



MARIANO MARCOS STATE UNIVERSITY

Batac City, 2906, Ilocos Norte

INTELLECTUAL PROPERTY RIGHTS

GOVERNING PRINCIPLES AND POLICIES

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***GOVERNING PRINCIPLES AND POLICIES ON
INTELLECTUAL PROPERTY RIGHTS***

**MARIANO MARCOS STATE UNIVERSITY
CITY OF BATAC, Ilocos Norte
Republic of the Philippines**



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RATIONALE

The Mariano Marcos State University (MMSU) is a premier higher institution in the north that embodies the pursuit of excellence in the performance of its four-fold function of instruction, extension, research and production. It has established itself as among the top performing State Universities and Colleges of the country as evidenced by its good showing in board examinations, presence of research centers and breakthroughs and award winning researches and extension activities.

The MMSU has proven itself to be an active partner in contributing to the improvement of the quality of life in the region through instruction, research and extension activities. In the exercise of performing its duties as an agent for adding to the body of knowledge through its researches, it saw an increasing number of research outputs in various fields and disciplines. These outputs include works that are copyrightable, generated technologies that are patentable, varieties that need protection and carry potential commercial value.

At the moment, MMSU is slowly creating a niche to become the regional research center for the development of relevant market oriented technologies for agro-industrialization and sustainable development. As it hopes to become an active partner of research centers and organization in the implementation of thematic researches of international relevance, it is imperative that an intellectual property policy be created. This policy aims to increase research and innovation, clarify ownership of intellectual property rights, create opportunities for public use of university innovations and provide for the equitable distribution of monetary and other benefits derived from intellectual property.



THE GUIDELINES

ARTICLE 1 COVERAGE

- (1) Personnel Covered -- This policy shall apply to all faculty, researchers, students and extension staff and visiting professors participating in any program, project, and contract or research activity in the University.
- (2) Matters covered -- These guidelines shall cover all researches, research contracts, tangible research properties or outputs with or without patent or copyright protection, whether for commercial and non-commercial purpose, undertaken using any university resource and including all technology transfer arrangements.
- (3) Rights Covered – These guidelines shall cover all types of intellectual property rights enumerated under the Intellectual Property Code of the Philippines (Republic Act No. 8293) and the Plant Variety Protection Act of 2002 (Republic Act No. 9168) as follows: copyright and related rights, trademark and service mark, geographic indications, industrial design, patent, utility model, layout designs (topographies) of integrated circuit, protection of undisclosed information or trade secret and new plant variety.
- (4) Other staff – The intellectual property rights to all works created and inventions conceived or reduced to practice of all non-academic and non-research staff during office hours or with university resources regardless of amount shall be owned by the university.

ARTICLE 2 GENERAL PRINCIPLES

- (1) The university subscribes to a policy of recognizing the traditional academic practice of treating faculty members as copyright owners of works they create independently and at their own initiative for traditional academic purposes which includes instruction, research, production and extension work.
- (2) The university encourages the faculty's full freedom in research and in the publication of their results subject to the adequate performance of their other academic duties;



- (3) The university acknowledges that its efforts to generate income should be weighed against its principal responsibility to provide a favorable environment to explore knowledge for the benefit of the public in general;
- (4) The university accepts that in some cases, the recognition of intellectual property rights of authors and inventors are effective ways to ensure accountability and accessibility of knowledge and technologies.

ARTICLE 3 RULES OF CONSTRUCTION

Nothing in these rules shall be construed--

- (1) To prevent University administration from implementing rules relating to the enforcement of academic standards such as plagiarism and dishonesty;
- (2) To alter existing University policy affecting conflict of interest including guidelines for outside teaching activities or practice of profession;
- (3) To limit the University's ability to negotiate and to meet obligation for deliverables under any contract, grant, or other arrangements with third parties, including sponsored research agreements, collaboration agreements, license agreements and the like if these terms are more beneficial to meet the purposes and principles of these guidelines;
- (5) To interfere with the discretion of editorial boards, textbook committees and the like to publish works.

ARTICLE 4 COPYRIGHT

- (1) Works Covered -- all literary, artistic and derivative works collectively referred to in these guidelines as "works" as defined in sections 172 and 173 of the Intellectual Property Code of the Philippines including course materials for e-learning and distance education, regardless of format in which it was created, (or) produced, shall be covered by these rules on copyright.



(2) Ownership of Copyright --

- (a) General Rule -- Copyright of all works shall remain with the creator except as may be otherwise provided in these rules.
- (b) When University Owns Copyright -- The University shall have exclusive ownership over institutional works. Institutional works include:
 - (i) works that are supported by a specific allocation of University funds or other resources other than the usual salary and resources made available to every faculty, student or staff;
 - (ii) works created at the direction and control of the University through its officials or designates for the purpose of a specific project or purpose;
 - (iii) works whose authorship cannot be attributed to one or a discreet number of authors despite the application of processes prescribed under these rules;
 - (iv) works whose authorship cannot be attributed to one or a discreet number of authors because it is the result of simultaneous or sequential contributions over time by multiple authors;
 - (v) works created through substantial use of University resources such as libraries, research facilities, buildings, utilities, equipment, tools and apparatus, including services of its employees working within the scope of their activities not for University purposes but for the personal gain or advantage of the faculty, research staff or student involved. There is a presumption of substantial use of University resources if the work has in any way been done during official work hours or within the premises of the University and is related to unauthorized outside teaching or the practice of profession without the requisite permission.

- (3) Disclosure and Assignment -- In cases of institutional works, creators shall disclose their existence and assign copyright over the work



to the University in accordance with these rules and the implementing rules that may be promulgated by the University Intellectual Property Office (UIPO) as approved by the Administrative Council (AdCo) and confirmed by the Board of Regents.

(4) Waiver of Copyright Ownership by the University –

(a) In case of institutional works and works in joint ownership with the University, the University through its designated officials, may waive copyright in favor of the creator if all the following conditions are met:

(i) the waiver would enhance the transfer of technology or improve the access of the works by the public in general;

(ii) the waiver does not violate any existing contractual obligation to third parties; and

(iii) the participation of the University in the work is acknowledged by the creator in all publications of the work, whether local or international.

(b) If the University is unable or has not decided to publish or exhibit the works within one year from its disclosure, its copyright is automatically waived in favor of the creator. The one-year period may also be waived by the University at the request of the creator if the work is to be published in a reputable international or local journal relevant to the academic discipline to which the work belongs. The contribution of the University shall be duly acknowledged in all publications or exhibitions of the work.

(5) Collaborative Works Among Institutions -- Absent any contractual stipulation to the contrary, if the work is the result of collaborative efforts between the University, an outside entity and the creator/s, the copyright shall be jointly owned by the University, the creators and the outside entity.

(6) Determination of Authorship in Cases of Contributed Efforts –

(a) In the case of works resulting from the contribution of efforts coming from different persons, authorship, whether sole or collaborative, shall be determined as follows:



- (i) by stipulation in the research contract;
 - (ii) by application of the rules for joint, primary and sole authorship as determined by a publication for which the work was intended;
 - (iii) through alternative modes of dispute processing including mediation and arbitration to be facilitated by the UIPO.
- (b) Only in the event of failure of any of these modes of dispute resolution may a conflict pertaining to the authorship or copyright of a work be referred for legal action.

ARTICLE 5 PATENTS

- (1) Inventions covered -- all inventions which may be or may relate to a product, process, or an improvement of any of the foregoing, that is new, involves an inventive step, is industrially applicable and potentially patentable, including utility models and industrial designs referred to in these guidelines as inventions shall be covered by these rules on patent.
- (2) Right to Patent -- except as otherwise provided in these rules, rights to patents shall belong to the inventor/s.
- (3) University Ownership of Patent – The University shall own all patents to commissioned invention.
Commissioned inventions are:
- (a) inventions that are supported by a specific allocation of University funds or use of other University resources;
 - (b) inventions produced at the direction and control of the university in pursuit of a specific project or purpose regardless of the source of funding;
 - (c) works whose inventorship could not be attributed to one or a discreet number of inventors despite the application of processes provided in these rules;



(d) those that may be stipulated by contract as commissioned inventions.

(4) Disclosure and Assignment -- Creators of commissioned inventions should disclose and assign the patent to these works to the university in accordance with these rules and the implementing guidelines which may be promulgated by the UIPO Board as approved by ADCO and confirmed by the Board of Regents.

(5) Inventions Funded by Outside Entities

(a) In the event that the funding for the research and creation of the invention is sourced by the University, wholly or partially, from outside entities, the University shall negotiate with the funding entity with respect to the ownership of the invention, patent rights and royalty sharing subject to confirmation by the Board of Regents. The agreement shall bind all parties including the inventors.

(b) In default of a negotiated agreement, all patents to inventions where the research funds were sourced from or by the university shall be owned by the University.

(6) Required Assignment of Patent to the University---Regardless of the source of funding, patents to the following inventions shall be assigned to the University:

(a) those conceived or first reduced to practice by employees, faculty or students in the University in the course of the performance of their duties;

(b) those created through substantial use of University resources such as libraries, research facilities, buildings, utilities, equipment, tools and apparatus, including services of its employees working within the scope of their employment.

(c) those resulting from thesis and dissertations, prototypes, proofs of concept or similar work submitted to the University in compliance with academic requirements by students. All expenses which the students may have incurred in connection



with these shall be reimbursed to the students concerned in the event the said dissertations, prototypes, etc. are commercialized.

(7) Waiver by University of Rights to Patent

(a) in the absence of existing contractual obligations to third parties, the University may release patent rights to inventors if all the following conditions are met--

(i) the University elects not to file a patent application and the inventor is prepared to do so. It shall be presumed that the university elects not to file a patent application if no application is filed one year after the disclosure of the invention or from the time the University is reasonably presumed to have known of its existence;

(ii) the waiver would facilitate the transfer of technology or its access to the general public; and

(iii) the equity of the situation clearly indicates that such release should be given.

(b) No waiver shall be given unless there is a written commitment that no further development of the invention shall be made involving the financial support or resources of the University. Nor shall any waiver be made in violation of any contractual obligation of the University.

(8) Collaborative Efforts between Institutions -- If the works is the result of collaborative efforts of the University, an outside entity and the creator/s, the copyright shall belong in joint ownership among the University, the creator/s and the outside entity.

(9) Inventions as a Result of Collaborative Efforts

(a) The identification of inventorship, whether sole, primary or joint, shall be determined as follows:

(i) by contractual stipulation;

(ii) by application of the rules and standards of a publication primarily intended by the collaborative effort;



- (iii) by alternative modes of dispute processing including mediation and arbitration. to be facilitated by the UIPO.
- (b) Only in the event of failure of any of these modes of dispute resolution may a conflict pertaining to the inventorship or patent rights to an invention referred for legal action.

ARTICLE 6

PLANT VARIETY PROTECTION

- (1) Plant Variety Protection Covered –plant variety protected should be new, distinct, uniform and stable as defined in Republic Act No. 9168 otherwise known as the “Philippine Plant Variety Protection Act of 2002”.
 - (a) Newness – a variety shall be deemed new if the propagating or harvested material of the variety has not been sold, offered for sale or otherwise disposed of to others, by or with the consent of the breeder, for purpose of exploitation of the variety;
 - (b) Distinctness – a variety shall be deemed distinct if it is clearly distinguishable from any commonly known variety;
 - (c) Uniformity – the variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics;
 - (d) Stability – the variety shall be deemed stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.
- (2) Right to Plant Variety Protection -- except as otherwise provided in these rules, rights to plant variety protection shall belong to the breeder/s.
- (3) University Ownership of Plant Variety Protection – The University shall own all plant varieties bred, or discovered and developed in the University thru commissioned research. Developed varieties thru commissioned researches are:



- (a) plant varieties that are supported by a specific allocation of University funds or use of other University resources;
- (b) plant varieties produced at the direction and control of the university in pursuit of a specific project or purpose regardless of the source of funding;
- (c) those that may be stipulated by contract as commissioned research.

(4) Disclosure and Assignment – Breeders of commissioned research should disclose and assign the variety protection to the university in accordance with these rules and the implementing guidelines which may be promulgated by the UIPO as approved by ADCO and confirmed by the Board of Regents.

(5) Development of New Plant Varieties Funded by Outside Entities

- (a) In the event that the funding for the research and creation of the new plant variety is sourced by the University, wholly or partially, from outside entities, the University shall negotiate with the funding entity with respect to the ownership of the plant variety and royalty sharing subject to confirmation by the Board of Regents. The agreement shall bind all parties including the breeders.

In default of a negotiated agreement, all developed new plant varieties where the research funds were sourced from or by the University shall be owned by the University.

(6) Required Assignment of Plant Variety Protection to the University--- Regardless of the source of funding, Certificate of Plant Variety Protection shall be assigned to the University:

(7) Waiver by University of Rights to Plant Variety Protection

- (a) in the absence of existing contractual obligations to third parties, the University may release plant variety protection rights to breeders/developers if all the following conditions are met--

- (i) the University elects not to file a plant variety protection and the breeder is prepared to do so. It shall be presumed that



the University elects not to file a plant variety protection if no application is filed one year after the disclosure of the developed new plant variety or from the time the University is reasonably presumed to have known of its existence;

(ii) the waiver would facilitate the transfer of technology or its access to the general public; and

(iii) the equity of the situation clearly indicates that such release should be given.

(b) No waiver shall be given unless there is a written commitment that no further development of the plant variety shall be made involving the financial support or resources of the University. Nor shall any waiver be made in violation of any contractual obligation of the University.

(8) Collaborative Efforts between Institutions/Private Sector -- If the works is the result of collaborative efforts of the University, an outside entity and the creator/s, the new plant variety shall belong in joint ownership among the University, the breeder/s and the outside entity.

(9) New Plant Varieties as a Result of Collaborative Efforts

(a) The identification of a plant breeder/developer, whether sole, primary or joint, shall be determined as follows:

(i) by contractual stipulation;

(ii) by application of the rules and standards of a publication primarily intended by the collaborative effort;

(iii) by alternative modes of dispute processing including mediation and arbitration. to be facilitated by the UIPO.

(b) Only in the event of failure of any of these modes of dispute resolution may a conflict pertaining to the plant variety protection referred for legal action.

(10) Germplasm may be provided by MMSU to interested parties, provided the transfer of the said germplasm is covered by a material transfer agreement.



ARTICLE 7 OTHER INTELLECTUAL PROPERTY RIGHTS

- (1) Trade and Service Marks -- Trade and service marks are distinctive words or graphic symbols identifying the sources, product, producer, or distributor of goods or services. The University shall own trade or service marks relating to goods or services distributed by the University. These include names and symbols used by the University in conjunction with its computer programs or University activities and events.
- (2) Proprietary Information -- proprietary information which includes information arising from work within the University. These also include processes which may fall under the concept of “trade secrets”.
 - (a) Proprietary information such as proposed terms of research agreements including their financial agreements shall be covered by existing rules relating to the constitutional duty of a state university to public disclosure;
 - (b) Research information and processes used for academic purposes shall be presumptively considered part of the public domain and shall not be considered as “trade secrets”, except when any one of the following is present –
 - (i) The protection is necessary in order to pursue an academic research project to its completion;
 - (ii) The information being protected is necessary in order to protect intellectual property rights of the University to an invention;
 - (iii) Upon the determination of the UIPO Board, circumstances are such that well defined interests of the general public will better be protected by temporarily claiming legal protection of research processes as “trade secrets”.
 - (c) Tangible Research Property (TRP) or research results which are in a tangible form (i.e. integrated circuit chips, computer software, biological organisms, engineering prototypes) which can not be the subject of any other kind of intellectual property protection are presumptively owned by the University. In no case shall biological material in any form be the subject of patents or any form of acquisition.



ARTICLE 8 COMMON PROVISIONS

(1) Waivers and Authorities

- (a) Except in cases of failure to publish or failure to file an application for a patent, all waivers of ownership of intellectual property rights shall be confirmed by the Board of Regents upon recommendation by the President of the University. The President of the University is authorized to delegate her/his responsibilities to any of her/his Vice Presidents based on her/his own judgment of what will be efficient and effective for a given constituent university.
- (b) The President shall periodically report to the Board of Regents intellectual property rights owned by the University which are impliedly waived immediately upon their discovery.

(2) Royalties

- (a) In the absence of contractual stipulations to the contrary, royalties derived from copyrights, patents and other intellectual property rights of the University shall be shared as follows:
 - (i) Thirty percent of net income shall be given to the University;
 - (ii) Thirty percent of the net income shall be given to the project to which the author or inventor belongs. The share shall be used for the improvement of the project; and
 - (iii) Forty percent of net income shall be given to the author/s or inventor/s. Joint authors or inventors shall share equally from this portion. Collaborating authors or inventors shall share in accordance with the determination of their participation in the authorship or invention as prescribed under these rules.
- (b) Net income shall mean gross royalty income less applicable taxes. All other expenses such as administrative costs, filing fees, costs relating to the production, distribution, advertising, maintenance and similar expenses of the work or invention shall be for the



account of the University and shall be taken from its share in the royalty income.

(c) When the University undertake the commercialization of the work, royalty income shall be 10% of the gross sales.

(3) Use of copyright, patents and other intellectual property rights of the University – Pursuant to its public function, the University shall not enter into exclusive licensing arrangements, nor shall the University enter into any kind of contractual arrangement that would deter the public in general from having reasonable access to the works or inventions. However, if it is necessary to immediately disseminate the new variety or intellectual property work for the benefit of its clientele, MMSU may enter into exclusive licensing agreements with the private sector, provided the exclusive licensing agreement is done with transparency and competitiveness through a public bidding and will also bring about lower prices of seeds of the new variety or work.

(4) University contracts –

(a) All contracts for research, regardless of source of funding, should provide for the means for determination of authorship in accordance with these rules.

(b) No allocation of research funds from the university shall be made in cases of works to be produced by collaborative efforts until and unless the provisions for ownership of intellectual property rights and ownership of resulting tangible materials, including processes for settling disputes on authorship or inventorships, shall be clearly provided in a contract.

ARTICLE 9

UNIVERSITY INTELLECTUAL PROPERTY OFFICE

(1) Creation of an University Intellectual Property Office (UIPO) -- To implement these rules, an University IP Office shall be set-up under the Office of the Vice President of Research, Extension and Business Affairs to spearhead the information dissemination of IP policy, technology licensing activities, plant variety protection and other related IP activities of the university.



The UIPO shall be set-up as precursor of a full- fledged Technology Licensing Office. The Unit shall undertake the following functions:

(2) Functions of the UIPO -- The UIPO shall have the following functions:

- (a) To implement this policy and to ensure compliance therewith by all University personnel and third parties;
- (b) To promulgate rules and regulations and devise forms to effectively and efficiently implement these policies;
- (c) Evaluate and screen copyrightable works, patentable and commerciable technologies, and plant varieties developed by the University needing protection;
- (d) Supervise the disclosure of works created and inventions conceived or first reduced to practice by all university personnel;
- (e) Facilitate the execution of agreements, affidavits, applications, complaints and other documents relating to works and inventions necessary to facilitate the University's intellectual property rights;
- (f) Coordinate with the appropriate legal office of the university with respect to requests for the filing of cases to ensure the University's intellectual property rights;
- (g) Monitor the progress of royalty payments;
- (h) Certify disagreements to the appropriate office of the university that may arise from royalty distribution or sharing in accordance with the provisions of these guidelines;
- (i) Undertake activities such as workshops and symposia to familiarize personnel with these guidelines as well as to continually solicit feedback on its directions and implementation;
- (j) Maintain database on IPR applications, patents and copyrights obtained and technology transfer transactions completed by the University; and
- (k) Other tasks, such as publications, marketing, production, distribution, filing patent applications, evaluation of disclosures needed may be outsourced by the UIPO upon the approval of the President.

(3) Composition of the UIPO - The IPO office shall be headed by a chief and a licensing coordinator. A UIP Board shall be created to act as Technical Committee to evaluate and screen copyrightable works, patentable and commerciable technologies, and plant varieties developed by the University needing protection; help determine and recommend appropriate measures and means to manage intellectual property and proprietary information; and to assist in handling settlement



of conflicts involving intellectual property and proprietary information. This will be composed of the following:

- Chairman: VP for Research, Extension and Agribusiness
- Co-Chair: Chief, IPO
- Members: (for research related IPR's)
 - Director for Research
 - Dean/ Head of Unit of applicant
 - Ad hoc technical member
 - Legal Officer
- (For instructional materials)
 - Dean for Instruction
 - Dean/ Head of Unit of applicant
 - Chief, DEIMO
 - Legal Officer

(4) Relation to Other System Units

(a) The Office of Legal Services of university shall have sole jurisdiction to prosecute and defend actions relating to the University's intellectual property rights. Legal interpretations of the University General Counsel of constitutional, statutory and university regulations shall be binding on the university unless overturned by the President of the University or the Board of Regents.

(6) Relation to Constituent Universities- The UIPO serves as an assisting and coordinating unit on matters relating to intellectual property protection.

**ARTICLE 10
ADDITIONAL PENALTIES**

Aside from penalties which may arise from the violation of any other law or University policy or guideline, any persons found to have violated any of the provisions of these guidelines shall suffer the following penalties --

- (1) Ineligibility for research grants from the university or any of its affiliated foundations for a period not to exceed five years;
- (2) Automatic removal of research load credits and ineligibility to receive these benefits for a period not to exceed five years;



- (3) Removal from any university administrative position and disqualification for any administrative position for a period not exceeding five years;
- (4) Ineligibility for outside teaching activities of the privilege to practice profession for a period not exceeding five years.

ARTICLE 11 Amendments

- (1) The UIPO upon recommendation to, and approval of the University President, may as it is necessary, amend, revise, and/or add to these implementing rules and regulations in order to fully implement the intent of the intellectual property rights.

ARTICLE 12 REPEALING CLAUSE

All other University policies inconsistent with these guidelines are repealed accordingly.

ARTICLE 13 EFFECTIVITY

- (1) Conditions for Effectivity -- These guidelines shall take effect after
 - (a) an extensive information and education campaign to be led by the UIPO coordinating with the various units of the university which shall commence upon the approval of these guidelines by the Board of Regents;
 - (b) the publication of these guidelines
 - (i) on the web page of the Mariano Marcos State University
 - (ii) on the University Newsletter; and
 - (iii) on monographs/flyers

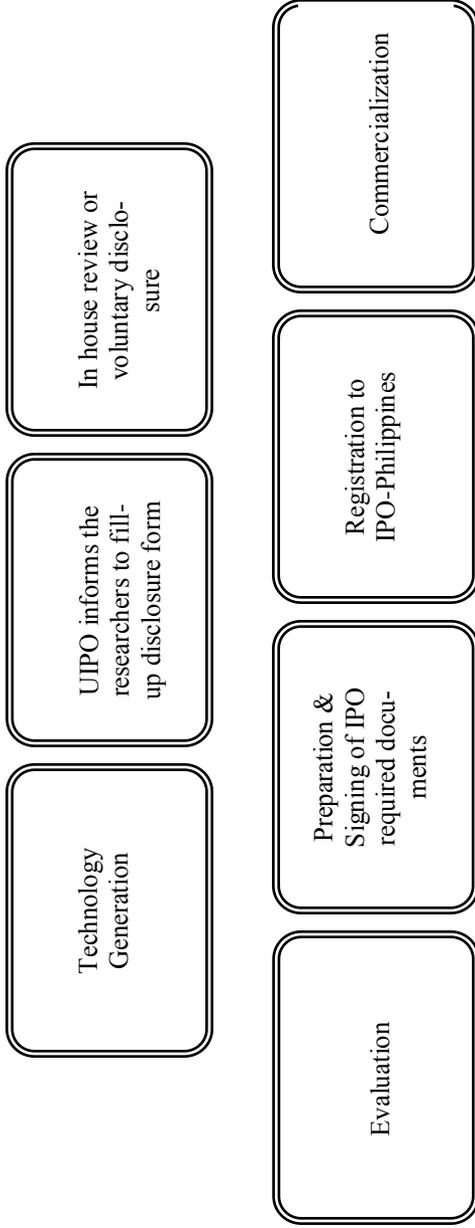


- (2) Effectivity -- The University administration shall endeavor to make these guidelines effective upon the approval of the MMSU Board of Regents and 30 days after its publication in the University website.

Approved by the MMSU Board (MMSU Board Resolution No. 944 Series of 2008) during its 80th Board Meeting, CHED Central Office, Pasig City on March 17, 2008.



General Process Flow of R & D Generated Technology IP Protection



Evaluation
Time table: University Intellectual Property Board (UIPB) evaluation is twice a year (February & July) or as need arises.

Preparation of IP Documents
UIPB recommends to the University President the filing of Patent, then informs the researcher(s) to fill-up IP required documents.
In charge: researcher(s), legal officer and licensing coordinator
Time table: at most two months

Registration to IPO, Philippines
In charge: UIPO, Chief

Commercialization
In charge: Ad Hoc Committee & Researcher(s)



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Intellectual Property Office (IPO)
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