



Meeting F4E – EURATOM Associations



BARCELONA – 29TH April 2010

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Intellectual Property and Information Issues



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A. Management of IP in F4E contracts with associations

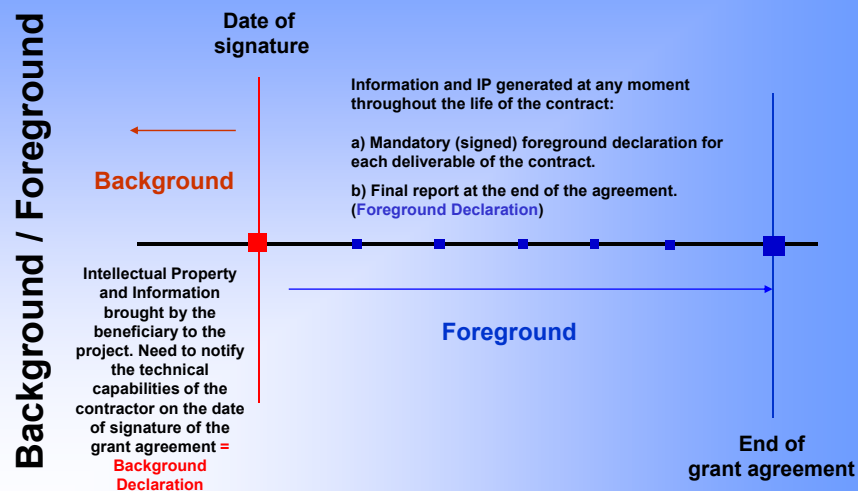


1. Applicable Legal Framework

- Euratom
- Association agreements
- Annex on Information and Intellectual Property of the ITER Agreement
- F4E's Decision (*Council Decision No. 2007/198/Euratom of 27 March 2007 establishing Fusion for Energy*).

2. What is Intellectual Property and Information?

- “**Intellectual property**” relates to literary, artistic and scientific works, performances of performing artists, phonograms, and broadcasts, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks, commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- “**Information**” shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in paragraph 1.





4. Background

- **Definition:** “[...] Shall mean intellectual property or information which is held by the beneficiary/contractor prior to the signature of the grant agreement/ contract or outside its scope and which is needed for the use of the foreground or for the use of the goods”
- **Ownership:** “[...] the beneficiary shall remain the exclusive owner of its background”
- **Background declaration:**
 - Needed to tell background from foreground
 - Needed to guarantee the rights (access rights & confidentiality) of the beneficiary
 - Need to be specific → Everything which is not background is foreground. (see explanation in section 9 of the Technical Specifications)
- **Late declaration of background:** When necessary in view of the circumstances. Need to justify why new background is to be included.



Background Declaration Form

Fusion for Energy Ref N°: _____ **APPENDIX 2** to the Grant Proposal Form

General Information **DECLARATION OF BACKGROUND**

Action Title:	
Action Type (Brief description of the grant)	
To-ordinator (Contact Person)	
Contractor (Full name of the company/association)	
Deliverables: (Please include a brief list with the items included in the background declaration)	

IMPORTANT NOTICE: The present form is to be used to report on the existing background. This document is not an assignment. It simply provides a disclosure of your background to Fusion for Energy and to any other beneficiaries. The regime for the treatment of background is established in Art. II.22 and II.23 of the Grant Agreement (Multiple Beneficiaries) / Art. II.20 and 21 (Single Beneficiary).

A printed copy of this annex will be attached as part of the agreement between the beneficiary and Fusion for Energy. Access rights, where applicable, will be based on the present declaration.

The beneficiary shall clearly identify their background as foreseen in Art. II.22 of the Grant Agreement (Multiple Beneficiaries) / Art. II.20 (Single Beneficiary). Background shall mean Intellectual Property or Information which is held by the Beneficiary prior to the signature of the Grant Agreement or outside its scope and which is needed for carrying out the Grant Agreement or for using the supplied goods.

I declare the information contained in this form is correct to the best of my knowledge.

Name: _____

Signature: _____

Date: _____

As appropriate, please respond to the queries in this form with brief comments and not simply state “yes” and “no”. Please feel free to provide additional comments if deemed necessary.

In case that no Background has been used for the implementation of this grant a declaration in this respect shall be included by the beneficiary in the box below

5. Foreground

- **Definition:** “Information and Intellectual Property whether or not protectable generated in the course of the execution of the present grant agreement including through subcontracting”
- **Ownership:** “*Foreground shall be the property of the beneficiary carrying out the work generating that foreground*”
- **Identification:** “*The beneficiary(ies) shall systematically and in due time notify to Fusion for Energy any creation of foreground*”
- **Reporting:** “[...]for each reporting period [...] the reporting shall comprise [...] a report on implementation of the plan for the use and dissemination of foreground”. Form D to the Grant Agreement (Anex VI): Foreground declaration

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Foreground Declaration Form

Action title:	
Action type (Brief description of the grant):	
Contact person	
Contractor (Full name of the company/association)	
Deliverables (Please include a brief list with the items included in the foreground declaration)	<ul style="list-style-type: none"> • • •
I, declare the information contained in this form is correct to the best of my knowledge.	<p>IMPORTANT NOTICE:</p> <p>Foreground refers to any Information and Intellectual Property <u>whether or not protectable</u> generated in the course of the execution of the Contract including subcontracting. The present form is to be used to report on the foreground produced as a result of the contract.</p> <p>A printed copy of this declaration shall be attached by the contractor/beneficiary to the progress reports and to the final report.</p>
Name :	<p>Further information and guidelines on how to fill in this format are provided in the last section of this annex.</p> <p>If needed, please add further pages to include any relevant IP.</p>
Signature and date:	<p>In case that no foreground has been generated, please include a statement in this respect in the box below and sign the form. In that case only the 1st page needs to be attached to the progress or final report</p>
Declaration:	

6. Progress and Final Reports:

- **Progress Reports:** Update on Intellectual Property Rights (Section 2.1.2 Management Specifications)
- **Final Report:** Final IPR declaration (Section 2.1.3 Management Specifications).

What's to be included in an IP report?:

Any development related to either background or foreground. The actions undertaken to protect IP assets, publications, licenses...

IP reports shall be self explanatory standalone documents. Cross references shall be avoided (with the exception of references to registered rights, such as patents). To ensure the confidentiality and the proper management of strategic IP information, the reports shall clearly identify any confidential information.

7. Publications policy

- In agreement with Fusion for Energy, beneficiary(ies) shall establish appropriate procedures to ensure that publication and dissemination activities are compatible with the tasks and activities of Fusion for Energy, the protection of Intellectual Property, confidentiality obligations, and legitimate interests of the owner of background and foreground.
- At least 45 days prior notice of any dissemination activity shall be given to the other beneficiary(ies) & F4E who may object within 30 days of the notification.
- Fusion public research in Europe (European Commission, Associations, F4E...) → Template for the permission to publish instead of "copyright" assignment to the publisher.

B. Access rights to Background/Foreground

1. Access to Background (F4E & Other beneficiaries):



Worldwide, non-exclusive, irrevocable license with the right to sublicense for any use	Royalty free for EFDA background
	Royalty free or under fair and reasonable conditions for non EFDA background

Other Beneficiaries

Royalty free without right to sublicense	If needed to carry out their own work
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Royalty free or under fair and reasonable conditions (to be decided in the Consortium Agreement)	If needed to use their own foreground
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2. Access to Background (ITER IO and other Das):



Registered IPR required to

- construct, operate, use or integrate technology for related ITER R&D
- maintain or repair an item
- when decided by the Council

Obligatory free licence with right to sublicense → Public Sponsored R&D



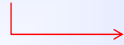
Background confidential information required to

- construct, operate, use or integrate technology for related ITER R&D
- maintain or repair an item
- safety, quality assurance, quality control, required by regulatory authorities
- when decided by the Council

Obligatory free licence to ITER IO for construction, operation, maintenance and repair



Background confidential information



- Best effort to grant commercial license or
- Provide the component under fair and reasonable conditions

3. Foreground (F4E & Other beneficiaries):



Worldwide, non-exclusive, irrevocable, royalty free license with the right to sublicense for any use

Other Beneficiaries

To be established by the members in accordance with the Consortium Agreement

4. Foreground (ITER IO & Other DAs):



Obligatory free licence with right to sublicense → Public Sponsored R&D



Commercial license → Fusion commercial use

Encouragement to grant Commercial licenses → Non-fusion commercial use

C. Fusion Intellectual Property Network

Purpose:



- To have a contact point for discussing Intellectual Property related matters associated with the ITER project.
- To harmonize practices between different associations and within the same associations (different contracts).
- To promote understanding about the concepts, needs and developments on IP related issues
- To clarify your doubts.
- To clarify our doubts.

What's next?:

- Identify relevant persons
- Organize a workshop in Barcelona in 2010 on IP related issues with a Q&A and, if applicable, a dissection of F4E's IP clauses and how they work.



Thank You:

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