

INTELLECTUAL PROPERTY RIGHTS POLICY

2018



Intellectual Property Rights Cell

Marwadi University Centre for Innovation, Incubation and Research

Marwadi University

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Preamble:

Marwadi University (hereafter referred to as 'MU') is a Private University approved by Government of Gujarat Act No. 9 of 2016 dedicated to excellence in teaching and research. Its activities, centered on faculty/students/project staff/ supporting staff/visitors are based on knowledge and intellectual exercise. In the era of technology domination, where values and perceptions change at brisk pace, Marwadi University, in particular, have to preserve the fundamental spirit of academics on one hand and have to march ahead, on the other, accepting changing realities of business economy based on knowledge generated, protected and disseminated under the intellectual property regime. In the evolving scenario of the world today, with increasing awareness of the 'knowledge asset', an Intellectual Property Rights (IPR) Policy is needed not only to preserve the interest of MU but also to make MU faculty/students/project staff/ supporting staff/ visitors aware of 'knowledge asset and its impact on the society'.

The present policy facilitates protection of the right of the Inventor(s) of MU i.e. faculty/students /project staff/ supporting staff /visitors of MU through the option of Intellectual property protection on a novel work or to keep it in public domain as they may deem fit. In alignment with the Vision and Mission of MU, the policy favors outreach of the novel technologies developed at MU. At the same time, it motivates the faculty, students and researchers of MU to initiate technology transfer using the intellectual property rights gained over a novel technology, invention and Research.

The IPR Policy of Marwadi University is expected to fulfill the commitment of Marwadi University in order to promote academic freedom and provide a beneficial environment for research and development.

1. OBJECTIVES:

The objectives of this policy document is given below:

- 1.1. To foster, stimulate and encourage creative activities in the widest sense in all the areas in which academic, consultancy and research programs are offered by MU.
- 1.2. To protect the legitimate interest of faculty / scholars / students of MU and to avoid as far as possible conflict of opposing interests.
- 1.3. To lay down a transparent administration system for the ownership and control of intellectual properties and sharing of the revenues generated and owned by MU.
- 1.4. It shares a global perception of practices related to intellectual property retaining national identity and local constraints, avoiding as far as possible 'conflict' of opposing interests.
- 1.5. The policy promotes fair use of traditional knowledge while recognizing local traditional knowledge stakeholders and benefit sharing.

2. TYPES OF IP:

The intellectual properties can be broadly listed as:

- 1.1. Patents
- 1.2. Copyrights
- 1.3. Trade/Service marks
- 1.4. Industrial designs
- 1.5. Traditional knowledge and Geographical Indication

3. DEFINITIONS:

The meaning of terms applied in this policy is given below (unless the context otherwise requires):

- 3.1. **Patent** - is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something or offers a new technical solution to a problem.
- 3.2. **Copyright** - is an exclusive right given to the author of the original literary, architectural, dramatic, musical and artistic works; cinematograph films; and sound recordings.
- 3.3. **Trade/Service mark** - means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.

- 3.4. **Industrial Design** - means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device.
- 3.5. **Traditional Knowledge** - The knowledge developed by the indigenous or local communities for the use of a natural resource with respect to agriculture, food, medicine etc. over a period of time and has been passed from one generation to another traditionally.
- 3.6. **Geographical Indications** - means an indication which identify such goods as agricultural goods, natural goods as originating or manufactured in the territory of a country or manufactured in the territory of a country or a region or locality in that territory where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, regions or locality as the case may be.
- 3.7. **First Party** - Marwadi University (MU).
- 3.8. **Second Party** - Faculty, Supporting staff, Project staff, Students, Startups and Visitors of MU.
- 3.9. **Faculty** means a person professionally qualified to carry out teaching and research at MU as a full-time employee, emeritus fellow, visiting professor appointed by MU.
(Note this definition of faculty is meant only for the purposes of this document and is not intended to replace the definition of faculty in the statutes or other documents of MU)
- 3.10. **Supporting Staff** - means a person employed full-time or part-time by MU to support the research, development, teaching and other supporting activities (including administrative activities) of MU.
- 3.11. **Student** - means a person who has registered or enrolled as full-time student, part-time student, casual student or exchange student from other universities/colleges for Education/Innovation/Research work.
- 3.12. **Project staff** - means a person employed temporarily on a contract under a research project, consultancy or any other activity carried out by MU.
- 3.13. **Third Party** - Any governmental or non-governmental organization with whom the First or the Second Party interacts for any activity with/without exchange of consideration in cash or kind.
- 3.14. **Activity** - Activities related to teaching, research, consultancy, generation and dissemination of information carried out by a person or University independently or collaboratively.

- 3.15. **Inventor(s)** - A person or a group of persons responsible for creating an IP. In case, creation of IP is associated with more than one inventor, one of them, from MU, would function as a Lead Inventor.
- 3.16. **Visitor** - A person either from India or abroad visiting under a collaborative activity or associated work at MU. It is expected that the visit has been approved by competent authority of MU.
- 3.17. **Associated Agreement** - document created with mutual consent of involved parties defining the rights, roles and responsibilities of each of the parties, for example, Memorandum of Understanding (MoU), Memorandum of Association (MoA), Research Agreement, Consultancy Agreement, Non-Disclosure Agreement (NDA), etc.
- 3.18. **Non-Disclosure Agreement (NDA)/Confidentiality Agreement** - The agreement intends to protect proprietary or confidential information among the parties involved in executing an NDA.
- 3.19. **MU-I²R** – to support Startups/Entrepreneur at campus Marwadi Education Foundation has set up Marwadi University Centre for Innovation, Incubation and Research called as MU-I²R.
- 3.20. **Intellectual Property** - denotes the specific legal rights which inventors and other IP holders may hold and exercise. Intellectual property includes Patents, Trademarks, Copyrights and Industrial Designs each differ in its scope, purpose and effects. IPR aims to exclude third parties from exploiting protected subject matter for a certain specified duration of time without explicit authorization from the right holder.

IPR owners can use or disclose their creations without fear of loss of control over their usage during the course of dissemination of their Creation/Invention.

IP confers a bundle of exclusive rights in relation to the particular form or manner in which ideas/information are expressed/manifested in the following and related items.

- i. New and useful scientific and technical advancements in the form of innovations, inventions, products and processes, computer hardware and software, materials, biological varieties etc. which are patentable.
- ii. Industrial and architectural designs, models, drawings, creative, artistic and literary works, teaching resource materials, generated records of research including thesis and dissertations which are copyrightable.
- iii. Trademarks, service mark, logos etc.

4. PATENTS:

Ownership of Patent:

- 4.1 MU shall be the owner, with the creators specially stated as inventors for all the intellectual property inventions, software designs and specimens created by the creators who include faculty members, research scholars, students, Startups and those who make use of the resources of MU.
- 4.2 The Inventions created by _____ personnel during the tenure of direct/indirect employment at the MU, without using MU resources and created outside their assigned/normal duties/areas of research /teaching shall be owned by the creators and the revenue generated out of such creations shall be shared in the ratio of 80%: 20% between the creator and the University respectively. Out of MU share, 10% share may be transferred to IPR Cell and rest 10% will be allotted to the MU-I²R.
- 4.3 If a Patent has emerged as a result of an Institutional/Industrial consultancy, sponsored to MU, the concerned industries and MU shall own the Patent. This however will not apply to those Patent that are covered under specific MoU's where the action shall be carried out as per the provisions of the MoU's.
- 4.4 If the Patent is a result of funds sponsored by an outside agency, then the Patent will be shared between MU and the sponsoring agency on case by case basis, as per MoU/Agreement/Undertaking between MU and the outside agency.

5. COPYRIGHTS:

Ownership of the copyright:

- 5.1. MU shall be the owner of all copyright works including software and all connected teaching materials designed and developed by employees of MU.
- 5.2. Further, MU shall also be the owner of copyrights of works produced, including software and all teaching materials developed by persons not directly associated with MU, provided MU has made its contribution in the form of any of the resources.
- 5.3. A copy of ME/MS/M Phil/Research Work/PhD thesis works submitted to MU may be forwarded to IPR CELL and IPR CELL shall attempt to explore the patentable rights if any in such thesis by constituting suitable committees consisting of experts.
- 5.4. The ownership of copyright by MU will in no way deprive the claims of the creator/author to publish his/her contribution in a scholarly and

intellectual way and they have authority to improve, publish and propagate their works.

- 5.5. A computer software may be copyrighted depending upon the content. A copyright software may be distributed for research and teaching purposes by its creator after obtaining appropriate undertaking to the effect that it will not be used for commercial purpose nor will it be transferred to any other party without explicit permission of MU.

6. TRADE AND SERVICE MARKS:

Trade and service marks related to goods and services involving MU will be owned by MU. Use of MU's name through trademark makes users obligated to certain standards and accountability.

7. INVENTOR/AUTHOR/OWNERSHIP:

- 7.1. Inventors/Authors will own intellectual property when:
 - i. None of the situation defined above for MU-ownership of intellectual property applies.
 - ii. It is created outside their assigned/normal area of research/teaching, for example, popular novels, poems, musical compositions, or other works of artistic imagination, without the use of significant university resources.
- 7.2. Students will own copyright on thesis/dissertation created as a part of their academic programs. However, the student must grant to MU royalty-free permission to reproduce and distribute copies for teaching and research as well as for dissemination for teaching and research to other academic institutions.
- 7.3. Ownership of software code, patentable subject matter and other intellectual property contained in the thesis/reports are subject to conditions specified under MU –ownership and Inventor/Author ownership.

8. Third-Party Ownership:

- 8.1. Ownership of intellectual property resulting from:
 - i. Funds provided partially or fully by a third-party to MU will be governed by specific provisions in the contract between the third-party and MU.
 - ii. Exchange programs between MU and other institutions will be governed by specific provisions in the contract between the third-party and MU.
 - iii. In case no such specific contract exists, IPR will remain with MU.
- 8.2. In cases of all IP produced at MU, MU shall retain a non-exclusive, free,

irrevocable license to copy/use IP for teaching and research activities, consistent with confidentiality arguments where ever entered by MU.

- 8.3. In cases where an IP is created by MU personnel, fully or as a part of the team, during deputation, official leave, or sabbatical, the concerned MU personnel should officially communicate the IP to MU. If the IP involves ideas/software developed, fully or in part, using significant university resources, then the IP will also be owned by MU fully or partially, as the case may be.
- 8.4. Filings of IP Applications in foreign countries: If inventor(s) wish application will be filed in foreign country parallel to its filing in India. If MU opts not to undertake such protection in any specific country requested by the inventor(s), MU will assign rights of the IP in that country to the inventor(s) for the purpose of such protection. MU or Attorney can be approached for such protection.
- 8.5. Renewal of IP rights: A decision on the annual renewal of IP rights will be taken by a committee constituted by the Vice Chancellor. If MU decides not to renew the IPR in any country, then it will assign the rights of the IP in that country to the inventor(s) upon a request to that affect from the inventor(s). In case of patents, the process of reassignment will be completed in a period of three months before the due date for its renewal.
- 8.6. In all cases where IP rights in any specific country have been reassigned to the inventor(s), MU will not claim any share of proceeds earned through that IP in that country excepting for the costs already incurred by MU.

9. Disclosures, Confidentiality and Assignment of Rights:

- 9.1. For sponsored and/or collaborative work the provisions of the contract pertaining to disclosure of IP are applied.
- 9.2. For all other IP produced at MU, the inventors will be required to disclose their IP to the IPRSC (Intellectual Property Rights Committee) at the earliest date using an IPRDF (Intellectual Property Rights Disclosure Form).
- 9.3. It will be mandatory for students to submit an IPRDF, countersigned by their supervisor(s)/Mentor(s), at the time of filing their PhD thesis or any other degree offered by University.
- 9.4. The inventor shall assign the rights of the disclosed IP to MU before leaving the university and will agree to the terms and conditions for the sharing of any financial benefits received by the university by commercialization of such IP.
- 9.5. Having made the disclosure, the inventors, both MU and non- MU personnel, shall maintain confidentiality of the IP during the period it is pending with MU for the assessment of the possibility of commercialization and protection of IP, unless authorized in writing by MU.

10. EVALUATION OF INTELLECTUAL PROPERTY:

- 10.1. Evaluation of Intellectual Property will be done by the IPRSC (Intellectual Property Rights Committee) nominated by the Vice-Chancellor.
- 10.2. Evaluation of IP means:
 - i. Assigning ownership of IP.
 - ii. Determining whether an IP is innovative and fit for filing in India and foreign countries.
 - iii. Determining whether the IP has a reasonable chance for commercialization.
- 10.3. After evaluation of IP, if MU decides not to take the responsibility for the protection of the IP, then it will assign all the rights of the IP to the inventors.
- 10.4. Even in such cases, as in (10.3), MU may take the responsibility of facilitating protection of the IP on case by case basis.
- 10.5. A decision on the annual renewal of IP rights will be taken by the IPRSC. If MU decides not to renew the IP, fully or partially, then it will assign the rights of the IP, wherever relevant, to the "inventors."

11. MAINTENANCE OF IP:

- 11.1. For the inventions developed at MU and the inventors who wish to protect the invention, it is mandatory that the creator has to disclose the creative work by using an Intellectual Property Rights Disclosure Form (IPRDF). The inventors shall assign the rights of the disclosed invention to MU. All IP related information that is disclosed to MU is confidential.
- 11.2. Confidentiality shall be maintained till the dates stipulated in the contract between the concerned parties. Once the IPR is ensured, the inventor/creator is encouraged to publish the work in the interest of general public.

12. COMMERCIALIZATION:

- 12.1. MU shall market the IP and identify potential licensee(s) for the IP to which it (i) has ownership and (ii) for which rights have been assigned to it.
- 12.2. For the IP where exclusive rights have not already been assigned to a third party, the inventor(s) may also contact potential licensee(s) on their initiative maintaining confidentiality and taking all necessary care to ensure that the value of the IP is not affected.
- 12.3. If MU is not able to commercialize the IP in a reasonable time then the inventor(s) may approach MU for assignment of rights of the invention(s) to them.

13. INFRINGEMENTS, DAMAGES, LIABILITY AND INDEMNITY/INSURANCE:

13.1. As a matter of policy, MU shall, in any contract between the licensee and MU, seek indemnity from any legal proceedings including without limitation manufacturing defects, production problems, design guarantee, up gradation and debugging obligation.

13.2. MU shall also ensure that MU's personnel have an indemnity clause built-into the agreements with license(s) while transferring technology or copyrighted material to licenses.

14. FEES:

MU will pay the IP fees in all cases when IP is taken by MU. If it is a joint patent with sponsoring agency/Inventor(s), then the patenting cost will be mutually discussed and agreed depending on the type of IP.

If the other party does not show interest in such process, MU can either continue the IP by paying the fees for its full term or withdraw application for the patent protection, at its discretion.

15. TRANSFER OF IP:

MU shall strive to identify potential licensee for the IP to which it has ownership. Generally, creators are expected to assist the transfer of IP. MU may contract IP to any of the technology management agency which manages the commercialization of IP. If exclusive rights of IP have not been assigned to the third party, innovator may enter into a contract with any potential licenses on their initiative maintaining confidentiality and taking care through Non-Disclosure Agreement with the concurrence of MU.

The inventor/creator has the first right on the terms and conditions that are agreeable by MU

16. REVENUE SHARING:

30% of the total revenue (lump sum payment, or any other form) accruing from the commercial exploitation of IP owned by MU shall be credited to MU. 70% of the revenue shall be credited to Inventor/Creator.

Out of the MU's share, 10% shall be transferred to the Department concerned towards encouraging research and development. 10% may be transferred to IPR Cell

for carrying out IPR related activities. The rest 10% will be allotted to the Marwadi University Centre for Innovation, Incubation and Research (MU-I²R).

16.1. The net earnings from the commercialization of IP owned by MU would be shared as follows:

Case	Net earnings	Inventor(s) Share %	MU Share %
1	For the first amount Z	70	30
2	For the next amount Z	70	30

16.2. It is suggested that amount Z be initially fixed at 70%. The inventor(s) share would be declared annually and disbursement will be made to the inventor(s), their legal heir, whether or not the inventor(s) are associated with MU at the time of disbursement.

16.3. Co- inventors of IP shall sign at the time of disclosure, a distribution of IP Earnings' Agreement, which shall specify the percentage distribution of earnings from IP to each co-inventor. The inventors may at any time by mutual consent revise the distribution of IP Earnings Agreement.

17. POWERS TO AMEND IPR POLICY:

MU, through its IPRSC, will have the full power to make changes to the IPR policy or bring out a new policy as and when it is felt necessary. This can happen in view of changes in government policies or other national and international developments including treaties and legal judgments. The changes or the new policy shall be applicable to all faculty/students/project staff/ supporting staff /startups/visitors.

18. RESPONSIBILITY TO CREATE/AMEND PROCEDURES AND PROCESSES FOR IMPLEMENTATION OF IPR POLICY:

MU, through its IPRSC, will have full powers to create and amend administrative mechanism from time to time in view of the changing needs including creating administrative bodies and entrusting role and responsibilities to various individual(s)/existing entities for evolving detailed procedures and to facilitate implementation of the IPR policy of MU.

19. CONFLICT OF INTEREST:

All inventors are responsible for compliance with government rules and MU's policies and ordinances related to development and use of IP generated. In all activities arising out of implementation of IPR policy of the university, all faculty members/inventors are expected to avoid potential and mutual conflicts of interest.

The inventor(s) are required to disclose any conflict of interest or potential conflict of interest. If the inventor(s) and/or their immediate family have a stake in a licensee or potential licensee company then they are required to disclose the stake they and/or their immediate family have in the company. Under these circumstances, it must be ensured by the inventor(s) that their entrepreneurial activities do not have an adverse impact on inventor(s) teaching, research and any other institutional responsibilities.

20. DISPUTE RESOLUTION:

In case of any disputes between MU and the inventors regarding the implementation of the IPR policy, the aggrieved party may appeal to the IPRSC of MU. Efforts shall be made to address the concerns of the aggrieved party. The Vice-Chancellor's decision in this regard would be final and binding.

21. JURISDICTION:

All the Conflicts and litigations shall be governed by and construed in accordance with the laws of India without giving effect to any choice or conflict of law provision or rule.

MU will retain the right to engage or not; in any litigation concerning patents and license infringements.

Inventor should keep a laboratory notebook in which they keep records of their work. Descriptions of discoveries should be signed, dated, and if possible witnessed.

22. IPR STANDING COMMITTEE (IPRSC) AND ITS ROLE:

The IPR Standing Committee will be the core administrating body, which will be responsible for evolving detailed procedures to facilitate implementation of the IPR policy of MU. IPRSC would also arbitrate on appeals made and any clarifications sought. The IPRSC will have the following members:

Vice Chancellor	Chairman
Registrar	Member
Dean/s	Member
Technical Expert/s	Member
IPR Expert/s	Member
E-Cell/SSIP Coordinator	Member Secretary

IPRSC suggested role would include the following:

- 22.1. To create expert groups in different subject domains for assessing and recommending proposals for IP filing. (Note: this assessment step can be skipped in case the costs of filing are borne by an external funding source including sponsored project or consultancy)
- 22.2. Create and finalize procedures, forms (and guidelines) for implementation of the IPR policy at MU.
- 22.3. Evolve proper procedures and guidelines for good practices for record keeping to enable efficient IP filing and protection.
- 22.4. Create and finalize draft agreements to facilitate IP protection by MU.
- 22.5. Provide guidelines for IPR related documentation including creating infrastructure for the same.
- 22.6. Formulate programs for educating faculty/students/supporting staff/project staff/visitors about IPR and other associated issues.
- 22.7. Approach funding agencies, venture capitalists etc. for funds for promotion of IPR activities at MU.
- 22.8. Tie-up with organizations for filing, licensing/assigning of IPR on revenue sharing basis.
- 22.9. To provide waivers and release of IPR to Inventor(s) and/or Third party(ies) within the framework of IPR policy of MU.
- 22.10. To evolve modalities of financing of IP related activities at MU.
- 22.11. Redress any conflict, grievance regarding ownership of IP, processing of IP proposals, procedures adopted for implementation of IPR policy and interpretation of various clauses of IPR policy.
- 22.12. Investigate the matter of violation/infringement of any intellectual property rights related to MU and make recommendations to the Vice Chancellor for resolution of such violation/infringement.
- 22.13. Deal with any relevant issues arising out of promotion as well as implementation of IPR policy.
- 22.14. IPRSC may appoint committee(s) or expert group(s) with members from within and/or outside MU to seek their opinion in carrying out any of the above responsibilities.