

## Translation



The following policy document, issued by the PRC Ministry of Education in 2020, encourages Chinese universities to focus on improving the quality, rather than quantity, of their patents. The document eliminates subsidies for patent applications, bars universities from using professors' and departments' numbers of patent applications as a metric in performance evaluations, and bans ranking of universities by their number of patent applications.

### Title

Certain Opinions of the Ministry of Education, the China National Intellectual Property Administration, and the Ministry of Science and Technology on Improving the Quality of Patents at Institutes of Higher Education and Promoting [Patent] Conversion and Use  
教育部 国家知识产权局 科技部 关于提升高等学校专利质量 促进转化运用的若干意见

### Author

The Ministry of Education (教育部), the China National Intellectual Property Administration (国家知识产权局), and the Ministry of Science and Technology (MOST; 科技部)

### Source

Ministry of Education website. The Opinions are dated February 3, 2020 and were uploaded to the website on February 19, 2020.

The Chinese source text is available online at:

[http://www.moe.gov.cn/srcsite/A16/s7062/202002/t20200221\\_422861.html](http://www.moe.gov.cn/srcsite/A16/s7062/202002/t20200221_422861.html)

An archived version of the Chinese source text is available online at: <https://perma.cc/5574-JWHZ>  
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### Translator

Etcetera Language Group, Inc.

### Editor

Ben Murphy, CSET Translation Lead

To the education departments (commissions), intellectual property bureaus (intellectual property administrative departments), and science and technology departments (commissions and bureaus) of all provinces, autonomous regions, and province-level municipalities; the Education Bureau, Intellectual Property Bureau, and Science and Technology Bureau of the Xinjiang Production and Construction Corps; the education departments (bureaus), intellectual property management agencies, and science and technology departments of the relevant ministries (units); all institutes of higher education affiliated with relevant ministries, and all institutes of higher education jointly established by the Ministry of Education and the people's governments of all provinces, autonomous regions, and province-level municipalities:

Since the promulgation and implementation of the *Outline of the National Intellectual Property Strategy*, intellectual property creation, use, and management levels on the part of institutes of higher education ("universities") have risen constantly, and the numbers of patent applications and approvals have increased greatly. Compared to high-level universities abroad, however, Chinese universities still have such problems as "emphasizing quantity over quality" and "emphasizing applications over implementation." In order to improve the quality of university patents across the board, strengthen the creation, use and management of high-value patents, and make better use of the important role of universities in serving economic and social development, we hereby put forward the following opinions.

## **I. Overall Requirements**

### **(1) Guiding Ideology**

Guided by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, thoroughly implementing the spirit of the 19th Party Congress and the Second, Third, and Fourth Plenums of the 19th Chinese Communist Party (CCP) Central Committee, and putting into effect the arrangements of the National Education Conference, we shall insist on the new development concept (新发展理念) and adhere to high-quality development as the main line, deeply implement the innovation-driven development strategy and the intellectual property (IP) powerhouse (知识产权强国) strategy, comprehensively raise the patent creation quality, use, and management levels of universities and their service capabilities, and push for new progress in scientific and technological (S&T) innovation and academic discipline construction, so as to support the construction of China as an education powerhouse (教育强国), S&T powerhouse (科技强国) and IP powerhouse.

### **(2) Basic Principles**

Insist on putting quality first. Firmly grasp the high-quality development requirements of IP, persist in putting quality first, home in on openings for breakthroughs, strengthen relevance, and have high quality permeate through the entire process of university IP creation, management, and use, from start to finish.

Give prominence to a conversion orientation. Establish the concept that the value of innovation can only be realized by converting university patents and other S&T achievements into practical applications, and that not converting them is the greatest loss; accentuate orientation toward conversion into applications, and force the optimization and improvement of university IP management work.

Strengthen policy guidance. Take full advantage of the important role that policies such as subsidies and awards, assessment and evaluation, etc., play in promoting

reform and guidance work; and establish and constantly refine various kinds of policies and measures conducive to improving patent quality and strengthening conversion and use.

### (3) Main objectives

By 2022, the whole-process management system for university IP, covering patent navigation and layout, patent application and maintenance, patent conversion and use, etc., will be further perfected, and organically integrated with the university S&T innovation system and the S&T achievement transfer and conversion system. By 2025, there will be clear improvement in the quality of university patents, patent operation capabilities will be significantly enhanced, and the patent approval and implementation rates of some universities will reach the levels of world-class universities.

## II. Key Tasks

### (1) Refining the IP management system

1. Improve overall IP planning and coordination mechanisms. Universities must establish IP management and operation leadership teams or S&T achievement transfer and conversion leadership teams, coordinate planning for S&T, IP, state-owned assets, personnel, achievement transfer and conversion, and libraries and other relevant institutions, actively implement *Intellectual Property Management for Institutes of Higher Education* (GB/T 33251-2016), and form overall planning and coordination mechanisms for the integration of S&T and IP management and S&T achievement transfer and conversion. Universities that have already established leadership teams for S&T achievement transfer and conversion must include IP management within the purview of such leadership teams.
2. Establish and improve the IP management process for major projects. Universities shall have IP management reflected in all phases of projects, from the selection, initiation, implementation, and conclusion of projects to the transfer and conversion of achievements. Centering around the S&T Innovation 2030 Major S&T Project and Key R&D Program (科技创新2030 重大科技项目、重点研发计划), explore establishing and improving patent navigation work mechanisms. Before project initiation, carry out analyses of patent and literature information, conduct IP risk assessment, and determine the research and technology roadmaps, so as to improve the starting point for R&D; during the project implementation process, track the dynamics of project R&D work, adjust the research direction and

technology roadmap as appropriate, and evaluate research achievements and form IP in a timely fashion; before project acceptance checks, it is necessary to adopt a conversion and application orientation, do a good job at laying out patents and protecting technical secrets, and develop a list of project achievement IP; and after project conclusion, strengthen patent use and implementation, and promote the transfer and conversion of achievements. Encourage universities to focus on strong and distinctive academic disciplines, strengthen the layout of IP in strategic emerging industries and industries related to the nation's major economic fields, and strengthen international patent applications.

3. Gradually establish disclosure systems for job-related S&T achievements. Universities should strengthen management and services for S&T innovation achievements at their source, and gradually establish and refine disclosure systems for job-related S&T achievements. Scientific research personnel should disclose job-related S&T achievements in a proactive and timely manner. Universities must raise awareness of the legal risks for scientific research personnel engaging in innovation and entrepreneurship, guide scientific research personnel in lawfully carrying out S&T achievement transfer and conversion activities, and effectively safeguard the legitimate rights and interests of universities. Without the permission of their unit, no one may engage in business startup activities, etc., using job-related S&T achievements. The disclosure of job-related S&T achievements that involve secrets shall strictly comply with secrecy protection regulations.

## (2) Carrying out assessment prior to patent application

4. Establish pre-patent application assessment systems. Universities capable of doing so must accelerate establishment of pre-patent application assessment systems, specify the assessment institutions and processes, the allocation of expenses and rewards, and other matters, and carry out assessment of technologies for which patent applications are proposed, in order to decide whether or not to apply for the patents, and effectively improve the quality of patent applications. Assessment work may be carried out by a university's own IP management department (technology transfer department) or by a contracted (委托) marketized institution. In the case of job-related S&T achievements that an assessment institution believes upon assessment to be unsuitable for patenting, where universities incur losses due to the abandonment of patenting, and the relevant responsible persons have performed their obligations of due diligence and made no unlawful

gains, such persons may be exempted, in accordance with laws and regulations, from their decision-making responsibility for the abandonment of patenting. For job-related S&T achievements formed from acceptance of projects commissioned by enterprises and other social organizations, the relevant contracting parties are permitted to agree independently whether or not to apply for patents.

5. Specify the apportionment of ownership and costs. Universities are permitted to carry out exploration of ownership reform regarding job-related inventions, and, in accordance with the principle of reciprocity of rights and obligations, make full use of methods such as ownership incentives and cost sharing, so as to promote patent quality improvement. Inventors shall not use government budget funding to pay patenting costs.

Following patent application assessment, in the case of job-related S&T achievements for which universities decide to apply for patents, inventors shall be encouraged to bear the patenting costs. Where universities and inventors split ownership, the inventors should bear patenting costs according to their ownership proportions. Where ownership is not split, it is necessary to specify the apportionment of patenting costs and the distribution of proceeds; where the university bears all of the patenting costs, the proceeds obtained from patent conversion shall be distributed according to the established ratio after deducting patenting and other costs; where the inventor bears all or part of the patenting costs, the patenting costs shall first be deducted from the proceeds from patent conversion, with double the amount of patent costs borne by the inventor to be deducted and returned to the inventor, and then [the remaining proceeds] shall be distributed according to the established ratio.

Following patent application assessment, for job-related S&T achievements that a university decides not to patent, the university must conclude written contracts with the inventors to transfer the patent application rights or patent rights in accordance with legal procedures, permitting the inventors to apply for patents on their own. After approval is obtained, the patent rights shall belong to the inventors, who shall bear the patenting costs, and the inventors will pay proceeds to the university, according to the agreed ratio, after deducting patent application fees, operation and maintenance fees, and other costs.

### (3) Strengthening construction of specialized institutions and talent teams

6. Strengthen construction of technology transfer and IP operation institutions. Support capable universities in establishing and improving specialized institutions that integrate technology transfer and IP management and operation, and provide assurance for personnel, space,

expenses, and other aspects. By means of platforms and pilot demonstrations such as "National IP Pilot and Demonstration Universities," "University S&T Achievement Conversion and Transfer Bases" and "University National Intellectual Property Information Service Centers," promote construction of technology transfer and IP management and operation systems, and continuously improve the S&T achievement transfer and conversion capabilities of universities. All universities shall be encouraged to explore marketized operation mechanisms, and fully mobilize the enthusiasm of professional institutions and talents.

Support construction of marketized IP operation institutions, and provide universities professional services in areas such as IPR, legal consultation, achievement evaluation, and project financing. Universities shall be encouraged to cooperate with third-party IP operation service platforms or institutions, and give third-party intermediary institutions service fees out of proceeds from the transfer and conversion of S&T achievements into practical applications. Universities shall be encouraged to join with local governments in establishing industry-oriented IP operation centers, focusing on the respective industrial planning layouts and university strengths of each locality.

7. Accelerate construction of specialized talent teams. Support universities in establishing technology transfer and IP operation-related courses, strengthening construction of IP-related majors and curricula, and combining recruitment and development to build professional IP management and technology transfer teams, so as to promote the construction of specialized talent teams. Universities shall be encouraged to form expert committees for S&T achievement transfer and conversion work, and recruit technology managers to participate throughout the entire S&T achievement transfer and conversion process, from university invention disclosure and value assessment to patent application and maintenance, and technology extension and matchmaking negotiations, so as to promote conversion and use of patents.
8. Establish IP management and operation funds. Support universities in utilizing school grants, local government awards, proceeds from S&T achievement transfer and conversion, and other routes to establish IP management and operation funds, which are to be used for commissioning third-party professional institutions to carry out patent navigation, patent layout, patent operation, and other IP management and operation tasks, as well as for constructing S&T transfer and conversion institutions, building talent teams, etc., thereby forming a virtuous circle in which conversion proceeds promote conversion.

#### (4) Optimizing policies and institutions

9. Refine the talent evaluation and hiring system. Universities must be oriented towards quality and conversion performance, attach greater importance to indicators such as patent quality and conversion into practical applications, resolutely put an end to simply taking the quantities of patents applied for and granted as the content for assessment in policies on job promotions, performance reviews, position appointments, project completion, talent evaluation, scholarship assessments, etc., and increase the relative weight given to performance on patent conversion and use. Support universities in independently establishing a series of technical and administrative-type positions for technology transfer and conversion, in accordance with regulations on job position establishment and management, and provide incentives for scientific research personnel and administrative staff to engage in S&T achievement transfer and conversion work.
10. Optimize patent funding and award policies. Universities must be oriented towards optimizing patent quality and promoting the transfer and conversion of S&T achievements. They must terminate subsidies and awards for patent applications, and greatly reduce and gradually eliminate awards for patent approvals. Awards may be granted to individual inventors or teams through post-subsidy methods such as increasing shares of proceeds from conversion.

### **III. Organization and Implementation**

(1) Refine work mechanisms. The Ministry of Education, the China National Intellectual Property Administration, and the Ministry of Science and Technology shall establish regular communication mechanisms, and study the patent application, approval, and conversion circumstances of universities in a timely fashion. All universities must deeply appreciate the importance of continuing to do a good job in patent quality improvement work, insist on putting quality first, actively promote inclusion of patent quality improvement work among their important agenda items, further raise the level of IP work, and promote the creation and use of IP. Reference can be made to these Opinions for the execution of other types of IP management work.

(2) Strengthen policy orientation. Take performance on S&T achievement transfer and conversion, such as patent conversion, as an important indicator for dynamically monitoring the construction of world-class universities and world-class curricula, and for evaluating effectiveness and assessing curricula, rather than simply assessing the number of patents, and give greater prominence to conversion into applications. Select

several universities to carry out development of specialized IP operation or technology transfer talent teams, and constantly improve IP operation and technology transfer capabilities. The China National Intellectual Property Administration shall strengthen examination of patent applications, and strictly control patent quality. Firmly resist rankings of universities by the numbers of patent applications or approvals, and oppose publication thereof.

(3) Implement monitoring of records. By the end of March of each year, universities shall perform record filing, through the China National Intellectual Property Administration system, on the patents for which conversion and implementation have been carried out, using licensing, transfer, exchange of technology for shares, joint ownership with enterprises, or other methods. Based on the record filing circumstances, the Ministry of Education and the China National Intellectual Property Administration shall publish the patent conversion and implementation circumstances of universities each year, and shall carry out monitoring of patent transaction circumstances. In accordance with *Certain Statutes on Regulating Patent Application Activities* (2017 Order No. 75 of the China National Intellectual Property Administration), abnormal patent application circumstances of universities will be monitored on a quarterly basis. For universities that have more than 5 abnormal patent applications per quarter or for which abnormal patent applications represent 5% of their total patent applications in the current year, the China National Intellectual Property Administration will cancel their eligibility to apply for China Patent Awards in the following year.

(4) Innovate in licensing models. Universities shall be encouraged to use ordinary licensing approaches to carry out patent implementation and conversion, so as to improve conversion efficiency. Innovation in licensing models by universities shall be encouraged. In the case of patents that fail to be implemented, without valid reasons, in the three years after patenting, their relevant licensing conditions can be determined and published through national IP operation-related platforms, and they may be opened to the public for licensing for a certain period.

Ministry of Education, China National Intellectual Property Administration, Ministry of  
Science and Technology

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