

identical in all countries. The situation is even less certain with respect to confidential information. No international treaty specifically addresses the question of obtaining protection for information in jurisdictions other than the one in which the inventor or researcher resides. The World Intellectual Property Organization's definition of intellectual property is often used in bilateral agreements.

It is important for the parties to any international collaboration to deal with basic intellectual property issues in written agreements. For example, what kind of intellectual property is covered by the agreement? Who owns it? What are the terms for licensing or cross-licensing the property? Without such an agreement, everyone involved is left at the mercy of the various national legal systems represented by the collaborators and the countries in which they are working or conducting business, or with no protection at all.

CONFIDENTIALITY AGREEMENTS AND PROJECT AGREEMENTS

Intellectual property can be created, and exclusive intellectual property rights lost, in a number of different scenarios, including joint research projects, exchange programs and workshops or seminars. Whatever the situation, it is best to address intellectual property issues, and enter into the necessary agreements, at the outset.

Confidentiality Agreements

A confidentiality agreement, or non-disclosure agreement, should facilitate the free exchange of information, so that collaborators on a proposed research project, for example, can decide whether the project is feasible, or hire a consultant to carry out a market study, or make a presentation to a potential financial backer without

jeopardizing confidentiality and risking loss of patentability.

The confidentiality agreement should identify the kind of confidential information to be exchanged, establish the length of time confidentiality is required, specify the exclusions or limits of confidentiality, and confirm that the exchange of information is not a licence to use the information.

Project Agreements

The project agreement should include similar terms about confidentiality and deal with the issue of ownership of intellectual property. Should ownership be sole or joint? If joint, what will be the rights of each of the owners and their ability to license or use the technology, or to enforce rights against third parties? What is the term of the project? What obligation does each owner have to disclose any filing of patent applications to other project members?

A detailed checklist of subjects to be considered for confidentiality agreements and project agreements is provided in Section 3, Making Agreements.

CONTAINMENT

Another way to protect intellectual property is through containment — physical containment of technology by restricted access, and containment of ideas by selective publication. The purpose of containment is not to prevent dissemination of knowledge but to avoid disclosure that may make it impossible to protect intellectual property, either as confidential information or as patentable subject matter.

The simplest way to preserve rights in intellectual property, especially before filing a patent application, is to disclose such information only on a “need to know” basis. While free exchange of ideas with colleagues is often to everyone's advantage, such exchanges can result in the loss of rights to