agreement the subject of which is the Intellectual Property is signed by the Director after its prior verification by the Committee.
3. Direct marketing may also be carried out by a Special Purpose Vehicle. In the case of direct marketing conducted by a Special Purpose Vehicle, the agreement subject to Intellectual Property is subject to verification by the Committee. Direct marketing conducted by a Special Purpose Vehicle consisting in the sale of rights to Intellectual Property requires the consent of the Director.

## **§ 26**

### **Indirect marketing**

1. For the purpose of Indirect marketing, IF PAN may establish a Special Purpose Vehicle in accordance with Article 83 of the Act on the Polish Academy of Sciences (Journal of Laws 2010 No. 96, item 619, as amended).
2. In the case of Indirect marketing, the principle is to subscribe/acquire shares or stock in commercial law companies whose purpose is activities aimed at implementing Intellectual Property in exchange for contributions/payment in the form of rights or a certain scope of rights to the Intellectual Property which is to be implemented.
3. In cases justified by circumstances, the subscription or acquisition of shares may take place in exchange for other cash or non-cash contributions than those indicated in sec. 2.
4. If indirect marketing is carried out by a Special Purpose Vehicle, the company's Management Board selects the investor and conducts negotiations. In the case of indirect marketing by IF PAN, the above-mentioned activities are carried out by the Committee.
5. An agreement with a company whose objective is to implement Intellectual Property requires prior verification by the Committee in terms of its compliance with the law.
6. Proceeds from dividends and the sale of shares in companies are the income of IF PAN.

## **§ 27**

### **Special Purpose Vehicle**

1. A special purpose vehicle is a sole-shareholder company. The Articles of Association or the contract of the Special Purpose Vehicle require the approval of the Director.
2. To cover the share capital of the Special Purpose Vehicle, IF PAN may contribute in whole or in part to a contribution in the form of rights to intellectual property belonging to IF PAN.
3. The tasks of a Special Purpose Vehicle include in particular:
  - a. Conducting indirect marketing of Intellectual Property transferred to it
  - b. Developing a marketing plan for specific Intellectual Property including, in particular,



researching commercial potential, analyzing the target market, valuing the Intellectual Property, analyzing the condition of the technology and the possibility of obtaining and maintaining exclusive legal protection

- c. Acquiring and maintaining contacts with industry representatives
  - d. conducting trade negotiations with potential contractors, the preparation of contracts,
  - e. support at every stage of marketing in the technological, technical, economic, marketing and legal areas,
  - f. Active search for opportunities for marketing the Intellectual Property
  - g. Promotion of science and of IF PAN
4. The conclusion of a contract by a Special Purpose Vehicle for the Intellectual Property requires a positive opinion from the Committee. The decision on the conclusion of the contract is taken by the Management Board of the Special Purpose Vehicle.
  5. In exceptional situations, it is not excluded that the Company will also pursue direct marketing in the field of the rights of the Intellectual Property transferred to it.

## **§ 28**

### **Spin-off Company**

1. Indirect marketing of the Intellectual Property may be accomplished through a Spin-off company with the participation of IF PAN or a Special Purpose Vehicle established to develop and market this property.
2. The decision to create a Spin-off company is taken by the Director, and if the Intellectual Property has been transferred to the SPV, the decision is made by the Management Board of that company. In any event, the decision shall be taken after hearing the opinion of the Committee.
3. IF PAN or the SPV may bring to the Spin-off company their right to the Intellectual Property or licensee to use the good as their contribution.
4. If the Spin-off company has a supervisory board, IF PAN has the right to appoint at least one member to the supervisory board.
5. The Creator of the Intellectual Property may be a partner/shareholder of the Spin-off company, a member of the body, a consultant or its employee.
6. IF PAN can offer shares/stock in the Spin-off company to IF PAN employees considering their contribution to creating the Intellectual Property.
7. A full-time IF PAN employee may be employed at the Spin-off company only with the consent of the Director.

## **Chapter V**

### **Rules for the division of funds from the marketing of Intellectual Property**

## **§ 29**

### **Funds subject to division**

3. For the use of Intellectual Property of If PAN as part of its internal research and scientific activities, as well as in other cases resulting in the failure of IF PAN to obtain benefits from

using the Intellectual Property, the Creators are not entitled to remuneration.

4. In the event that IF PAN obtains benefits for using the Intellectual Property on its own, including also for the sale of products containing these solutions or for the provision of services by IF PAN to third parties using this property (funds not deriving from marketing), IF PAN is obliged to pay the Creator the remuneration specified in a separate contract concluded with him/her.
5. The Creator is entitled to participate in the Marketing Funds obtained by IF PAN on the terms set out in the regulations.
6. The division of Marketing Funds is carried out annually, not later than by March 31 of the calendar year.
7. Disputes regarding the division of Marketing Funds are decided by the Committee.

### **§30**

#### **Division of Marketing Funds obtained by IF PAN**

1. In the event that IF PAN or the SPV achieves the benefits of marketing Intellectual Property referred to in § 6, § 11 sec. 1 and the Know-how related to it, the employee is entitled to remuneration in the amount of:
  - a. 60% of the value of the Marketing Funds obtained from direct marketing, reduced by no more than 25% of the costs directly related to marketing, which were incurred by the Institute or the Special Purpose Vehicle.
  - b. 50% of the value of Marketing Funds obtained from indirect marketing, reduced by no more than 25% of the costs directly related to marketing, which were incurred by IF PAN or the SPV.
2. The right to remuneration referred to in sec. 1 shall be valid for no more than 5 years from the date of obtaining the first benefits.
3. In the case of more than one Creator of a given Intellectual Property, the remuneration defined in sec. 1 is the total remuneration for employees with co-creator status. The division of Marketing Funds between the Creators is made in proportion to the participation in the creation of Intellectual Property. The Creators inform the Committee about the creative participation of all co-creators. An employee has the right to claim the part of the share in Marketing Funds from IF PAN which is due to him/her.
4. The remaining part of the Marketing Funds is divided halfway between IF PAN and the SPV. If the Special Purpose Vehicle did not participate in the marketing of a given property, all of the funds are vested in IF PAN.
5. In the absence of separate arrangements, the division of Marketing Funds of Intellectual Property allocated to IF PAN is as follows:
  - a. 60% for the IF PAN organizational unit where the property was created
  - b. 40% to the disposition of the Director
6. In the case of IF PAN or the SPV achieving benefits from marketing
  - a. Intellectual Property referred to in § 21 sec. 1
  - b. Non-employee Intellectual Property the rights to which were taken over by IF PAN on the principles applicable to the employee property,

- c. Intellectual property made by an employee, Ph.D. student or student as a result of implementing a civil law agreement other than a contract of employment concluded between the Creator and IF PAN,

The Creators, in the absence of different contractual provisions, are entitled to remuneration according to the principles set out in sec. 1-4.

7. In the case of marketing Intellectual Properties other than those specified in sec. 1 and sec. 6, the Creator is entitled to remuneration for the benefits obtained from marketing achieved by IF PAN or the SPV if the contract between IF PAN and the Creator so provides.

### **§ 31**

#### **Division of Marketing Funds obtained by the employee**

1. If the Employee achieves benefits from marketing the Intellectual Property purchased by him/her in the manner specified in § 20, IF PAN is entitled to 25% of the funds obtained by the employee from marketing, reduced by no more than 25% of Costs directly related to marketing, which were incurred by the employee.
2. The right referred to in sec. 1 shall be entitled to IF PAN no longer for 5 years from the date of obtaining the first funds.
3. In the case of more than one Creator of a given Intellectual Property, the amount of funds specified in sec. 1 is the total value entitled to IF PAN from all co-creators. The employee is liable to IF PAN for his/her commitment to the amount of his/her share in the co-ownership of Intellectual Property.

### **Chapter VI**

#### **The rules for using the Funds of IF PAN and the provision of scientific and research services**

### **§ 32**

#### **Rules for using the Resources of IF PAN**

1. The Director appoints a person responsible for the operation, maintenance and proper use of the Resources of IF PAN.
2. The use of Resources in connection with the performance of duties from the employment relationship or the tasks of the doctoral student is free of charge.
3. The use of Resources beyond the scope of duties from the employment relationship or the tasks of a Ph.D. student requires the consent of the Director or a person authorized by him/her. The rules for using the Resources are set out in an agreement between an employee/Ph.D. student and IF PAN. The amount of fees for using the Resources is determined based on the price list.

4. The use of the Resources of IF PAN for the implementation of Projects requires a notification to the Committee. For each Project, the use of Resources is recorded in order to determine the expenditures incurred for the implementation of the Project.
5. Using the Resources for purposes other than the implementation of the Projects, in particular using the Resources by external entities, requires the consent of the Director or a person authorized by him/her. The use of the Resources takes place on the basis of an agreement specifying the scope and form of using the Resources, including the amount of fees determined on the basis of the price list.
6. With respect to companies established by employees on the basis of rights to employee and non-employee Intellectual property, as well as Spin-off companies, it is allowed, with the consent of the Director, to use the Resources in exchange for non-cash benefits. The value of the non-monetary equivalent should correspond to the amount of the fee resulting from the price list. The rules for using the Resources are specified in the contract.
7. The provision of Resources to external entities, including companies in which IF PAN holds shares or stock, should be based on transparent rules, in accordance with the principle of equal treatment of all entities.

### **§ 33**

#### **Resources purchased from external funds**

The rules for using the Resources purchased from external funds take into account primarily the regulations of the programs from which the purchase was financed and these regulations have priority in application in the event of their conflict with these regulations.

### **§ 34**

#### **Fees**

8. Fees for the use of Resources and the calculation of the price of providing services using the Resources are determined by the Committee on the basis of market valuation or calculation of service costs in accordance with the current IF PAN financial policy and Director's orders.
9. At the request of the Committee, the Director may, in order to implement the marketing policy and supporting entrepreneurship with the participation of IF PAN, establish preferential rules for using the Resources by companies in which IF PAN has shares or stock, including Spin-off companies, and other entities undertaking actions to implement the Intellectual Property created at IF PAN.
10. The Special Purpose Vehicle uses the IF PAN premises free of charge.

### **§ 35**

#### **Provision of scientific and research services**

1. IF PAN may provide scientific and research services to third parties, also as part of Commercial Projects.
2. The guidelines on contracts for the provision of scientific and research services are established by the Committee.
3. The provision of scientific and research services is based on a contract which is concluded by the Director on behalf of IF PAN after consulting the Committee.
4. The provision of scientific and research services requires the commencement of the Commercial Project and the appointment of a Project Manager who is responsible for the performance of the contract and the rational use of Resources.
5. The Commercial Project Manager makes files the Commercial Project to the Committee on the terms specified for Projects.
6. The remuneration for conducting research is determined taking into account fees for using the Resources set in the price list.

## **Chapter VII Organizational issues**

### **§ 36 Entities participating in marketing**

1. The management of IF PAN's Intellectual Property of and its marketing, the following persons participate in the scope provided for in these Regulations:
  - a. Director
  - b. Intellectual Property Committee
  - c. Special Purpose Vehicle
  - d. Spin-off companies

### **§ 37 Director**

1. In the field of intellectual property management, the Director issues decisions and takes actions provided for in the Regulations. The Director also makes decisions regarding the management of Intellectual Property in the field that is unregulated by the Regulations.
2. The Director may appoint an Agent for the Management of Intellectual Property acting as his/her proxy.

### **§ 38 Intellectual Property Committee**

1. The Committee is appointed by the Director. Until the establishment of the Intellectual Property Committee, all of its competencies as well as the duties incumbent upon it, set out in these Regulations, apply to and refer to the Director or a person appointed by

the Director to exercise the competence of the Committee.

2. The Committee of at least 5 people, including:
  - a. Deputy Director for Scientific Matters
  - b. Deputy Director for Economic and Financial Matters
  - c. Patent Attorney
  - d. Intellectual Property Lawyer
  - e. Expert for contacts with business
3. The Committee may be supplemented by subsequent members on the basis of the Director's decision.
4. The members referred to in sec. 2 items c-e are appointed for a 2-year term with the possibility of being elected for subsequent terms. These members may be dismissed by the Director at any time.
5. Members of the Committee are required to make a declaration of obligation to keep confidential the information to which they have access in connection with the duties of the Committee member.
6. The Committee makes decisions and expresses opinions in the form of resolutions. Adopting a resolution requires an absolute majority of votes, unless the Regulations provide otherwise.
7. Before reaching a decision, the Committee may seek information and opinions of other persons, including external experts.
8. If the Committee takes a decision or expresses an opinion on a matter in which its member has a personal or financial interest, that member shall not vote.
9. In the case referred to in sec. 8 or in the event of a temporary impediment to the exercise of a function by a member of the Committee, the Director shall appoint as a member of the Committee an additional person who will replace the missing member of the Committee at the time the decision or opinion is taken.
10. The activities of the Committee are supervised by the Director.
11. In terms of day-to-day operations, the Committee is supported by the Office for Intellectual Property.
12. Detailed rules of the Committee's operations are defined in the regulations adopted by it, subject to approval by the Director of the Institute.

### **§ 39**

#### **The Committee's competences**

1. The Committee's competences include in particular:
  - a. Presenting the opinion to the Director along with a recommendation regarding making the appropriate decision on marketing the Intellectual Property.
  - b. Preparation of opinions and recommendations regarding the principles and methods of marketing and protecting Intellectual Property.
  - c. Cooperation with the Special Purpose Vehicle in order to effectively market Intellectual Property.
  - d. Verifying that contracts concluded in connection with the marketing of property

conducted by IF PAN as well as the SPV comply with the law, as well as fulfilling the requirements provided for in legal provisions regarding legal transactions in the scope of using the components of IF PAN's fixed assets.

- e. giving opinions on matters related to the management of IF PAN's Intellectual Property rights,
  - f. reviewing IF PAN's internal regulations regarding Intellectual Property management, including the Regulations, and proposing amendments to the Director and amending these regulations.
  - g. Informing the Director on an ongoing basis on matters related to the management of IF PAN's Intellectual Property.
  - h. Amicable settlement of disputes related to matters covered by these Regulations, including those relating to marketing.
2. At any time, the Committee may request information from an Employee or Project Manager about the Project, Commercial Project and results of research and development works.
  3. The Committee, at the request of the Director, or when it deems it justified, audits the Intellectual Property of IF PAN, including those of the Special Purpose Vehicle, as well as audit Funds for marketing. The purpose of the audit is, in particular, to determine what income from Intellectual Property is derived from IF PAN and the Special Purpose Vehicle, whether maintaining the protection of certain Intellectual Property is profitable and what actions should be taken to facilitate the effective management of certain Intellectual Property.
  4. The Committee, at the request of the Director, or when it deems it justified, conducts an audit of Spin-off companies. As a result of the audit, a resolution may be adopted to undertake actions aimed at improving the effectiveness of the marketing of property, as well as an opinion along with a recommendation to withdraw IF PAN from participation in the Spin-off company in a manner consistent with the law. The final decision in this matter is taken by the Director.

#### **§ 40 Settling disputes**

1. The Committee settles disputes regarding
  - a. the obligation to file the Intellectual Property with the Committee
  - b. the proportion of participation in the right to Intellectual Property between IF PAN and the Creator, as well as between co-creators,
  - c. the principles of using the Intellectual Property by IF PAN and the Creator in a manner consistent with the Regulations and the agreement concluded between IF PAN and the Creator,
  - d. rights to the Publication of the work and the possibilities of its Dissemination,
  - e. the principles of the division of benefits resulting from the marketing of Intellectual Property.

- f. Conflict of interest in the case of marketing the Intellectual Property referred to in § 23 sec. 8
2. The proceedings before the Committee are conducted at a written request made to the Committee.
3. The decisions of the Committee are made in the form of resolutions, which the interested party may appeal with the Director of the Institute within 14 days from the date of receiving the written decision of the Committee.
4. In the event of the failure to appoint the Committee, in the situation described in item 3, the interested party is entitled to apply for reconsideration of the Director's decision, submitted to the Director within 14 days from the date of receipt of the first written decision of the Director.
5. A resolution of the Committee, as well as the decision of the Director, does not exclude the possibility of seeking rights before common courts.

#### **§ 41**

##### **Intellectual Property Office**

1. The Office provides ongoing support for matters related to the management of Intellectual Property with the Committee.
2. The Office's tasks include in particular:
  - a. Accepting Intellectual Property applications,
  - b. Circulation of documents between the Director, the Committee, the Creator,
  - c. Verification of employment contracts in terms of binding employees of IF PAN with the regulations,
  - d. Providing relevant forms to employees,
  - e. Keeping a Register of Intellectual Property of IF PAN,
  - f. Keeping a Project Register.
3. Documents submitted to the Office are considered to be submitted to the Committee.

#### **§ 42**

##### **Register of Intellectual Property of IF PAN**

1. The register includes information about:
  - a) the Creator of the protected Intellectual Property,
  - b) filing the Intellectual Property with IF PAN,
  - c) filing the Intellectual Property with the competent office for obtaining protection,
  - d) issued decisions of competent offices,
  - e) the time of payment of any fee for extending the protection,
  - f) the expiry date of industrial property rights,
  - g) the agreement concluded between the Creator and IF PAN,
  - h) the accepted form of marketing, including the granted licenses.
2. With the exception of the information referred to in sec. 1 items b, g, h, the Register shall



be public.

3. Entries in the register are made by the Head of the Office or the person authorized by him/her.
4. The register is kept in electronic form.

### **§ 43**

#### **Project Register**

1. The Project Register includes information about Projects and Commercial Projects conducted at IF PAN.
2. The Register, in particular, includes information on filing the Project/Commercial Project, reporting changes to the Project/Commercial Project, reporting the closure of the Project/Commercial Project, filing the Intellectual Property and the contract on conducting a Commercial Project.
3. Subject to provisions on access to public information, the information contained in the register are confidential.
4. Entries in the Register are made by the Head of the Office or the person authorized by him/her.
5. The register is kept in electronic form.

### **Chapter VII**

#### **Final provisions**

1. Violation of the provisions of the Regulations is a violation of employee duties regulated by the Labor Code, entailing consequences specified in the provisions of the Act on the Polish Academy of Sciences and the Labor Code.
2. The provisions of the Regulations shall apply to all Projects, Commercial Projects commenced after the effective date of the Regulations and Intellectual Property created after the effective date of the Regulations.
3. Provisions regarding the division of benefits from marketing shall not apply to marketing done prior to the entry into force of these regulations. In this case, the existing rules apply.
4. In matters not regulated by the Regulations, the provisions of the Act of April 4, 1994 on Copyright and Neighboring Rights (Journal of Laws 2006, No. 90 item 631 as amended) and the Act of June 30, 2000 on Industrial Property Rights (Journal of Laws 2013 item 1410 as amended), the Civil Code (consolidated text Journal of Laws of 2014, item 121 as amended) and the Act of April 16, 1993 on Combating Unfair Competition (Journal of Laws 2003, No. 153 item 1503) and the Act of June 26, 2003 on the protection of plant species (Journal of Laws of 2014, item 621 as amended).