



LUNDS
UNIVERSITET

Vice-Chancellor

DECISION

Reg. no
STYR 2019/908

2021-06-24

Guidelines for the management of intellectual property rights, etc. and general recommendations on Lund University's right to use patents, designs and topographies

Lund University's main tasks are education, research, external collaboration and the application of research findings. Research and teaching are to be carried out in close conjunction and to a high standard. This includes supporting the management of the intellectual property rights that arise.

Through its participation in the EU research programme, Lund University is also required to state what applies regarding the management of intellectual property rights, the application of research findings, collaborative and contract research, and to provide information on applicable regulations¹. The University has therefore chosen to clarify the management of such matters through the present guidelines.

This document also contains general recommendations on Lund University's right to use patents, designs and topographies produced by its employees within the context of their employment. In previous general recommendations, the University has clarified what applies regarding the University's right to use copyrighted material.²

Intellectual property rights concern matters that may be subject to protection under intellectual property law, such as patents, copyright trade names, designs and topographies.

Intellectual property rights can be assigned to several people collectively. Mutual agreements between multiple creators and inventors with regard to the exercise of their joint right are not covered in this document.

LU Innovation provides advice and support in matters relating to the management of intellectual property rights. The University recommends contacting LU Innovation as early as possible. For more information, visit the LU Innovation page on the staff pages.

General recommendations on Lund University's right to use patentable inventions

¹ Section 23a of the General Model Grant Agreement, Horizon 2020 and the EU Commission's Code of Practice

² General recommendations on Lund University's right to use copyrighted material, Reg. no STYR 2015/542

Through the present general recommendations, the University clarifies its interpretation of the Patents Act³ and the Act on the Right to Employee's Inventions⁴ (referred to as the 1949 Act) in regard to patentable inventions made by its employees in the context of their employment. The recommendations do not involve a change in the University's current application of the legislation.

According to the Patents Act, the person who has made a patentable invention has the right to apply for patent protection for it. The 1949 Act stipulates that, in certain circumstances, the employer has the right to take over an employee's invention or use the invention in return for remuneration. The act also stipulates that a patentable invention produced by teaching staff⁵ at the University as part of their employment, is owned by the teaching staff themselves and not the employer; this is called the "teacher's exemption" or "Professor's Privilege".

In most cases, the so-called experimental use exemption⁶ in the Patents Act permits the right to continue research activities on inventions that have been patented. In addition, the following applies at Lund University.

In accordance with the procedure for teaching staff, the University does not claim the right to take over a patentable invention produced by an employee whose main duty is research and the invention is essentially a result of that work.⁷ The same applies for other employees who, within the scope of their duties, together with teaching staff or an employee whose main duty is research, participate in the production of an invention in a way that they are regarded as inventors or co-inventors. This means that in such circumstances, the University applies the teacher's exemption for all employee categories who, as part of their employment, mainly carry out research duties or who contribute to such duties as part of their employment. Moreover, the University does not claim the right to inventions produced by its employees outside the context of their employment, but which fall within the scope of the University's activities.

If an employee chooses to use a patent-pending or patented invention which was produced as part of their employment within the context of their employment at Lund University, it would mean giving the University the right to use the invention without further remuneration other than their normal salary. The University's right to use is limited to the purposes and needs that fall within the University's normal activities and apply as long as these purposes and needs exist.

The University also has the right to use a patent-pending or patented invention produced by an employee in the context of a specially appointed task or on special instructions from the employer, or which has been produced for use specifically within the University. This may include production within a pre-existing context, and which has involved major investments by the employer, for example.

³ Patents Act (1967:837)

⁴ Act on the Right to Employee's Inventions (1949:345)

⁵ In the present document, teaching staff are the employees at Lund University who are referred to as "academic staff" in the current LU Appointment Rules.

⁶ Patents Act (1967:837) Chapter 1, Section 3, Paragraph 3, Point 3

⁷ This includes employees such as researchers and doctoral students, for example.

In other situations, the University applies the 1949 Act. This means that when an employee who is not covered by the teacher's exemption according to above, produces an invention that falls within the scope of the University's normal activities, the employee must, without delay, contact their line manager who will determine the further management of the invention. Information about the invention is covered by the requirements of professional secrecy to the extent indicated in Chapter 31, Section 21 of the Public Access to Information and Secrecy Act (2009:400).

If there is a need to regulate the right to use in a manner other than outlined in these general recommendations, this is to be explicitly stated; preferably in a written agreement.

If a third party has partial or full rights to an invention that is patent-pending or patented, or if the invention was produced by an employee outside the context of their employment and is to be used as part of the University's activities; a special agreement concerning the right to use must be made with the University prior to use.

Management of patent costs

In cases where the right to a patentable invention belong to the individual employee personally, budgeted funds, grants or other funds intended for Lund University can never be used to pay the costs of the application or maintenance of patent protection. Such payment contravenes the way in which the University's funds can be used and would also make the patent owner liable to benefit taxation and the University to social security contributions.

However, applications can be made for funds to cover patent costs, either to research funding bodies or with the support of LU Innovation and LU Holding AB. For more information, visit the LU Innovation page on the Staff Pages.

Guidelines for the management of intellectual property rights, etc. and general recommendations on Lund University's right to use to patents, designs and topographies

The right to a trade name (trademark and business name) developed within the context of the University's activities, belongs to the University.

The University does not claim the right to designs or topographies produced independently by its employees within the scope of their research duties. The University's right to use designs or topographies is according to the sections above regarding patents.

Management of the commercial use of intellectual property rights

Employees at the University who have created intellectual property rights and who intend to commercially exploit them, can obtain support from LU Innovation concerning business development, funding and legal advice.

The University may invest in a project by forming a company together with the employee through the University's holding company, LU Holding AB, for the further commercialisation of innovations

For more information, visit the LU Innovation page on the Staff Pages.

Management of externally funded research

Intellectual property rights are often used or arise in research that has been externally funded. The management of such rights is regulated by a contract between the University and the funding body or partner. When an employee's intellectual property right is to be used in projects or collaborations undertaken by the University with an external partner, and the external party imposes conditions on such rights; a contractual relationship describing the terms of use must also be established between the individual employee and the University.

If the intellectual property rights for research findings are transferred or assigned to external parties, the basis is that the patent owner, who may be an employee, shall receive fair remuneration. The University must also ensure that the University and its employees are entitled to continue using the rights in research, teaching and external engagement. In such circumstances, the University follows SUHF's principles as the basis for managing intellectual property rights in research contracts.⁸

The Legal Division's pages on the Staff Pages provide contract templates for use in various situations and other information regarding contract management, which may prove useful.

Management of the publication of research findings

The Higher Education Act⁹ states the principle of academic freedom and includes the freedom to publish research findings.

The University advocates open access for research communication.¹⁰

In assignments or collaborations with external parties, some delay in publishing may be acceptable if there are reasons for the delay. Such a delay should not be more than 3 (three) months. See SUHF'S principles for managing intellectual property rights in research contracts (note 7 above).

Management of visiting lecturers, visiting researchers and others

It is important to regulate the right to intellectual property rights in a contract between Lund University and external employers when visiting lecturers, visiting researchers, externally employed doctoral students, etc. conduct research at the University, but retain their employment with another employer.

The Legal Division's pages on the Staff Pages provide contract templates for use in various situations and other information regarding contract management, which may prove useful.

Management of material

Physical material produced at Lund University, such as cells, chemical substances and biological material, is owned by the University. This also applies to materials covered by the intellectual property rights of an employee.

⁸ Principles for managing intellectual property in research contracts, SUHF 19 October 2016, REK 2016:3, Reg. no 0067-16

⁹ Higher Education Act (1992:1434) Chapter 1, Section 6

¹⁰ Open Access policy for publications and artistic works, STYR 2020/1861

The use and transfer of human tissue material in biobanks shall comply with the relevant biobank legislation and applicable personal data and data protection regulation. It is important to note that Region Skåne often has responsibility for patient material and that Region Skåne's legal framework then applies for the use of patient material.

Ethical approval may be required for research that involves individuals or the processing of personal data. When such research is to be conducted as part of the University's activities, the University is the research principal and an application for ethical review must be made. For advice and support on research ethics, refer to the information available on the pages devoted to research support on the Staff Pages.

Management of conflict of interest, secondary employment and use of companies
Issues relating to conflict of interests and secondary employment may require consideration in situations involving external engagement, for example when an employee has an interest in an external counterpart. The University has specific information regarding these situations.¹¹

The University also has regulations for the use of companies.¹²

Management of document registration and archiving

The University's documents are to be registered and archived in accordance with the current regulations and procedures. A summary of these can be found in the public authority's Record Management Plan.¹³ For support and advice regarding these matters, contact the Record Management and Archives Office or refer to the information available through the office's pages on the Staff Pages.

Decision

Through the present guidelines, the University decides to clarify the management of intellectual property rights arising at the University and what applies regarding the application of research findings, collaborative and contract research, and to provide information on applicable regulations.

Through these general recommendations, the University also decides to clarify its interpretation of the Patents Act and the Act on the Right to Employee's Inventions regarding patentable inventions produced by employees in the context of their work. Furthermore, it clarifies what applies regarding Lund University's right to use patents, designs, topographies and trade names produced by employees in the context of their work. The recommendations do not involve a change in the University's current application of the legislation.

The decision on this matter was taken by the undersigned vice-chancellor in the presence of the university director Susanne Kristensson, following a consultation with the representative of the Lund University Students' Unions and a presentation by general counsel Annette Nilsson, Legal Division and Records Management.

¹¹Lund University's regulations on secondary employment (Reg. no STYR 2018/2014) and information memorandum on secondary employment

¹²Regulations for purchasing at Lund University, Reg. no STYR 2020/562

¹³ University director's decision Reg. no LS 2013/54 including supplemented decisions Reg. no LS 2013/54 and V 2015/322

Legal counsel Fredrik Engfeldt, LU Innovation, also participated in the processing of the matter.

Erik Renström

Copies to:

Faculties

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