



**SEMMELWEIS UNIVERSITY**

**ORGANIZATIONAL AND OPERATING RULES**

**BOOK 1.**

**ORGANIZATIONAL AND OPERATING ORDER**

**I.6. SPECIAL PART**

**INTELLECTUAL PROPERTY MANAGEMENT REGULATIONS**

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## **PART I.6**

### **INTELLECTUAL PROPERTY MANAGEMENT REGULATIONS<sup>1</sup>**

#### *Section 1 [Purpose of the Regulations]*

- (1) Semmelweis University (hereinafter: University) intends by enacting its Intellectual Property Management Regulations (the “Regulations”) to promote and ensure
  - a) the legal protection, as far as possible, of intellectual property created by persons covered by the Regulations;
  - b) the economic and social exploitation of the intellectual property created;
  - c) the establishment of utilization enterprises and cooperation with the University;
  - d) the endorsement and enforcement of the scientific and economic interests of the University.
  
- (2) The regulations are intended to define the following in accordance with the law and the internal regulations of the University:
  - a) the procedural rules for the protection, utilization, acquisition, transfer of intellectual property rights and providing in kind contribution of assets to licensee companies and
  - b) the way and method in which persons who create intellectual works, research groups, organizational units and the University benefit from the fees and revenues arising from the utilization and sale of intellectual works.

#### *Section 2 [Definitions]*

1. *Contribution of assets*: the in kind transfer of a property with a marketable value, an intellectual creation, a right of property value as a non-monetary contribution to the ownership of a business company.
2. *Inventor*: shall have the meaning defined in Section 7 (1) of Act XXXIII of 1995 on the Patent Protection of Inventions (hereinafter referred to as the Patent Act).
3. *Design (pattern of a design)*: the term defined in Section 1 of Act XLVIII of 2001 on the Protection of Designs.
4. *Business organisation*: a legal entity meeting the conditions set out in Section 3:88 (1) of the Civil Code.
5. *Utility model*: the term defined in Section 1 of Act XXXVIII of 1991 on the Protection of Utility Models.
6. *A permission of use license (license)*: the transfer, in whole or in part, of a right of exploitation of an intellectual property right to a rightholder, limited in time and / or space, or unrestricted.
7. *Exploitation agreement (license agreement)*: a contract of a non-transferable nature, as defined in the University’s IPR policy, which is applicable where the work user is not the primary rightholder (author, registered patent, trademark proprietor, etc.) but another person. The name of the license agreement for each type of creation is as follows:

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<sup>1</sup> According to Senate Decision No. 139/2021. (XII. 20.) Annex 2 Effective from: 30.10.2021.

- a) *Exploitation agreement*: patent (patent license agreement); use and design pattern (design protection license agreement); plant variety (variety protection license agreement)
  - b) *Agreement of Use*: Trademark (Trademark License Agreement)
  - c) *Use Agreement*: copyright work
8. *Spin-off enterprise*: means an enterprise as defined in Section 3 (4) of Act LXXVI of 2014 on Scientific Research, Development, and Innovation (hereinafter referred to as the “RDI Act.”).
9. *Innovation*: as defined in Section 3(6) of the RDI Act.
10. *Research & development*: includes basic research, applied research and experimental development. RDI Act Section 3 point 6.
- a) *basic research*: as defined in RDI Act Section 3 point 1.
  - b) *applied research*: as defined in RDI Act Section 3 point 2.
  - c) *experimental development*: as defined in (RDI Act Section 3 point 2.
11. *Publicly financed support*: has the meaning defined in Section 3(10) of the RDI Act.
12. *Consortium*: as defined in Section 3(18) of the RDI Act.
13. *Plant variety* shall have the meaning defined in Section 105(a) of the Patent Act.
14. *Spin-off enterprise*: means, for the purposes of these Regulations, an economic organization established for the purpose of exploiting research results, as recommended by the OECD Secretariat in 2001, („Analytical Report on High-tech Spin-offs”) to which at least one of the following characteristics applies:
- a) founded by an employee of a publicly funded research institution (eg a research institute or University);
  - b) a new company that has obtained its technology from a publicly funded research institution under a licensing agreement;
  - c) established by a publicly funded research institution or with the participation of such an organization.
15. *Patentable invention* means a patentable invention defined in Section 1(1) and Section 5/A of the Patent Act.
- a) *Service invention*: the term defined in Section 9 paragraph (1) of the Patent Act.
  - b) *Employee invention*: the term defined in Section 9 paragraph (2) of the Patent Act.
16. *Patent*: a right of financial value conferring on the patent owner (patent proprietor) the exclusive right, limited in time and space, to exploit the solution according to the invention. Patent protection lasts for 20 years from the date of filing the patent application, but only in the countries in which it is registered (protected).
17. *Intellectual property*: the term as defined in Article 3(21) of the RDI Act
18. *The exploitation of intellectual work*: the term as defined in the law applicable to that type of intellectual work
19. *The exploitation of a copyrighted work*: the term defined in Section 17 of Act LXXVI of 1999 on Copyright (hereinafter referred to as the Copyright Act).
20. *Sale of an itellectual work*: in general parlance, means a transfer (sale) for consideration, but within the meaning of the *Patent Act* it means *a sale of a service invention*.
- a) the *exploitation* of the invention, including non-utilization in order to create or maintain a favorable market position;
  - b) permitting the *use for another party* (license);
  - c) the assignment, *in whole or in part*, of a patent claim or patent.

21. *Intellectual property*: the term as defined in Section 3 paragraph (20) of the RTI Act
22. *Copyright work*: as defined in Section 1 of the Copyright Act.
23. *Invention*: a new technical solution for a product or process. In particular, the following shall not be regarded as inventions
  - a) a discovery, scientific theory and the mathematical method;
  - b) the aesthetic creation;
  - c) a plan, rule or procedure for intellectual activity, gaming, conduct of business, and a computer program;
  - d) the representation of information.

(*Patent Act Sections 1 and 2 paragraph (1)*).
24. *Invention fee*: In the case of the sale of a service invention, the inventor shall be entitled to an invention fee in cases covered by the Patent Act Section 13 paragraph (1). These provisions shall also apply to utility models and designs (with variations in the latter case).
25. *Novelty infringement*: The requirement of novelty according to Section 2 of the Patent Act applies in an absolute manner, without any limitation in time and space (i.e. information published anywhere, at any time in the world before the priority date, shall be considered a novelty-impairing fact). A piece of information is disruptive/infringing if it is accessible to anyone, i.e. it is not necessary that in reality anyone actually has access to it.
26. *Trade secret - know-how*: the terms defined in Section 1 of Act LIV of 2018 on the Protection of Trade Secrets.
27. *Trademark*: the term defined in Section 1 of Act XI of 1997 on the Protection of Trademarks and Geographical Indications.

The descriptions, definitions, and information materials related to intellectual property management are continuously available on the Innovation Centre's website.

### *Section 3 [Personal scope of the Regulations]*

- (1) The personal scope of the Regulations shall cover:
  - a) all organizational units/departments of the University;
  - b) persons who have a medical service, employment, or other employment relationship with the University;
  - c) persons engaged in research, development, Innovation (hereinafter: RD&I) and teaching activities at the University, persons who create intellectual property and who are in a student relationship to the University, including Ph.D. students;
  - d) visiting researchers carrying out RD&I and educational activities and creating intellectual works at the University;
  - e) business entities engaged in RD&I and educational activities at the University and creating intellectual property under civil law;
  - f) companies established by the University or with its participation to exploit intellectual property and persons employed or otherwise engaged in an employment relationship with such companies.
- (2) Persons and entities under Para (1) c), d) and e) are subject to these Regulations if:

- a) University infrastructure (e.g. equipment, building, human resources) and the University bears the overheads (overheads) of this activity, and
  - b) they accept the provisions of the Regulations as binding on them by a separate declaration or contract, unless the RD&I, educational or other intellectual property activity is carried out in the context of a call for proposals or contract whose rules provide otherwise.
- (3) Persons and entities subject to paragraph (2) may engage in RD&I, educational or other activities resulting an intellectual property only after signing a contract concluded with them or under a declaration according to paragraph (2) point b).

#### *Section 4 [Material scope of the Regulations]*

The material scope of the Regulations shall cover:

- a) all intellectual property created by the persons covered by the Regulations in the course of their work at the University, typically RD&I and teaching, whether in the course of their employment or as staff and the property rights which they hold in such intellectual property;
- b) also for intellectual property that the University acquires free of charge or for consideration under an agreement with a third party;
- c) other intellectual property rights of the University (eg trademarks).

#### *Section 5 [Principles relating to intellectual property]*

- (1) All rights in service-related intellectual property created by persons subject to the personal scope of these Regulations in the course of their position within the University, typically in the context of RD&I and teaching, shall vest in the University, except for the moral rights of the author and those set out in paragraph (2).
- (2) The paragraph (1) shall not apply if:
- a) legislation or contract provides otherwise;
  - b) the University waived that right in a statement;
  - c) the University did not make the declaration pursuant to Section 10. paragraph (8) within the deadline.
- (3) Pursuant to the relevant laws and paragraphs 1 and 2,
- a) the University is to be considered as successor to the creator (inventor) of the service invention (utility model and design, plant variety);
  - b) the employee invention (utility model and design, plant variety) patent (or the relevant industrial property right) belongs to the creator (inventor) and the University is entitled to exploit it in accordance with Section 2 paragraph (15) point b);
  - c) if the creation of the work is an obligation of the creator arising from their legal relationship under Section 3(1), the University shall acquire the property rights by transferring the work to the creator as their successor in title (service copyright). The University may use the work, permit others, and move the property rights. The

University may use the work, grant permission to use it to others, or transfer property rights.

- (4) Persons and departments subject to these Regulations shall, with due care and diligence
  - a) facilitate the acquisition, protection, preservation, and exploitation of intellectual property rights for the University,
  - b) to ensure that the RDI, planned to be carried out with third parties, including the Cooperative Doctoral Programme (hereinafter referred to as KDP), is carried out in a manner compatible with the objectives of the University: (b) to ensure that the terms and conditions of cooperation, including those relating to activities to be carried out under cooperative research agreements with third parties, including under the KDP, or to teaching activities, are laid down in writing before the commencement of such cooperation, which contracts shall also provide for the rights to the resulting intellectual property and the sharing thereof, taking into account that, as a general rule, the rights to intellectual property shall be owned by the parties in proportion to their contribution to the creation of the work and that, where such negotiation requires specialist assistance, such assistance may be requested from the Innovation Centre or the Directorate-General for Legal and Administrative Affairs.
- (5) Unless otherwise provided by law, the call for proposals, or the grant agreement, the following shall be considered as a general rule when concluding the consortium agreement.
  - a) any member of the consortium shall have the exclusive right of ownership over any intellectual property that has previously been the property of the consortium, regardless of the activities carried out by the consortium,
  - b) if the intellectual work referred to in point a) is utilized and used in the course of the consortium activity, the scope of the right of utilization and use, the remuneration of creators and authors, and the bearing of costs related to the protection of intellectual property shall be provided for in the contract,
  - c) the members of the consortium shall also jointly decide on the rights to and sharing of intellectual property created in the framework of the consortium using the resources obtained by the consortium, taking into account their contribution to the project costs and the creation of the intellectual property.
- (6) In the case of a publicly funded project, any person acting on behalf of the University and covered by these Regulations must ensure that the entire possible scope of rights to the intellectual property created is transferred to the University – within the framework provided by law and grant agreements.
- (7) Persons covered by the Regulations may, following the procedure laid down in Section 10 paragraph (8), offer to the University an **intellectual work** that is not covered by the Regulations, regardless of whether that work is protected by law.
- (8) The University may waive the rights related to the intellectual works under these Regulations in favour of the researcher or reject the intellectual creation offered to it.



*Section 6 Preventing novelty spoilage – publication pre-filtering*

- (1) Before publication, the researcher, teacher, or author (in this point hereinafter referred to as the “author”) shall satisfy themselves with due diligence that the publication of the intellectual work (including copyright works) or of an extract from it, which they have created, does not constitute a breach of novelty, does not jeopardize the industrial property protection of the solution or research result described therein or does not infringe the intellectual property rights of a third party. In particular, a lecture, presentation, poster, TDK, or Ph.D. thesis describing a new intellectual creation or research result may also be novel if available to anyone so that efforts shall be made to ensure the provisions of paragraph 1 prior to such activities.
- (2) In case of any doubt, the Centre for Innovation shall provide professional support to the author in carrying out the pre-screening of publications. The request is to be sent in writing before publication within 10 working days; the Innovation Centre shall provide an opinion on whether the publication may jeopardize the protection of the intellectual work and, if the Innovation Centre considers it justified, the publication shall be postponed for 5 working days after the filing of the industrial property application. If the Innovation Centre does not comment on this matter within the time limit, its consent to publication shall be deemed to have been given.
- (3) In the course of the publication pre-screening, the Innovation Centre shall also determine whether the research result or creation contained in the publication is eligible for industrial property protection. If such a possibility exists, the Innovation Centre shall contact the author to initiate the procedure for obtaining protection under Section 9.
- (4) Notwithstanding the provisions of paragraphs (1) to (2), if the procedure under Section 9 has already been initiated for the intellectual creation in question, the creator shall contact the Innovation Centre before publication and ensure that the novelty is not infringed.

*Section 7 Special rules for students*

- (1) If an organizational unit of the University intends to involve a student, doctoral student (hereinafter jointly referred to as “student”) in research and development (TDK, KDP), teaching, or other activities involving the creation of intellectual work, a doctoral employment contract or a civil law contract shall be concluded with the student in advance. Intellectual works created in the context of this relationship shall become the property of the University and shall be subject to the procedures applicable to service-type intellectual works.
- (2) The contract concluded with the student shall provide for the rights relating to the intellectual work, the possible exploitation of the work, and the remuneration of the student; in the absence of a contract, the provisions of these Regulations shall be accepted through a student’s declaration.



- (3) The department which involves the student in the activity in question is responsible for concluding the contract and obtaining the declaration.
- (4) If the University wishes to exploit an intellectual work created by a student who is not covered by these Regulations, a separate contract shall be concluded with the student. The student may also offer their intellectual property not covered by the Regulations, in which case the procedure shall be as set out in Section 5 paragraph (7).
- (5) Notwithstanding the provisions of paragraph (1), the requirements of these Regulations shall be applied at the level of principle regarding intellectual works resulting from grants awarded under the KDP. The Centre for Innovation shall prepare the research cooperation agreements under the KDP and shall receive draft agreements for its opinion.

#### *Section 8 Special rules for visiting researchers*

- (1) The department that involves the visiting researcher in the activity in question shall have signed the declaration referred to in section 3 paragraph (2) point b).
- (2) Where persons who have a legal relationship with the University under Section 3 paragraph (1) carry out intellectual property activities with another organization as visiting researchers, the University shall conclude a prior agreement with the host institution on the management and sharing intellectual property rights. The researcher concerned shall inform the Innovation Centre before starting such activities. The Innovation Center shall prepare the contract in consultation with the Directorate-General for Legal Affairs and Administration and the host institution, with the researcher's involvement.
- (3) Paragraphs 1 to 2 shall not apply where otherwise provided by law, contract, or call for proposals.

#### *Section 9 Notification of intellectual works*

- (1) The filing procedure shall be understood to mean the process before the university industrial property procedure under Section 11, during which the intellectual work becomes known to the University.
- (2) The application procedure shall apply to works of authorship, in addition to those eligible for industrial property protection, and to works of authorship kept secret in place of protection, as well as to protected knowledge and copyright works, subject to the exceptions provided for in Section 18.
- (3) Creations under these Regulations shall be notified immediately after their creation, by completing the form published on the Innovation Centre's website, for which the Innovation Centre shall provide support if necessary, with sufficient content and detail to enable it to be established that

- a) whether it is an intellectual creation;
- b) whether the nature of it being a service or employee creation can be determined;
- c) whether the work is eligible for industrial property protection;
- d) whether the work can be exploited and whether it will be of scientific, commercial, or other advantages to the University.

The completed form should be sent to the Innovation Centre.

- (4) In the case of an incomplete or incorrectly completed form, the Innovation Centre shall return it to the applicant for further completion, indicating the deficiencies and setting a deadline of no more than 10 working days. The Innovation Center shall register a complete form and send it to the RDI Business Development Centre for examination under paragraph 3 (d). The date of registration shall be the date on which the intellectual property application is recognized by the University (hereinafter referred to as the ‘internally recognized date’).
- (5) Following the registration, the Innovation Centre shall start the preliminary evaluation of the intellectual work without delay but within a maximum of 10 working days. The Innovation Centre shall, in a personal consultation with the creators, in cooperation with the RDI Business Development Centre, identify the circumstances affecting the legal protection and exploitation of the intellectual work, and shall then carry out a primary market and exploitability study with the assistance of the RDI Business Development Centre. During the evaluation process, the parties will jointly develop an appropriate exploitation strategy, including the tasks of the parties involved in the exploitation process and the deadlines for completing these tasks.
- (6) The institution shall set up and operate a University Innovation Committee (hereinafter referred to as “EIB”) to decide the reception, protection, exercise of rights, and exploitation of the works covered by these Regulations.

#### *Section 10 University Innovation Committee*

- (1) Members of the EIB:
  - a) the Rector, who is also the President of the EIB;
  - b) the Chancellor;
  - c) the Vice-Rector for Science and Innovation;
  - d) deans of faculties;
  - e) the President of the Doctoral School;
  - f) the Director of Innovation.
  - g) the Director of RD&I Business Development.
- (2) The EIB shall exercise its powers as a body and shall take its decisions
  - a) in person (in person or in absentia via an electronic communications network), or
  - b) by written decision (on paper or by electronic means (e.g., e-mail)).

The meeting shall be convened by the Director of Innovation at least 5 working days before the meeting, indicating the place and time of the meeting. Coordination and secretarial tasks related to the functioning of the EIB shall be carried out by the Innovation Centre.

- (3) The Innovation Centre shall draw up the agenda, which shall be sent to the members 3 working days before the meeting; prepare a preliminary draft decision paper on the requests received; provide the members of the Committee with the information necessary for taking decisions; keep the minutes; prepare the draft decisions, indicating the options available; forward the EIB decisions to the parties concerned; register, maintain and archive all Committee documentation. The Director of the RD&I Business Development Centre may, through the Innovation Centre, request the inclusion of an agenda in their area of expertise by sending at the same time the Commission's decision paper. The EIB President or their alternate shall decide on the proposal's inclusion on the agenda.
- (4) The submission prepared by the Innovation Centre shall, depending on the nature of the work and the knowledge available, as a general rule, address the following issues (subject to the proposal of the RDI Business Development Centre as regards exploitation and business development issues) and propose a decision:
  - a) a recommendation for the university admission of the work;
  - b) the assessment of the protectability of the work and a proposal for the steps to be taken to obtain (maintain) industrial property protection;
  - c) the determination of the service or employee nature of the intellectual property that may be protected by industrial property rights and the service or non-service nature of the copyright work;
  - d) in the case of a service nature, it is to be determined whether the University claims the work, intends to file an application for industrial property protection or wishes to keep the work secret;
  - e) if the work is an employee work, whether the University exercises its right to exploit the work;
  - f) the possibilities and conditions of exploitation;
  - g) any waiver of the University's rights and the reasons thereof
  - h) the expected costs and the University's assumption of these costs (including the costs of obtaining and maintaining protection and exploitation) and the benefits (scientific, professional, economic, etc.) and revenues for the University;
  - i) whether there is justification for departing from the general conditions (e.g., remuneration) laid down in the regulations;
  - j) proposals of strategic importance (e.g. university innovation, industrial property rights, exploitation strategies).
- (5) The EIB exercises its powers jointly as a body. The President or their delegate shall chair the EIB meeting. The Director of Innovation shall be the technical proposer of the items on the agenda. The Director of the RDI Business Development Centre shall be the technical project manager in the case of a Director of Business Development proposal under paragraph 3. The meeting shall be quorate if more than 50% of the members are present.

- (6) All members of the EIB shall be obliged to arrange for their replacement if they are unable to attend the meeting in person. Such substitution shall be made based on a general or ad hoc written proxy given by the members. The proxy itself shall specify whether it is to be used for deliberations only or to exercise voting rights and, if necessary, the position to be taken on the matter covered by the proxy. A general proxy shall be valid from its date until its revocation; an ad hoc proxy shall be valid for a single committee meeting.
- (7) Experts invited by the members, the Innovation Centre, the Office of the Vice-Chancellor for Science and Innovation, and designated staff of the RDI Business Development Centre may participate in the work of the EIB, by invitation and without the right to vote. At the EIB meeting, creators of intellectual creations will be allowed to present their innovations in person, using the template provided for this purpose.
- (8) The EIB shall decide on the proposal for a decision contained in the bids submitted by the KIC to the Board, particularly on the matters referred to in paragraph 4 of this point. Based on the decision taken by the EIB, the University shall, within 90 (the so-called 90-day rule) of the date of internal recognition, make a declaration that
  - a) whether it claims a service invention (or utility model or design) (if so, the University will be the owner of the invention/design, pay the fees for the industrial property rights proceedings, and have the exclusive right over the invention/design);
  - b) whether the employee invention (utility model or design) is intended to be exploited, if so, the inventor/author will be the owner of the invention/patent, they will have the right to dispose of it, but the University will have a (non-exclusive) right to exploit it;
  - c) does not claim the service invention (utility model or design) but intends to exploit it as an employee invention (utility model or design) as in (b);
  - d) does not claim the service invention (utility model or design) and does not intend to exploit it as an employee invention (utility model or design), in which case the inventor/author becomes the proprietor of the invention/patent, has exclusive rights to it and the University has no right to exploit it.
- (9) The EIB shall take its decisions by majority vote; in a tie, a new ballot shall be taken. The Chancellor shall exercise the right of financial countersignature in respect of decisions of the EIB that have an economic impact on the University's management, organization, and operation.
- (10) The Innovation Centre shall draw up minutes of the Committee meeting, including the decisions taken and the proportion of votes cast. The decision's validity and result shall be established by the Rector (or their authorized representative). The resolution on the EIB's decision, signed by the Rector and, if necessary, countersigned by the Chancellor, shall be sent electronically by the Innovation Centre to the parties concerned within 5 working days of the decision.
- (11) In the case of a written decision under paragraph (2) (b), members shall be given at least 5 working days to review the proposals and cast the votes. A written decision shall be

valid if more than 50 % of the members have transmitted their voices to the Innovation Centre. In the case of a valid vote, the rest of the process described for the board meeting shall apply.

*Section 11 [Industrial property procedure]*

- (1) If the University decides to obtain (maintain) industrial property rights based on a decision of the EIB, the Innovation Centre shall initiate the industrial property procedure depending on the nature of the intellectual property within 90 days of the signature of the EIB decision.
- (2) The University shall bear the protection costs to the extent specified in the EIB decision. Supposing the intellectual work has been created in collaboration with another institution or economic entity, the charges shall be shared in proportion to the right to the work unless otherwise agreed.
- (3) If the intellectual creation is created within the framework of a supported project in which the costs of industrial property rights and exploitation are accountable, these expenses must be planned in the budget of the project application.
- (4) If the EIB decides that the University does not wish to obtain protection for a protectable intellectual creation but wishes to keep it secret for professional or commercial reasons, the Innovation Centre shall notify the creator in writing within 5 working days of the EIB's decision. The creator may no longer disclose information relating to the subject matter of the intellectual work without authorization. In case of exploitation by the University, the creator is entitled to a fee under the law and these Rules.
- (5) Throughout the entire process of industrial property protection proceedings, creators shall cooperate with the Innovation Centre, the appointed patent attorney, and lawyer or experts involved by the University (such as the RDI Business Development Centre), in particular in signing documents and providing technical information required for industrial property protection proceedings.
- (6) In the course of industrial property proceedings, particularly prior to the publication of the application in the Office, the intellectual property may be disclosed to third parties only based on a confidentiality agreement (confidentiality agreement) with that third party. The signing of the draft agreement, a template of which can be downloaded from the Innovation Centre's website, is coordinated by the Innovation Centre.

*Section 12 [Use - general provisions]*

- (1) The EIB shall decide on the exploitation strategy or modification of the exploitation strategy for each intellectual work individually, taking into account all the circumstances. For these Regulations, the term "university exploitation" shall be understood as follows:
  - a) internal use within the scope of its activities;

- b) the authorization of exploitation for the benefit of others;
  - c) making the intellectual property available to a university user or another undertaking as a non-monetary contribution (appropriation);
  - d) the transfer (final sale) of the property rights resulting from the intellectual work and the protection of industrial property rights.
- (2) At the request of the Innovation Centre and the RDI Business Development Centre, creators are also required to participate in processes concerning the exploitation of their creation, such as finding partners, presenting the outcome, developing development proposals, attending meetings.

### *Section 13 [Internal exploitation]*

- (1) In the case of a service invention, utility model, or design, the University shall have the exclusive right to exploit the work internally within the scope of its activities. The creator (e.g., inventor) shall be entitled to the remuneration laid down by law and these Regulations for all types of exploitation, including internal exploitation, unless the parties agree otherwise. This provision shall not apply in the internal use of a work of authorship of a service nature.
- (2) The University shall have the right to exploit an employee's invention (utility model or design). Still, this right of exploitation shall not be exclusive, and the University shall not grant a license to third parties. The right of exploitation may not be transferred or assigned, except by succession.
- (3) According to [Section 7. paragraph (7)] of the *Patent Act*, the invention may not be disclosed to the public before the publication of the patent application without the inventor's consent or their successor in title. Following from this provision, the University may exploit an employee's invention only under the right of the creator (e.g., inventor) to publish the invention.

### *Section 14 [Authorisation of exploitation for others]*

- (1) If the EIB so decides, the University may grant a license to a third party to exploit an intellectual work that it owns. The rights and obligations of the University, as licensor, and the exploiter, as a licensee, shall be set out in a license agreement. A template for the draft contract can be downloaded from the websites of the Directorate General for Legal and Administrative Affairs, the Innovation Centre, and the RDI Business Development Centre. The Innovation Centre will cooperate with the RDI Business Development Centre for the specific case.
- (2) The University shall ensure throughout the license agreement that no third party has any rights to the patent that prevent or restrict exploitation and that the invention is technically feasible (warranty of rights and remedies).

### *Section 15 [Transfer of intellectual property as a contribution]*



- (1) If the EIB so decides, the University may make the intellectual property available to companies for exploitation. The company making the exploitation may be one of the following:
  - a) within the meaning of the RDI Act ;
  - b) a spin-off enterprise not falling under point a)
  - c) an enterprise not covered by points a) and b).
- (2) The companies referred to in paragraph (1) point a) shall be subject to the provisions of Section 34 of the RDI Act and the requirements of the regulations of the University applicable to business companies.
- (3) The typical ways of making available intellectual property owned by the University are:
  - a) In the case of an exploitation enterprise established by the University or a company of which the University is holding a share [within the meaning of paragraph (1) point a)]
    - aa) the University makes the intellectual work available to the exploiting enterprise as a non-monetary (in-kind) contribution.
    - ab) The University shall contribute in cash only to the user company and shall grant a license to the enterprise to exploit the intellectual property in the form of a license agreement.
  - b) The University shall grant a license agreement to exploit the intellectual property to the exploiter within the meaning of paragraph 1 point (b) or to any other enterprise within the meaning of paragraph 1 point (c) established without its participation.

*Section 16 [Transfer of property rights in intellectual property and industrial property rights]*

If the EIB so decides, the University may transfer (definitively sell) the claim to the intellectual property rights in the intellectual work and the industrial property rights.

*Section 17 [Surrender of the intellectual property and the rights thereto]*

- (1) The University may, at the discretion of the EIB, waive the rights to an intellectual work which it holds or has been offered, provided that such waiver shall not cause the University any loss of property, taking into account all the circumstances of the case.
- (2) The creator may dispose of the service intellectual property if the University consents thereto or if the creator fails to make the declaration referred to in Section 10 paragraph (8) within 90 calendar days.
- (3) The University may decide to withdraw the patent application initiated for a service invention or not to pay the necessary procedural fees and thereby waive provisional patent protection. In such a case, before taking such action, and in such a way as to ensure that the inventor has a reasonable period within which to exercise the patent claim, it shall offer the inventor a free assignment of the patent claim, with or without a right of exploitation in respect of the service invention. The waiver of temporary protection shall be effective without the inventor's consent. This provision shall apply mutatis mutandis to other intellectual works eligible for industrial property protection.



This provision shall apply mutatis mutandis to other intellectual work that industrial property rights may protect.

- (4) The protection for an employee's invention shall vest in the inventor without the burden of the University's right of exploitation if the University waives this right under the Patent Act if it fails to make the declaration under Section 10 paragraph (8) within 90 calendar days. This provision shall apply mutatis mutandis to other intellectual work that industrial property rights may protect.
- (5) If the University surrenders its rights to the intellectual work at any stage of the procedure, the creator shall be entitled to all such rights free of charge, with the proviso that the University may claim a share of the profits of any further exploitation up to the amount of its expenditure up to the date of surrender or up to a specified proportion of the net turnover. The EIB's decision on the resignation shall quantify the amount of the financial expectation of the creator and shall inform the creator thereof.

*Section 18 [Determination of the service character of the work]*

- (1) The employer (University) shall acquire the property rights to works created by authors who have a legal relationship with the University under Section 3 (1) if the creation of the work is the author's obligation under this legal relationship. Unless otherwise agreed, when the author of a work under this legal relationship completes and delivers the work, all property rights shall be transferred to the University, except for their moral (individual) rights.
- (2) The work shall be deemed to have been created in the performance of an obligation arising out of the author's relationship under paragraph (1). The existence of a legal relationship shall not in itself constitute the basis for the service character of the work; it shall also require the written recording of the obligation to work on the work. In establishing the responsibility, the starting point must be the job duties set out in the job description and the document confirming the legal relationship within the meaning of Section 3 paragraph (1) employment contract, contract of assignment, etc.). On a case-by-case basis, the employer may also have the power to issue ad hoc instructions to create a service contract. For a work to be considered a work of authorship, it doesn't need to be completed at the workplace during working hours, as the author may not only carry out creative activities during working hours.
- (3) In particular, works of authorship created with the aid of grants awarded by the University as a beneficiary in the context of grants and other programs shall be considered to be of a service nature, even if they are not otherwise part of the authors' employment duties.
- (4) Where the creation of a work of authorship is not an employment obligation arising from their legal relationship within the meaning of Section 3 paragraph (1), and where the employer has not given any ad hoc instructions for its creation, the author shall be free to dispose of it even if the work falls within the scope of the University's activities in

terms of its content. In such cases, the University is not automatically entitled to use the work, but only by agreement with the author.

- (5) In the event of doubt, the manager's position exercising the right of employment shall be considered when assessing the work's service character. In this respect, in case of disagreement between the manager and the author, the parties shall refer the matter to the EIB through the Innovation Centre. The EIB will decide on the issue after hearing the facts and views.
- (6) The University shall have the right to dispose of the work of an official nature, and the institution shall decide on its use, assignment or transfer. The provisions of Sections 9 to 17 of these Regulations shall apply mutatis mutandis to the notification and use of works of authorship of a public-service nature.

#### *Section 19 [Fees from exploitation and their distribution]*

- (1) The inventor/creator/author shall be entitled to an invention/creator's fee for the exploitation of intellectual work, the amount of which shall be determined under the legislation in force and these Regulations.
- (2) A contract shall govern the remuneration of the inventor/creator/author (e.g., an invention royalty contract or a license agreement) concluded with the University, the exploiting patentee, or the right holder. The provisions on remuneration in the *Patent Act* and the *Copyright Act* and in these Rules may be derogated from the EIB, within the limits of the law, at the parties' discretion by mutual agreement.
- (3) The content of the invention/creator remuneration agreement shall be proposed by the Innovation Centre in a proposal to the EIB, in consultation with the RDI Business Development Centre for exploitation and business development and, if necessary, with the Directorate-General for Legal and Administrative Affairs for general legal compliance.

#### *Section 20 [Inventory fee]*

- (1) The inventor shall receive an invention fee in the event of the sale of a service invention. The inventor shall receive an invention fee for each exploitation method separately and in the event of authorization of exploitation without consideration and free transfer.
- (2) The University, as the employer, shall pay the invention fee; in the case of a joint patent, the exploiting patentee shall pay the invention fee, unless otherwise agreed by the patentees. Upon licensing and assignment of the exploitation, the contract to this effect may provide for the assignee to assume the obligation to pay the fee from the University.
- (3) The royalty for exploitation shall be proportionate to the amount the University (or the exploiting patentee) would pay under a patent license agreement in exchange for a

license based on the licensing traffic in the technical field of the invention (the so-called *licensing analogy principle*).

- (4) By a license to exploit or transfer a patent, the fee for the invention shall be proportionate to the consideration for the license to exploit or the transfer (or the economic advantage resulting from the license to exploit without regard or from the free transfer).
- (5) In determining the amount of the invention fee, the proportion referred to in paragraphs (6) and (7) shall be determined regarding the University's contribution to the creation of the invention and the obligations of the inventor arising from his employment. In the case of an invention kept secret, account shall also be taken of the disadvantages suffered by the inventor due to the failure to obtain protection.
- (6) The remuneration for exploiting an employee's invention shall be paid by the University (or, in the case of several employers, by the exploiter, unless otherwise agreed). In determining the royalty payable in return for the right to exploit, the licensing analogy shall be considered following paragraph (6).
- (7) For the remuneration of the breeder of a plant variety, the inventor of a utility model, and the designer, the provisions of paragraphs (1) to (9) shall apply *mutatis mutandis*.

#### *Section 21 [Creator's Fee]*

The University shall acquire the property rights resulting from a work of authorship created within the framework of a legal relationship as referred to in Section 3 paragraph (1). It is subject to the obligation that the author be remunerated if the institution grants a license to use the work to another person or transfers the property rights into another person's work. No royalties shall be due in the case of internal use.

#### *Section 22 [Basis of the invention/creator's fee]*

- (1) In the case of (internal) exploitation of intellectual work by the University, the basis for determining the base of the invention/creation fee shall be the amount for which the work in question could be obtained on the market (employing a license or transfer).
- (2) In the case of a license to exploit (license), the starting point for the invention/creator fee shall be the license fee or royalty paid to the University, whereas at a transfer of an intellectual property right, it shall be the purchase price received.
- (3) In determining the amount under paragraph (2), an account shall be taken of any related quantifiable benefits or allowances (including any shares issued or shares created by the licensee/buyer), other than any assets, services, or rights granted by the licensee/buyer to the University.

- (4) In the case of exploitation through a licensee or other enterprise, the basis of the fee shall be determined on an individual basis, with a separate assessment of whether the University and the inventor/creator have an equity interest in the company.
- (5) In the case of the external use (exploitation) or transfer of a work of authorship, the fee shall be settled individually by contract between the parties.
- (6) The revenue from all forms of exploitation of an intellectual work shall be reduced by the costs associated with the evaluation, obtaining, maintaining, and exploiting the work (including, for example, the relevant fees, administrative service charges, taxes, levies, including employers' contributions on expenses), as determined by the Directorate-General for Economic Affairs, subject to the data provided by the Innovation Centre and the Centre for RDI Business Development.

*Section 23 [Amount of the invention/creation fee]*

- (1) The invention/creation fee amount shall be determined by these Regulations as a percentage of the fee base defined in Section 22. It shall be distributed between the inventors/creators and their departments or research teams and the Semmelweis Science and Innovation Fund (hereinafter referred to as STIA), using the following framework rules, which shall be laid down as guidelines.
- (2) The share of the inventors/creators involved in creating an intellectual work will be between 40 and 60 % of the fee fund. The department or research group employing the inventor/creator may receive between 10 and 20 % of the fee fund, while the share of the STIA shall be between 20 and 40 % of the fee fund. These proportions may be deviated from the creative fee contract, primarily in favor of the creators.
- (3) The specific distribution shall be determined under the above conditions and laid down in the fee agreement. The Innovation Centre shall propose the proportions based on the opinion of the RDI Business Development Centre; after having explored and considered the circumstances, the decision shall be at the discretion of the EIB.
- (4) The fee contract shall be concluded within a maximum of 30 working days following the EIB's decision. The share to be paid to the inventors/creators shall be disbursed after the conclusion of the contract and no later than 60 working days after the receipt of the proceeds in the University account. If the revenue to cover the fee is received in installments in the University's account, the time limit shall be applied according to each installment.
- (5) In the case of several inventors/creators/authors, the prize shall be divided among them in proportion to their contribution to creating the intellectual work. The ratio of the individual contribution shall be determined based on the information contained in the intellectual property application form or the subsequent declaration.

- (6) The University shall pay an inventor/creator fee to the persons concerned only for exploiting intellectual property registered with the Innovation Centre under Section 9 of these Regulations.

*Section 24 [Registration and valuation of intellectual property]*

- (1) The University shall, under accounting law, ensure that records of intellectual property and related rights are kept in an appropriate form and detail.
- (2) The Directorate-General for Economic Affairs shall keep centralized accounting records of intellectual property covered by these Regulations under the provisions of Act C of 2000 on Accounting and in line with the requirements of the University's own-cost regulations. The Innovation Center supports this activity for Innovation through guidance, training, and personal consultations.
- (3) In addition to the register referred to in paragraph (2), the Innovation Centre shall keep a separate professional record of all intellectual property created at the University, its legal protection, exploitation, and the organizations exploiting it, which shall contain in particular the following data:
  - a) the name of the intellectual work and a detailed description of its subject (content);
  - b) in the case of an industrial property right application or protection, the type of protection, in the case of a copyrighted work - copyright protection;
  - c) the service or employment nature of the intellectual work;
  - d) the names of the creators (e.g., inventors, authors), the employing department or research group, the inventor/author ratios in the case of multiple creators;
  - e) procedural dates (e.g., creation, report ready, university application, **internal** recognized day, industrial property procedures, EIB decision, contract award, payment of fees);
  - f) other holders, owners, and exploiters of intellectual property outside the University, ownership percentages.
- (4) Intellectual works and the property rights thereto accepted by the University (EIB) shall be professionally evaluated by the Innovation Centre, subject to the opinion of the RDI Business Development Centre, in the course of registration, based on the available information and according to its possibilities, using known domestic and foreign methods. The assessment shall be facilitated by providing information by all persons and departments covered by these Regulations. The peer-review shall cover in particular the following aspects:
  - a) the technical and technological aspects of the intellectual creation, its technological "maturity," and its advantages concerning state of the art;
  - b) the forms, routes, territorial extension, expected costs, and return on investment of obtaining industrial property protection;
  - c) the need to involve a representative (patent agent or lawyer);
  - d) market aspects of intellectual property, marketability, analysis of competitors, opportunities and conditions for exploitation, business development;
  - e) third party rights;

- f) financial aspects of the intellectual creation; professional and economic contributions of creators and the University; expected results;
  - g) the possibilities for further development, the costs, and the return on investment.
- (5) An external valuation expert may be involved in the case of exploitation activities where a determination of the market value is mandatory or justified. Still, the principle of proportionality must always be taken into account, i.e., if the estimated consideration for the external valuation service exceeds half of the expected revenue from the exploitation, the involvement of an external expert does not ensure that the University's interests are safeguarded.
- (6) The Innovation Centre is obliged to monitor the deadlines of the obligations related to the protection procedures and maintenance of intellectual property rights for industrial property applications or protected intellectual property. In case of a decision, prepare the EIB meeting within a reasonable time and take the necessary measures towards the Directorate-General for Economic Affairs.

#### *Section 25 [Consequences of non-compliance]*

- (1) Any person may report any breach of the provisions of these Rules to the EIB. At the EIB's request, the circumstances of an infringement shall be investigated by an ad hoc working group composed of members appointed jointly by the Rector and the Chancellor. The working group shall send the investigation results to the Rector, who shall decide, where appropriate, on the necessary measures to be taken and inform the competent managers.
- (2) Infringements of the regulations shall be deemed to include, in particular, premature disclosure (novelty infringement) of intellectual property already accepted by the University, misleading the University, making untrue statements, concealing a fact, divulging official or business secrets, using intellectual property belonging to the institution for personal or third-party purposes, and failing to provide or failing to provide the required information.

#### *Section 26 [Application of intellectual property regulations, report to the governing body]*

The University shall submit an annual report to the Minister responsible for coordinating science policy on how the objectives for exploiting intellectual property created at the institution have been achieved following the provisions of its IPR management regulations (*KFI tv.*). The Innovation Centre prepares this report based on data and expert opinions from the University's departments (notably the RDI Business Development Centre). Upon request of the Innovation Centre, all relevant departments are obliged to assist in preparing the report by providing the information available to them.