

**APPENDIX TO HSU SPONSORED PROGRAMS FOUNDATION INTELLECTUAL PROPERTY
POLICY
DEFINITIONS**

1. Patents

The United States patent system grants exclusive rights to inventors in order to encourage the public gain of information and to prevent duplicative research effort. A patent provides seventeen years of excluding others from making, using or selling the invention. It does not give the patent holder the authority to make, use or sell, simply the authority to prevent others from doing so. Thus it is that one party can hold the patent on an improvement to an invention, while another holds the patent on the invention itself.

Process

To obtain a patent, four statutory requirements must be met: utility, adequacy of disclosure, novelty and non-obviousness. Utility, usefulness, necessitates a practical application. Adequate disclosure requires a fully detailed description sufficient to enable a person in the same technological field as that of the patent to "practice" the invention. Adequate disclosure has two parts: 1) the specification section which identifies the field of technology and describes in detail the invention's features and 2) the claims section which describes in detail the subject matter for which the patent applicant desires protection. The requirement for novelty specifies that the invention not be known or in use prior to the filing of the patent application. While United States law references a one year "grace period" for publication or use prior to patent filing, other nations do not recognize such a grace period, so any prior use can negate the patent in foreign markets. The final requirement for patentability is non-obviousness. The invention must be one which goes beyond a minor improvement which would have been obvious to anyone skilled in the field. At issue is whether the "prior art" (other patents, published documents, and technical publications) renders the invention obvious.

Patent applications are received by the U.S. Patent and Trademark Office and can take up to two years to evaluate, depending upon the press of applications and the number of related inventions. During this patent examination process, patent applications are confidential. Once patent is granted, the application is printed and made public. Denial of patent is appealable.

Plants can receive patent protection under utility patents but are also protected if they are asexually reproduced varieties or if they are sexually reproduced varieties (Plant Variety Protection Act of 1970).

Patent Right Enforcement

The owner of a patent can preclude others from making, selling or using the invention within the territory of the United States. This property right can be assigned to others or licensed on either an exclusive or non-exclusive basis. Infringement on such property rights can be pursued in a civil suit in a Federal District court. Winning such a suit can result in either or both injunction and financial damages.

Licensing

Both the patenting and licensing of inventions, made even by the recipients of federal funding, are authorized under U.S. patent law and U.S. regulations. License negotiations involve such business matters as royalty rates and measures of due diligence. Licenses are generally granted to campuses agreeing to manufacture in the United States any inventions to be used or sold in the United States. Such domestic production requirements especially apply to federally funded inventions. The issue of exclusivity is dependent upon the requirements needed to enable development. If significant development costs are involved, licensees can be expected to request exclusive rights. Nonexclusive licensing typically occurs for materials having numerous commercial uses.

Dedication to the Public

An invention's patentability can be accidentally destroyed or deliberately destroyed by disclosing it through publication or public use. A formal mechanism for deliberate destruction is Statutory Invention Registration, administered by the U.S. Patent and Trademark Office. Dedication to the public typically occurs when exclusive rights to an invention which might be secured through a patent have no commercial value.

2. Copyrights

Copyright protects a work of authorship, fixed in any tangible medium of expression, from unauthorized reproduction. Copyright is applicable to computer software, art work, music, articles, books and other literary works. Publishers normally carry copyright. Copyright protects the expression of the idea, but not the idea itself.

3. Trademark

Trademark is the mark which distinguishes an organization or a product. Symbols and logos of Humboldt State University are trademarks, and they may not be used by third parties without a proper license and specific approval via the university's Licensing Program.

4. Trade Secret

Trade Secret is a legal property protection device under state law. Knowledge formalized as a trade secret cannot be disclosed in any open scientific forum. Trade secret commonly occurs with profit-making companies.