

LOUISIANA STATE UNIVERSITY

AGRICULTURAL CENTER

Effective Date: August 25, 2004

AG CENTER PS-22
Version: 2

INTELLECTUAL PROPERTY AND DISTRIBUTION OF ROYALTIES

Purpose

This policy replaces and supersedes the previous Ag Center PS-22 Version 1.

The primary purpose of this Policy revision is to modernize the distribution of royalties, particularly those attributable to Plant Patents and Plant Variety Protection Certificates. Under PS-22, Version 1, plant breeders generally received a lower percentage of royalties than did other inventors. This revised Version 2 of PS-22 allocates to all developers of a plant variety the same percentage of Distributable Royalties as is allocated to inventors of utility patents, while recognizing that the “developers” who contribute to the development of a plant variety, and who therefore receive a percentage of Distributable Royalties, will usually include persons in addition to those who are “officially” named as the breeder(s) or inventor(s) of the variety under applicable legal standards.

This policy delineates the LSU Agricultural Center’s disbursement of Distributable Royalties under Part II, Chapter VII of the By-Laws and Regulations of the LSU Board of Supervisors, and Permanent Memorandum 64.

Definitions

All definitions appearing in Part II, Chapter VII of the By-Laws and Regulations of the LSU Board of Supervisors, as amended from time to time, shall apply to this PS-22.

Sales of Foundation Seed by LSU, other sales of agricultural products by LSU, and any related or similar income shall not be considered to give rise to any Distributable Royalties.

Unless otherwise clearly indicated by context, the term “inventor” shall be construed to include an inventor of a utility patent, an inventor of licensed know how, an inventor or discoverer of a plant patent, or a breeder of a plant variety protection certificate. The term “inventor” shall not be construed to include other developers.

The “developers” of a plant variety that is the subject of a pending or issued plant patent or plant variety protection certificate shall include, in addition to “officially” named breeder(s) or inventor(s) or discoverer(s) of the variety, also such other LSU personnel determined by the Director to have contributed to the development of the variety, as set forth below. Such additional “developers” shall be determined only in the case of a plant patent or plant variety protection certificate, and not in the case of a utility patent.

The “Director” shall mean the Vice Chancellor and Director of the Louisiana Agricultural Experiment Station and/or the Louisiana Cooperative Extension Service.

A “plant patent” shall mean a plant patent within the contemplation of 35 U.S.C. §§ 161-164, or equivalent rights in other countries. Unless otherwise clearly indicated by context, the term “plant patent” shall also be understood to include a plant patent application.

A “utility patent” shall mean a patent within the contemplation of Title 35 of the United States Code, other than a plant patent, regardless of the subject matter of the patent; or equivalent rights in other countries. Unless otherwise clearly indicated by context, the term “utility patent” shall also be understood to include a utility patent application.

A “plant variety protection certificate” shall mean a plant variety protection certificate within the contemplation of Chapter 57 of Title 7 of the United States Code, or equivalent rights in other countries. Unless otherwise clearly indicated by context, the term “plant variety protection certificate” shall also be understood to include a plant variety protection application.

Basic Rule

Chapter VII of the Bylaws and PM-64 state that Forty Percent (40%) of all Distributable Royalties shall be paid to the respective inventor(s) (with equitable allocation to other developers as determined by the Director in the case of Plant Variety Protection Certificates or Plant Patents), Ten Percent (10%) to the Office of the President, and Fifty Percent (50%) shall be allocated within the appropriate campus as directed by the Chancellor.

Administrative Philosophy

The primary purpose for the LSU Agricultural Center’s obtaining utility patents, plant patents, and plant variety protection certificates is to exercise control over the protected intellectual property rights, to permit agreements intended to enhance the chances that the intellectual property will be further developed and made available in the marketplace for the benefit of agriculture and economic development, in Louisiana particularly, and the rest of the United States generally. Some technical developments generated by LSU Agricultural Center scientists will continue to be directly transferred to producers or other users, particularly where a third party is not required to commercialize and market a technology.

A secondary purpose for obtaining utility patents, plant patents and plant variety protection certificates is to attempt to realize revenue that can be used to further support the research and extension programs that generated the protected technology and to appropriately reward the inventor(s) or developer(s). The LSU Agricultural Center recognizes that these revenues may not be a major source of total program support relative to state, federal, and extramural funding; however, selected technologies may nevertheless provide a significant source of support for the specific programs generating the intellectual property. The LSU Agricultural Center also recognizes that technology development is dependent on the existence of the total research/extension infrastructure: collaborating scientists and staff, facilities, and equipment. Thus, provision is made for a portion of any revenues received to be reinvested in support of that research and extension infrastructure.

The LSU Agricultural Center also recognizes that developers other than “officially” named breeders and developers play an important role in the development of new varieties, and that provision should therefore be made for the equitable sharing of the inventors’ portion of Distributable Royalties with such individuals.

General Policy

Disbursement of Distributable Royalties Assigned to Campus

Chapter VII of the By-Laws and PM-64 provides that Fifty Percent (50%) of Distributable Royalties shall be allocated within the appropriate campus as directed by the Chancellor. The following allocation of the campus’ portion of Distributable Royalties shall be made within the LSU Agricultural Center:

- 1) Ten Percent (10%) of Distributable Royalties shall be retained by the Office of the Chancellor, to be used for the general support of programs within the LSU Agricultural Center.
- 2) Twenty-five Percent (25%) of Distributable Royalties shall be retained by the appropriate Vice Chancellor for the administrative area to which the inventor(s) report(s). These funds are to be used at the discretion of that Vice Chancellor to cover legal fees for patenting and licensing of inventions and, if funds remain, for research, technology transfer, or other projects or programs under the direction of that Vice Chancellor.
- 3) Fifteen Percent (15%) of Distributable Royalties are to be distributed to the department, research station, or administrative unit to which the inventor(s) report(s). These funds are to be used to support research , technology transfer, or

other programs in that unit, subject to the approval of the Chancellor and the appropriate Vice Chancellor or Director.

Disbursement of Distributable Royalties to Inventors and Developers

Forty Percent (40%) of Distributable Royalties attributable to one or more utility patents shall be paid to the respective inventor(s). Where there is more than one inventor, the allocation between the different inventors shall be made in accordance with Chapter VII of the By-Laws and PM-64.

Where particular Distributable Royalties are attributable to one or more plant variety protection certificates or plant patents, the following procedures shall apply: The Director shall determine equitably, in light of all pertinent facts, the names of all LSU personnel who should be treated as developers of the particular variety or varieties. The Director shall also determine equitably, in light of all pertinent facts, the relative proportions in which the different developers should share in Distributable Royalties. The Director’s determination of these names and proportions shall be made in writing. The developers, as a group, shall then be entitled to receive a total of Forty Percent (40%) of Distributable Royalties attributable to the affected plant variety protection certificates or plant patents, in the proportions determined by the Director.

Where particular Distributable Royalties are attributable both to one or more utility patents, on the one hand, and to one or more plant variety protection certificates or plant patents, on the other hand, the following procedures shall apply: If the license or other source of Distributable Royalties clearly allocates the Distributable Royalties between these two categories, then that allocation shall govern. Otherwise, the Director shall determine equitably, in light

of all pertinent facts, a fair allocation of Distributable Royalties between the two categories. The Director's determination of this allocation shall be made in writing. The portion allocated to utility patents shall then be distributed as otherwise described above for utility patents; and the portion allocated to plant patents or plant variety protection certificates shall then be distributed as otherwise described above for plant patents and plant variety protection certificates.

A written determination by the Director as to the allocation of Distributable Royalties among developers, or among developers and inventors, may be appealed by an affected individual by submitting a written request for reconsideration to the Director within thirty days of the Director's initial determination. Copies of the written request shall be contemporaneously delivered to all individuals who would be adversely affected by the requested modification. If no written request for reconsideration is submitted within thirty days, the Director's initial determination shall become final and unappealable. If a written request for reconsideration is timely submitted, the Director shall make a second determination of an equitable allocation in writing, taking into account all pertinent facts. The Director's second determination shall be final and unappealable.

Use of Inventor's or Developer's Share of Distributable Royalties

Inventors or developers who are entitled to a portion of Distributable Royalties may, on written request, have all or part of their portion of those Distributable Royalties retained by the LSU Agricultural Center to support research or extension activities or work under their direction. Individuals considering this possibility are encouraged to confer in advance with their personal tax

advisors concerning potential tax consequences.

Effective Date

The Effective Date of this Revision 2 of PS-22 is September 1, 2004. This Revision 2 shall not have any retroactive effect prior to the Effective Date. This Revision 2 of PS-22 shall apply to all Distributable Royalties received by the LSU Agricultural Center on account of licenses or other agreements that are executed by LSU on or after the Effective Date. This Revision 2 shall not apply to Distributable Royalties resulting from agreements that were executed by LSU prior to the Effective Date, regardless of whether resulting Distributable Royalties may be received after the Effective Date. Nor shall this Revision 2 apply to an agreement that was executed by LSU prior to the Effective Date, but that is amended on or after the Effective Date; for purposes of PS-22 such an agreement, as amended, shall continue to be treated as an agreement that was executed before the Effective Date. Furthermore, this Revision 2 of PS-22 shall have no effect in a situation where, prior to the Effective Date, LSU had entered into a written agreement with an inventor, breeder, or other developer concerning the allocation of Distributable Royalties; in such a case, the allocation provided by the written agreement shall govern, rather than the policies of this Revision 2 of PS-22.