



MOI UNIVERSITY

ISO 9001:2015 Certified Institution

INTELLECTUAL PROPERTY POLICY

JANUARY, 2019



MOI UNIVERSITY

**MU/OP/DVC(A, R&E)/055-PROCEDURE FOR DEVELOPING OF QUALITY
UNIVERSITY POLICIES**

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FOREWORD

These guidelines have been developed to support Moi University in its efforts to handle and deal with Intellectual Property Issues. The main objective of the policy is to emphasize the need to effectively manage properly the Intellectual Property rights in research findings and other academic works produced by the University and staff. As a result it is expected that there will be greater collaboration between Moi University and other organization and Industry as a whole thus laying foundation for knowledge based economic development.

On behalf of the University I would like to commend the committee for compiling this policy.

Prof. Simeon K. Mining, Ph.D.; MDhc
Professor of Immunology &
Director, Research

EXECUTIVE SUMMARY

Moi University Intellectual Property Policy (MUIPP) is aimed at unlocking the available University resource potentials and mobilizing it toward the creation of knowledge based enterprises. The policy is part of the overall Moi University Research Policy. It will be implemented by the office of Deputy Vice Chancellor Academics, Research and Extension. To implement the policy, Moi University Intellectual Property Regulations have been developed in developing the policy; it was considered that Moi University is a Science, Technology and Development University, endowed with well-trained and qualified personnel as well as specialized laboratories, equipment and field stations. Moi University endeavors to utilize these resources to generate new knowledge through R&D. The policy is expected to govern the generation of new knowledge, process and products and take care of the interest of all the shareholders in the generation and commercialization of the IPRs.

DEFINITIONS OF TERMS

- Inventor - Means an inventor or inventors, creator or creators, breeder or breeders and is understood to mean the person or persons who actually devises an invention or creates a work or breeds a plant as defined by the Industrial Property Act 2001, Copyright Act 2002 or Seeds and Plants Varieties Act Cap 326 respectively.
- Intellectual Property - Means creations of the human mind (intellect) and comprises of industrial property, copyright and plant breeder's rights.
- A 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 innovative and useful technical solution to a problem in industry.
- Patent Protection - Means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. These patent rights are usually enforced in a court, which holds the authority to stop patent infringement.
- Industrial Design - Is the ornamental or aesthetic aspect of an article. It may be the shape, the patterns, lines or colour of an article. Industrial designs are what make an article attractive and appealing, hence they add to the commercial value of a product and increase its marketability.
- Trademark - Is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

| | | |
|----------------------|---|--|
| Utility Model | - | Is an invention which does not meet all the requirements of patentability but has an industrial use. In Kenya, utility models are protected by the Industrial Property Act, 2001. |
| Copyright | - | Is a legal term describing rights given to creators for their literary and artistic works. This include literary novels, poems, plays, reference works, computer programs, databases, films, musical compositions and choreography, artistic works such as paintings, drawings, photographs, sculpture; architecture; maps, multimedia creations and technical drawings. |
| Trade Secrets | - | Comprise of confidential scientific, technical, business, commercial and financial information not publicly known data or information used in research, business, commerce or industry. They make the Moi University enterprises have a competitive edge over others. |
| Know-How | - | Refers to the actual human technical skills derived from experience in working on a certain technology. It may or may not be part of trade secret. Licensing of most new technologies work best when accompanied by transfer of know-how either through training, manuals or secondment of personnel to the licensor until the licensor's personnel are able to optimally utilize the invention. |
| Support staff | - | Refers to all the non-teaching staff and students who assist the inventor (s). |
| Moi University | - | Shall be defined as by the Moi University Act of 1984, Chapter 210A of the Laws of Kenya. |
| Indigenous knowledge | - | Established age-old traditions and practices of certain regional, indigenous, or local communities, encompassing the wisdom, knowledge and teachings of these communities and with value for |

development; for example usefulness to environmental conservation, food security, health, among other things.

Collaborative Research

Agreements: - A contract that governs cooperation between two or more persons in the systematic investigation of a particular subject in an effort to discover new knowledge or to develop new processes or products.

Material Transfer

Agreement: - A contract that governs the transfer of one or more materials important for biological, engineering, chemical, physical science applications with defined properties, from owner (or authorized licensee), to a third party who wishes to use the material for research purposes.

Confidentiality

[Non Disclosure]

Agreements: - Is a document that, when signed, allows one party to discuss their confidential information (including their work and ideas) with other interested parties. It legally binds those parties to keep the information confidential and not to disclose it to third parties.

Licensing

Agreements: - A written contract to third parties to put to use intellectual property developed by another party. Such licensing can be inclusive or exclusive.

Project Funding

Agreement: - A research funding agreement that includes provision for intellectual property rights.

Access to Innovation

Agreement: - This is an agreement that stipulates how access to innovation can be gained.

Benefit Sharing

Agreement: - This is an agreement that stipulates how co-inventors, Innovators and Indigenous communities, Licensors and licensees, employers and employees and indigenous owners of inventions can share benefits arising from the commercialisation of an intellectual property.

Invention

Disclosure: - A formal description of an invention that is confidentially made by the inventor to Moi University for purposes of protection.

Genetic

Resources: - Refers to the inherited *Bio Property* inherent in living forms and endowed with socio-economic value: They are the building block of life for all people and the natural environment, and maintaining genetic diversity ensures that the web of life can continue for future generations.

Jua-Kali:¹ - Refers to micro-industrial processes which not only employ appropriate technologies but also informal strategic and developmental matrices.

¹ **Jua Kali** is a Swahili word meaning “hot sun” which originally referred to small scale entrepreneurs working in an open area where skilled and unskilled trade gangs practice enterprising activities such as Motor vehicle repair and carpentry and joinery

LIST OF ABBREVIATIONS & ACRONYMS

| | | |
|--------|---|---|
| CA | - | Confidentiality Agreement |
| CDA | - | Confidential Disclosure Agreement |
| IP | - | Intellectual Property/Industrial Property |
| IPR(s) | - | Intellectual Property Right(s) |
| LAB | - | Laboratory |
| MTA | - | Material Transfer Agreement |
| MUIPP | - | Moi University Intellectual Property Policy |
| PA | - | Participation Agreement |
| TT0 | - | Technology Transfer Office |

1.0 INTRODUCTION

1.1 Vision

To be the University of choice in nurturing innovation and talent in science, technology and development.

1.2 Mission

The University wants to preserve, create and disseminate knowledge and conserve and develop scientific, technological and cultural heritage through quality and relevant teaching and research; to create a conducive working and learning environment; and work with government and private sector for the betterment of society.

1.3 Core Value

- i) Promotion and defense of intellectual and academic freedom, scholarship and relentless search for truth.
- ii) Fostering teamwork, collaboration, creativity and innovation, effective communication, tolerance, perseverance, and a culture of peace.
- iii) Embracing excellence, openness, consultation and consensus building, efficiency and effectiveness.
- iv) Practicing professionalism, meritocracy, exemplary leadership, equality, integrity and social justice.
- v) Maintaining a sense of self-respect, discipline, responsibility, institutional loyalty and national patriotism.
- vi) Continuous improvement of services in order to remain competitive.

1.4 Objectives

- i) To pursue excellence in teaching, research and outreach
- ii) To produce well informed, practical, and self-reliant graduates capable of contributing to development in rural and urban areas.
- iii) To produce well informed, practical, and self-reliant graduates capable of contributing to development in rural and urban areas.
- iv) To offer expertise in area of national development.

- v) To promote science and technology for national development.
- vi) To participate fully in the promotion of culture and develop individuals who are responsive to the needs and well being of others.
- vii) To offer a range of opportunities for training through continuing education.
- viii) To secure and manage resources to achieve the above goals efficiently.

1.5 Quality Policy Statements

Moi University is committed to providing quality education and services that meet the needs of its customers and stakeholders through quality and relevant teaching, research and community service and outreach. The University is committed to a quality work and learning environment that is grounded in intellectual and academic freedom, teamwork, quest for excellence, professionalism, discipline and continuous improvement of its products (programmes/activities) and services so as to achieve client/customer satisfaction. To be able to realize this commitment, the University will continually review its products (programmes/activities) and services to conform to the Quality Management Systems based on the ISO 9001 - 2015 Standards.

1.6 Objectives of Moi University Intellectual Property Policy

Moi University Intellectual Property Policy is part of the overall Moi University Research Policy. It shall provide harmony to the competing interests of all the stakeholders in the generation and commercialization of an Intellectual Property Right. Moi University is dedicated to teaching, research, and dissemination of all new knowledge generated. Therefore, the objectives of the Intellectual Property Policy shall be to;

- i) Govern the disposition of intellectual property generated at the institution,
- ii) Promote the progress of science and technology and
- iii) Ensure that discoveries, inventions, and creations generated by the staff and students of Moi University or jointly with counterpart collaborating researchers from other institutions are utilized in ways most likely to benefit the public and motivate further research & development.

Specifically Moi University Intellectual Property Policy is aimed at achieving the following objectives:

- i) To promote creativity and innovation
- ii) To create an enabling environment that encourages generation and expedites the dissemination and application of the new knowledge by Moi University researchers for the greatest benefit to Moi University and the public through efficient and timely processing of technology transfer.
- iii) To protect the traditional rights of scholars to benefit from the products of their scholarly work.
- iv) To ensure that the commercial results, financial, or otherwise, are distributed in a fair and equitable manner that recognizes both the contributions of the inventors and the University as well as any other stakeholders.
- v) To promote, preserve, encourage and aid scientific investigation and research.
- vi) To establish standards for determining the rights and obligations of Moi University, Inventor(s) and other stakeholders with respect to inventions, discoveries and works created at the University.
- vii) To encourage and reward Moi University staff who innovate, invent and create Intellectual Properties,
- viii) To ensure compliance with applicable national laws and regulations,
- ix) To put in place standards for technology.
- x) To sensitize students on IP and tap creativity among the youth.

1.7 Coverage of the Moi University Intellectual Property Policy (MUIPP)

Moi University Intellectual Property Policy (MUIPP) has 6 sections covering introduction, Intellectual Property Rights (IPRs) considered, Ownership of IPRs, Disclosures of IPRs, Marketing and Licensing as well as Revenue Distribution.

1.8 Justification for MUIPP

The following are the justifications for having an Intellectual Property Policy in Moi University;

- (i) Moi University is established as a Science Technology and Development University.
- (ii) The University continues to put emphasis on enhancing quality of Training, Research and Extension.
- (iii) Moi University endeavors to generate new knowledge through R & D, the University is endowed with well-trained and qualified personnel, specialized laboratory, equipment and field stations.
- (iv) Moi University has a big potential to generate income through royalties from licensed IPRs, consultancy, contract research and commercialization of R & D findings,
- (v) Intellectual Property Policy is therefore required to govern those activities and take care of the interest of the stakeholder including creator/inventor, University, Sponsor and Licensee/Licensor.

1.9 Intellectual Property Rights (IPRs) covered by MUIPP

Moi University Intellectual Property Policy (MUIPP) covers the following IPRs and related issues:

- i) Patents
- ii) Utility models
- iii) Industrial designs
- iv) Copyright in literary work and geographical indication
- v) Trade and service marks
- vi) Plant Varieties Protection
- vii) Trade Secrets and know how
- viii) Contract Research
- ix) Research collaboration
- x) Indigenous Knowledge

1.10 Ownership of Intellectual Property Rights

The policy highlights when and under which conditions the IPRs shall be owned by the University, Sponsor or Staff. The MUIPP has also handled issues related to Publications, theses and dissertations as well as ownership of equipment purchased through contract and sponsored research.

1.11 Disclosure of Intellectual Property Rights

The policy addresses issues related to handling of disclosure of inventions and creations, premature disclosure, obligations of the University and inventor during and after disclosure of inventions, as well as the management of confidential disclosure agreement.

1.12 Commercialization, Marketing and Licensing

The policy covers issues related to commercialization, marketing and licensing. The MUIPP proposes the development of a manual to assist in the evaluation of the commercial potential of the Intellectual Property Rights (IPRs) developed by the University personnel and its collaborators. The MUIPP also proposes the development of guidelines with a checklist of items, which must be considered when discussing a licensing agreement.

1.13 Revenue Distribution

The policy proposes that the revenue generated through commercialization of Intellectual Property from Moi University should benefit the University, inventor, the investor's research and research group, University's Intellectual Property Fund and University-wide research projects. The proportions distributed to each party is proposed, but is subject to review from time to time.

1.14 Implementation

For implementation, the University will create a unit called *Technology Transfer Office (TTO)*, under the Office of the Deputy Vice Chancellor, Academics, Research and Extension. The functions of **TTO** shall be:

- i) Sensitise its staff regarding intellectual property management,

- ii) Evaluate invention disclosures in a timely manner,
- iii) Assess the potential of Intellectual Property Rights,
- iv) Evaluating the commercial potential of the invention,
- v) Obtaining appropriate Intellectual Property protection,
- vi) Locating suitable commercial development partners
- vii) Develop mechanisms within the University for negotiating, licensing and Management of Intellectual Property Rights.
- viii) Identify industrial problems to be solved through contract research,
- ix) Assist Heads of Departments to ensure proper understanding of the Participation Agreement, Material Transfer Agreement, and Confidentiality Disclosure Agreement,
- x) Proposes variation, amendment, reviews to the Intellectual Property Policy.
- xi) Building up and enhancing the capacity and documentation needed to perform technology searches, formulate IPR applications and providing such services to the public at a fee
- xii) Refining intellectual properties generated in the University, *Jua-kali* technology and indigenous knowledge through standardization of process and products ready for marketing.

2.0 RATIONALE AND JUSTIFICATION

2.1 Justification and Rationale for Moi University Intellectual Property Policy

1. This Moi University Intellectual Property Policy (MUIPP) shall operate as a regulation for the Moi University staff, students, collaborators and visitors who use the Moi University resources in conducting their research or coming up with anything that falls within the purview of intellectual property as provided for in this document.

2. Moi University is established as a Science, Technology and Development University. For Moi University to realize the objective of promoting science and

Technology through academic programs and services there is needed to have a comprehensive and enabling Intellectual Property Policy.

3. In its efforts to realise its vision, mission and objectives, Moi University continues to put emphasis on enhancing:
- i) Quality training and education,
 - ii) Quality research
 - iii) Community and extension services
 - iv) Attraction and retention of qualified and motivated staff
 - v) Transfer of knowledge from the university and the utilisation of the same for the creation of national wealth.
 - vi) Linkages of Moi University and industries through consultancy, research contracts and commercialisation of inventions, innovations and research findings
 - vii) Infrastructure and facility for R&D in the University.

To realise these efforts, Moi University recognises the need to generate new knowledge through R & D and to identify those, which are commercially viable.

Moi University is endowed with well-trained and qualified personnel as well as specialised laboratories, equipment and field stations. Already, several IP protectable and commercializable research products have been generated within the University. There is need to put in place a policy that would help to harness these resources and potentials to generate funds and enable the University realise its mission and objectives.

The implementation of appropriate Intellectual Property Policy can enable Moi University to generate significant income through:

- i) Royalty and fees from licensed Intellectual Property creations from innovations and inventions,
- ii) Consultancy,
- iii) Research contracts,

- iv) University owned companies and joint ventures,
- v) Commercialization of R & D findings
- vi) Utilization of existing protected and unprotected Intellectual Property information's.

In order to reap adequately from the planned endeavors, Moi University recognizes the need to take care of the interests of all the stakeholders who contribute in one way or the other in the process of commercialization of innovations, inventions and research findings in Moi University. These includes:

- i) Inventor,
- ii) Support staff and students,
- iii) The University,
- iv) Inventor's Department,
- v) Visiting researchers,
- vi) Sponsors (industries, donors),
- vii) Technology Transfer Office
- viii) Licensee/Licensor and
- ix) Collaborating Institutions.

The Inventor is a major stakeholder in the process of commercialization of Intellectual Property Rights due to some of the following:

- i) Intellectual input,
- ii) Conceptualization of idea,
- iii) Investment in terms of time and capital.

Moi University is a stakeholder in protected and/or commercialized Intellectual Property Policies since the University;

- i) Provides the infrastructure for the researcher or inventor to operate,
- ii) Pays the researcher salary,
- iii) provides direct and indirect financial support for research,
- iv) Provides the good will in the name,
- v) Provides enabling environment.

Moi University has established a unit called **Technology Transfer Office (TTO)** with required expertise to scout, identify processes and initiate commercialization of Intellectual Property Rights. **TTO** will be under the Office of the Deputy Vice Chancellor, responsible for Research and Extension for the time being.

Where the researcher makes the initial contact with a sponsoring agency regarding a potential research collaboration, consultancy, contract and research it is important that the researchers are aware of the key points to be addressed during negotiation. Proper understanding of the Moi University Intellectual Property Policy will be helpful. For detailed and final negotiation of contracts the researcher shall refer to the **Technology Transfer Office**.

Moi University shall reward individuals (staff) for inventing and protecting. The criteria will be spelled out in the appropriate University document governing promotion.

Where support staff/students are involved in the process of invention, they shall be considered for financial rewards and other recognition given to the Inventor.

Royalty will be distributed to staff, students and support staff as set in a prior agreement. The **TTO** will manage the distribution.

Moi University personnel through **TTO** shall seek preliminary application for Intellectual Property for potential innovations and research findings to guard against “*premature disclosure*” which may compromise protection and commercial exploitation of an invention.

Moi University shall consider an IP application, which has been examined and approved by the relevant National Intellectual Property Office, as equivalent to a publication in a refereed journal for the purposes of promotion.

As a way of sensitizing students on IP and related issues, information on the same shall be included in the student guide. Students shall be encouraged to seek more information on IP from the relevant personnel. The **TTO** may organize talks for students.

An industry may provide employment to Moi University staff, researchers and students who are involved in the development of an invention or innovation with a commercial potential. In this case the industry might get Moi University technology free of charge. The Intellectual Property Policy will guard against such eventuality

Moi University staff occasionally gets contract research. The sponsor who has paid for a contract research may expect ownership of the intellectual property generated or/and unrestricted utilization of the knowledge acquired. The Intellectual Property Policy will resolve any such disputes.

Innovation and inventions developed in Moi University may eventually be purchased by or licensed to industries for exploitation. An Intellectual Property Policy will regulate the process of licensing.

The Kenya Government provides funds for infrastructure, research and the running of the University. Consequently, any invention, innovation and research findings, arising from Moi University would be used for the development of the country and that no useful inventions would be kept unutilized, through unfair monopoly of ownership. The Intellectual Property Policy will govern this

Technology Transfer Office shall receive invention disclosure, undertake search for novelty of the invention, pay the cost of processing IP applications, market the invention and negotiate the licenses and royalty. The office shall also set up a technical information centre and collect technical documentation of indigenous patent information as well as information needed to commercialize inventions such as standards.

2.2 Issues addressed by Moi University Intellectual Property Policy

Moi University intellectual property policy addresses the following issues;

- i) Coverage of intellectual property policy
- ii) Ownership of an intellectual property
- iii) Disclosure of an intellectual property
- iv) Marketing, commercialization and licensing of Intellectual Property Rights
- v) Distribution of income
- vi) Rights and obligation of Moi University, sponsors and inventors
- vii) Contract Research
- viii) Individual consulting/outside activities
- ix) Collaborative Research and R & D.

3.0 SCOPE

3.1. Coverage of Moi University Intellectual Property Policy

3.1.1 Coverage

The coverage of Moi University Intellectual Property Policy shall be broad, comprehensive and holistic in approach and shall include:

- i) Patents
- ii) Utility models
- iii) Industrial designs
- iv) Copyright in literary work and geographical indications
- v) Trade and service marks
- vi) New plant varieties
- vii) Trade Secrets and know-how
- viii) Contract Research
- ix) Research collaboration
- x) Indigenous Knowledge

3.1.2 A Patents

A 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 innovative and useful technical solution to a problem in industry. In Kenya, a patent provides protection for the invention to the owner of the patent for a period of 20 years.

Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. These patent rights are usually enforced in a court, which holds the authority to stop patent infringement.

A patent owner has the right to decide who may or may not use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone, who will then become the new owner of the patent.

Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, and the invention becomes available for commercial exploitation by others, free of charge. However patent information may be used for teaching or further research without being considered an infringement even while the patent is in force.

3.1.3 Industrial Design

An industrial design is the ornamental or aesthetic aspect of an article. The design may be the shape, the patterns, lines or colour of an article. Industrial designs are applied to a wide variety of products of industry, handicraft, technical, medical, house wares, electrical and architectural. Industrial designs are what make an article attractive and appealing, hence they add to the commercial value of a product and increase its marketability.

Industrial designs are protected under the Kenyan laws (Industrial Property Act 2001). Protection gives the owner exclusive right against unauthorised copying or imitation of the design by third parties. The duration of protection is generally five years, renewable twice for further periods of five years each.

3.1.4 Trademarks

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. In Kenya, the Trademarks Act Cap 506 protects trademarks. A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorise another to use it in return for payment. Trademark protection is enforced by the courts, which have the authority to block trademark infringement. Trademarks promote initiative and enterprise by rewarding the owners with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. For Moi University, a trademark will be important as the University strengthens its income generating enterprises, including sales of goods and services.

3.1.5 Utility Models

In general terms a utility model is an invention which does not meet all the requirements of patentability but has an industrial use. In Kenya, the Industrial Property Act, 2001, protects utility models. Moi University will put emphasis on utility models with the primary objective of encouraging the rapidly evolving, indigenous innovativeness, particularly in small and medium scale enterprises as well as the informal sector (Jua Kali).

3.1.6 Copyrights

Copyright is a legal term describing rights given to creators for their literary and artistic works. From Moi University's point of view, the works covered by copyright include literary novels, poems, plays, reference works, computer programs, databases, films,

musical compositions and choreography, artistic works such as paintings, drawings, photographs, sculpture; architecture; maps, multimedia creations and technical drawings. In Kenya Copyrights are protected by the Copyright Act, 2002. The creator of copyrights holds the exclusive right to use or authorise others to use the work on agreed terms. The creator of a work can prohibit or authorise:

- (i) Its reproduction in various forms, such as printed publication or sound recording,
- (ii) Its public performance, as in a play or musical work,
- (iii) Its recordings, for example in the form of compact discs, cassettes, or videotapes
- (iv) It's broadcasting, by radio, cable, or satellite.
- (v) Its translation into other languages, or its adaptation, such as novel into a screen plays.
- (vi) Its availability for access such as through a website.

Many creative works, protected by copyright require Sams distribution, communication, and financial investment for their dissemination (for example, publications and computer programs). Therefore, Moi University may need to sell or license the rights to individuals or companies best able to market the works in return for payments.

Copyright protection also includes moral rights, which involve the right to claim authorship of a work, and the right to oppose changes to it that could harm the University's reputation. Moi University may wish to oppose the use of copyright in circumstances that the university would not wish, as an upright citizen, to be associated with (e.g. to promote a racist agenda or immorality).

In the event of production or possession illegally, goods related to protect works of Moi University, the University shall obtain court orders to stop such activities, as well as seek damages for loss of financial rewards and recognition.

3.1.7 Trade Secrets and Know-how

Trade Secrets comprise confidential data or information used in research, business, commerce or industry. Moi University shall own and use Trade Secrets including confidential scientific, technical business, commercial and financial information not publicly known, which makes the Moi University enterprises have a competitive edge over others.

Trade Secret information may be disclosed or shared under the terms of a Confidentiality Agreement. Confidential information may be created in sponsored research projects. In this case, the sponsor may require the university to preserve the secrecy of the information.

Moi University, however, shall ensure that trade secrets protection does not negate knowledge sharing which is part of the academic missions of the University.

Know-How

Know-how refers to the actual human technical skills derived from experience in working a certain technology. It may or may not be part of trade secret. Licensing of most new technologies work best when accompanied by transfer of know-how either through training, manuals or secondment of personnel to the licensor until the licensor's personnel are able to optimally utilize the invention.

3.1.8 Plant Varieties Protection

Moi University is involved in research in the development of new plant varieties. In Kenya, new plant varieties are currently protected under the Seeds and Plants. Varieties Act Cap 326 of the Laws of Kenya by giving the breeder limited monopoly rights over the varieties they have created by way of registration system for plant varieties.

3.1.9 Indigenous Knowledge

Moi University members, as stipulated in the Moi University Act and statutes, may engage in research that involves tapping from the indigenous knowledge and being sentient to the need for protection of such rights from undue exploitation by unauthorized third parties

shall ensure that adequate contracts that control access and respects benefit sharing with the source community are put in place.

Subject to other provisions herein, protection of intellectual property emanating from such indigenous knowledge shall acknowledge the contribution of such parties and if such registrations are as a result of collaborative research with international institutions or persons then the community shall be considered a joint owner.

Under such circumstances, should there be royalties accruing from the commercialisation of such Intellectual properties, then commensurate benefits will be given to the community.

3.1.10 Genetic Resources

Moi University members, as stipulated in the Moi University Act and statutes, may engage in research that involves tapping from Genetic Resources which refers to the inherited *Bio Property* inherent in living forms and endowed with socio-economic value and are the building blocks of life for all people and the natural environment, and maintaining genetic diversity ensures that the web of life can continue for future generations.

- (i) The University is sentient to the fact that by using genetic material, new crop varieties can be continuously developed to better resist pests and adapt to changing environmental conditions.
- (ii) Genetic material and the associated Indigenous knowledge of healers and communities from nearly every country around the world provide a tremendous and indispensable source of materials for research in the most modern laboratories and may be used by the university from time to time.
- (iii) Genetic resources have been used to produce cancer-fighting drugs, dietary supplements, chemicals for clothing manufacturing, perfumes among other things hence have profound link with the University's vision and mission and national development goals.
- (iv) The University is also sentient to the fact that by securing potential royalty or direct revenue streams, genetic resources open the doors to new avenues

for resources which must be shared equitably and the rights of the indigenous communities who have created this knowledge must also be protected.

4.0 OWNERSHIP

4.1. Rights to Ownership

4.1.1 Relevant Agreements

Moi University will formulate appropriately, as the need arises, agreements and other related contractual documents, for the management of Intellectual Property Rights, such as;

4.1.2. Collaborative Research Agreements

4.1.3. Participation Agreements

4.1.4. Material Transfer Agreements (MTA)

4.1.5. Confidentiality (Non-Disclosure) Agreements

4.1.6 Licensing Agreements

4.1.7 Project Funding Agreement

4.1.8 Access to innovation and Benefit Sharing Agreements

There shall be *Collaborative Research Agreements*, which will govern the joint research activities, with other institutions and industries, especially the intellectual property concerns thereof. The DVC (R&E) shall ensure that appropriate *Collaborative Research Agreements* are developed by the researcher(s), respective Head(s) of Department(s) and Dean(s), TTO, and the Legal Officer. The agreements shall be signed by the authorized officer of the University.

Each participant in a research project shall be required to sign a *Participation Agreement* that confirms acceptance of the provisions of MUIPP as provided for in the Moi University Research Policy. Each Head of Department must confirm that a valid Participation Agreement is on file before any University's resources are made available for the students and other researchers from outside of the University Fraternity.

Provided that the MUIPP remains an integral part of the terms of service for all the Moi University employees and shall not be ousted by any other agreement between the employee and the University.

There shall be *Material Transfer Agreements*, which will govern the transfer of proprietary tangible property, often biological materials to or from Moi University during collaborative project with other institutions and industries. Each Head of Department shall ensure that appropriate Material Transfer Agreement is developed with the collaborating institution and signed by the authorized officer of the University.

There shall be Confidentiality (Non-Disclosure) Agreements, Licensing Agreements, Access to innovation Agreements, and Benefit Sharing Agreements, to govern research, ideas and information between Moi University and other institutions.

4.2 Ownership of Intellectual Property Rights by Moi University

Moi University shall own any Intellectual Property that is made, conceptualized, discovered or created by a member of staff, students, visiting researchers etc, in the course of their employment and responsibilities or any person who makes *significant use of the institution's resources* in connection with the development of such Intellectual Property.

University resources shall be tangible resources provided by Moi University to inventors including:

- (i) Office, lab and studio space and equipment,
- (ii) Computer hardware, software and support,
- (iii) Secretarial services,
- (iv) Research, teaching and lab assistants,
- (v) Supplies and utilities,
- (vi) Funding for research,
- (vii) University Time.

The use of library facilities, and other facilities available to the general public, shall not be considered by Moi University as "significant use" of institution's facilities and equipment.

Moi University shall own any Intellectual Property that is made, discovered, or created

by anybody who is specifically hired or commissioned by the University for that purpose, unless otherwise provided by written agreement between such individual and the University.

4.3 Ownership by a Financial Sponsor

Moi University shall own all Intellectual Property Rights made, discovered, or created in the course of research funded by a sponsor, unless otherwise provided by written agreement between Moi University and the sponsor.

Where a sponsor specified a technical problem to be solved by the research at the University and a researcher stumbles on a totally different and unrelated invention in addition to solving the sponsor's problem then the "accidental" invention shall belong to the University.

Where Moi University is involved in collaborative research with another institution(s) or business entity, the Intellectual Property Right shall be co-owned and the distribution of royalties will be governed by contractual agreement between the parties. Both institutions shall contribute equally towards expenses related to acquiring IP Rights and Licensing.

4.4 Ownership by Individual Staff

Inventions for which individual can prove that they did not use University resources and time shall belong to the inventor.

If an inventor makes, creates, or discovers Intellectual Property and claims that he/she did not make "significant use" of Moi University's resources, but the Intellectual Property closely resembles a specific research project that the inventor has conducted at Moi University, it shall be argued that the Intellectual Property was developed with the use of Moi University resources. Under such condition, the inventor shall be required to provide documentary evidence supporting the claim, that he did not use University resources.

Moi University will not take any responsibility for IP information disclosed or used at the University by a former employee of another institution or by an employee of an institution

in collaborative or like relation research with the Moi University without the consent of the other institution.

If within a period of one year, an otherwise member of the university who ceases to become a member of the University comes up with an invention, such invention shall be deemed to belong to the University unless there is has clear proof that the invention was fully carried out without utilization of University resources and time as per the time the person was a member. The burden of proof shall be on the person.

If Moi University does not exploit an invention within five years after the grant of Intellectual Property Right, the University may reassign ownership to the inventor upon request.

Should Moi University not express an interest to pursue patent protection (due to low commercial potential, ethics and morality issues etc) the University will, in writing, assign to the inventors the rights to the invention.

4.5 Publications, Theses and Dissertations

Students' theses and dissertations are considered "Exempted Scholarly Works". Therefore, the students will own copyright subject to a royalty-free license to Moi University to reproduce and publish for the purpose of training and research in Moi University. Students shall normally not be allowed to publish their theses and dissertations until the office of Deputy Vice Chancellor Research and Extension for the time being confirms that there are no Intellectual Property Rights issues to be *compromised by such publications*.

Moi University shall protect the right of Faculty, students and other employees to publish the results of their work, by ensuring that where applicable, preliminary application of Intellectual Property Right is undertaken. However, where Intellectual Property Right issue is involved, the delays should not be beyond six (6) months.

For a publication arising from contract research, the University shall be allowed to publish unless otherwise stated in the contract.

4.6 Where the Inventor opt to commercially exploit an IPR

There Moi University allows the Inventor(s) to commercially exploit his/her invention the university will retain ownership of the invention, but shall give license to the inventor(s) who will then pay royalties to the University. Such offer shall be subjected to competitive bidding.

4.7 Ownership of Equipments

Equipment purchased on externally funded research contract shall remain the property of Moi University upon completion of the contract. The equipment will be under the custodian of the Department involved in the research. Where more than one department is involved, the office of the DVC Research and Extension shall determine the distribution of the equipment.

5.0 DISCLOSURE OF INVENTIONS

5.1 Importance of Disclosure of Invention

The University is sentient to the fact that Invention Disclosure to a competent office is important for keeping records, processing for protection and commercialisation, or availing Intellectual Property to the general publics.

A disclosure of an invention shall be understood as a formal description of an invention that is confidentially made by the inventor to Moi University through the TTO for the purpose of protection.

On the creation of Intellectual Property the Inventor(s) will complete and submit to the Technology Transfer Office an Invention Disclosure.

5.2 Role of Technology Transfer Office

The functions of Technology Transfer Office shall be as follows:

- (i) Sensitise its staff regarding intellectual property management
- (ii) Assess the potential of Intellectual Property Rights
- (iii) Evaluating the commercial potential of the invention,
- (iv) Obtaining appropriate Intellectual Property protection,
- (v) Locating suitable commercial development partners
- (vi) Develop mechanisms within the University for negotiating, licensing and management of Intellectual Property Rights.
- (vii) Identify industrial problems soluble through contract research,
- (viii) Assist Heads of Departments to ensure proper signing of the Participation Agreement, Material Transfer Agreement, Confidentiality Disclosure Agreement, among others
- (ix) Encourage the role of association
- (x) Building up and enhancing the capacity and documentation needed to perform technology searches, formulate IPR applications and providing such services to the public at a fee, and

- (xi) Facilitating the refining of *Jua Kali* technology, and Indigenous Knowledge through standardization of process and products by University researchers for marketing

All researchers in Moi University shall be obliged to disclose all potentially protectable creations and inventions conceived in the course of their responsibilities.

5.3 Handling of a Disclosures

The TTO shall develop and administer Invention Disclosure Forms to assist inventors. The key information required on the Disclosure form shall include:

- (i) Invention or innovation title
- (ii) Names of all inventors and the degree of their contributions to the invention. All the inventors through their signatures must confirm this statement.
- (iii) Descriptions of the invention
- (iv) Sponsorship, if any
- (v) Dates of conception and realization of invention
- (vi) Material Transfer Agreement (if any)
- (vii) Any other information that will be relevant
- (viii) Any other agreement entered into, that is relevant to the invention

Moi University researchers shall be sensitised on the importance to record invention as early as possible and as complete and accurate. The description shall be written to allow another person reading it to comprehend and reproduce the invention. The description shall be written preferably in a bound notebook with numbered pages, in ink.

Submitting a Disclosure is the first formal step in obtaining proper intellectual property protection. Inventors are strongly encouraged to submit invention Disclosures early in their invention development process to avoid any potential ownership dispute.

5.4 Premature Disclosures

Premature disclosure is the release of information concerning an invention to the public before an IP application is filed. Premature disclosure includes abstracts, poster sessions, shelved theses or even certain talks describing an invention to an open audience. Such premature disclosure may disqualify an invention for protection. **Technology Transfer Office** should adequately advise researchers against premature disclosure.

5.5 Obligations of Moi University during and after Invention Disclosure

In all cases, an intellectual property that a member of staff discloses for possible commercialization, Moi University shall be obliged to determine its commercial potential.

Intellectual property Disclosures shall be considered confidential by Moi University. All members of the **Technology Transfer Office** shall sign an agreement to this effect and shall be liable to be sued for breach of confidentiality.

Moi University shall encourage the development by industry of its inventions and technology and seek to facilitate the transfer of such technology for the use and benefit of the University and the public.

Moi University shall provide a process for resolution of disputes that arise between the University and other institutions, sponsors and inventors regarding Intellectual Property Rights. In all cases the Kenyan law shall prevail.

5.6 Obligations of inventor(s) during and after disclosure of Inventions/creations

Moi University personnel are obliged to disclose in details and timely manner all inventions, discoveries and other works.

The inventor(s) shall provide such assistance to **Technology Transfer Office** as may be necessary throughout the technology transfer process to protect and license the intellectual property.

The inventor(s) shall arrange for the retention of all records and documents that are necessary for the protection of the interest of Moi University in the intellectual property. A copy of these records shall be deposited with the **Technology Transfer Office**

The inventor(s) shall abide by all commitments made in license, contract research and other agreements related to privately funded research.

The inventor(s) shall promptly disclose all potential conflicts of interest (e.g. research with multiple sponsors) to the University.

The inventor(s) shall be expected to apply reasonable judgment as to whether an invention has commercial potential and without delay make formal disclosure of the same to the **Technology Transfer Office**

The inventor(s) shall be obliged to disclose his/her invention as soon as possible and to delay Public Disclosure until the evaluation process is completed and IP application is filed.

5.7 Confidential (Non-Disclosure) Agreement (CDA)

During the evaluation period, an invention may be safely disclosed outside of Moi University under the protection of a *Confidentiality [Non-Disclosure] Agreement* (CDA). Disclosures made under an appropriate CDA are not considered Public Disclosures.

A Moi University researcher may receive confidential information from other organizations in relation to research he/she performs at Moi University. The collaborating institution may impose serious non-disclosure and non-use obligations on the confidential information and may claim an ownership interest in inventions that may arise in the course of research performed with such Confidential Information.

The person for the time being responsible for the Technology Transfer Office shall together with the University Legal Office prepare a CDA for signification by an authorized university officer.

When Moi University staff, in the course of contract research, receives Confidential Information, the treatment of such Confidential Information will be governed by the terms of the agreement applicable to the contract research.

6.0 COMMERCIALIZATION, MARKET VALUATION AND LICENSING

All Commercialization of the intellectual property developed in the University shall take place in accordance with the terms of Moi University Research Policy, Moi University Intellectual Property Policy, Moi University Extension and Outreach Policy, and in accordance with the principle of “Benefit to Kenya”. “Benefit to Kenya” is defined as incremental Kenyan economic activity and improved quality of life therein. Maximum benefits would be derived from the creation of high-quality jobs in Kenya. Short-term economic benefits (e.g. licensing to the highest bidder regardless of whether in country or not) will be subordinate to the longer-term benefit to companies with operations in Kenya and strengthening Kenya’s economic base and capacity to invent.

1. The **TTO** and the inventor(s) will evaluate the commercial potential of invention(s) in the University.
2. The University may license the right to commercialize its Intellectual Property and will strive to get the best deal for both the University and the inventor.

7.0 REVENUE DISTRIBUTION

7.1 Revenue distribution from commercialized Intellectual Property

Gross Income shall be understood as funds obtained from commercialization of an Intellectual Property.

Net Income shall be understood as Gross Income less expenses incurred by University for Intellectual Property Rights processing, protection, maintenance and licensing.

Where an invention made by an employee of Moi University is commercialized, the net income shall be distributed to the following:

- (i) Inventor(s)
- (ii) IP Fund of Moi University
- (iii) Inventor's research
- (iv) Inventor's departmental infrastructure
- (v) Faculty infrastructure
- (vi) University-wide Bonus
- (vii) Technology Transfer Office
- (viii) University-wide research project fund

The proportion to be distributed to each of the above interests will be determined by the Moi University Senate and approved by Council from time to time.

In the absence of a written agreement to the contrary, multiple Inventors shall receive equal portions of the Inventor's share of net revenue. When multiple Inventors are located on different departments, faculties and campuses, the same shall also apply to the units.

It should be understood that the Inventor shall continue to receive his/her share even after leaving employment of the University. In the event of death of the Inventor, the legal next of kin shall receive the benefits.

Collaboration institutions shall be free to use their own policies and practices as regards distribution of their respective shares of royalties.

7.2 Equity shares

Moi University may opt to negotiate for partnership or joint venture, with any other entity that has obtained a License to the University's technology in exchange for royalty.

Moi University may also opt to negotiate for equity interests in lieu of or in addition to monetary consideration as a part of an agreement between it and an external entity relating to applicable intellectual property.

Where the University has taken the equity option, inventor(s) shall be allowed to make decisions whether to take the equity or royalty options.

Where Moi University owns equity interests, the monetary proceeds generated by the sale of such equity interests, shall be distributed according to contracts for revenue distribution.

REFERENCES

1. Moi University Research Policy 2018
2. Moi University Intellectual Property Policy 2018
3. Commission for University Education Research Management Policy of November, 2016
4. Moi University Statutes of 2013 (Amended 2016)
5. The Universities Act (No. 42 of 2012)
6. Moi University Charter of 2013
7. Moi University Strategic Plan 2015/2016-2020/2021
8. Science Technology and Innovation Act No.28 of 2013