

# Rules regarding remuneration for commercial exploitation of inventions made during employment at DTU

(In case of discrepancies between the Danish and the English version of these rules, the Danish version will apply.)

According to section 12 of the Danish Act on Inventions at Public Research Institutions (Lov om opfindelser ved offentlige forskningsinstitutioner) (Consolidated Act No. 210 of 17 March 2009), income for the institution obtained through a third party's commercial exploitation of inventions must be distributed between the inventor and the institution. The rules cover persons employed at DTU.

## If DTU takes over the rights to the invention

When DTU takes over the rights to an invention for the purpose of commercial exploitation and subsequently receives income from such exploitation, DTU must pay a reasonable remuneration to the inventor.

If the invention was made by several DTU employed inventors, the inventor's remuneration (the possible cash one-off payment and the share of net income or equity shares in a limited liability company) must be distributed according to the inventor shares between such inventors, unless another distribution has been decided by the Head of DTU Legal & Technology Transfer when DTU took over the rights to the invention or subsequently during the patenting process.

In case several inventions with different inventors are exploited commercially together, DTU may establish a specific remuneration model that safeguards all the involved inventors' interests in the best possible way based on the below-mentioned principles of distribution.

## Principles of distribution

When DTU takes over an invention for commercial exploitation, the net income from sale of patents and licenses will be distributed evenly with 1/3 of the income to the following parties: the inventor(s), the department at which the inventor was/is employed at the time the invention was made, and DTU's common pool.

If inventors from several departments are involved, the department share of 1/3 will be distributed among the departments corresponding to the inventor share of the individual departments.

In cases where two or more inventions are commercialised together, remuneration will be distributed only if and when the net income from the total portfolio of inventions forming part of the commercialisation agreement is positive. In this case the net income will be distributed evenly among the inventions in the portfolio.

## Net income

Net income is the income from licensing or sale of rights to the invention less the recognised, direct expenses in connection with e.g. (non-exhaustive):

- Assessment of the patentability of the invention
- Assessment of the commercialisation potential of the invention
- Fee for patent agents
- Fees and charges for patent authorities
- Expenses for defending and maintaining the patent
- Translation expenses
- Fee for external consultants
- Expenses for specific marketing, including travelling and accommodation expenses
- Expenses for special documentation and development tasks adopted by the Head of DTU Legal & Technology Transfer for the purpose of commercialisation
- Expenses for insurance and shipment of experimental material, if necessary as part of the patenting process or discussions about the exploitation.

If DTU receives net income and decides to pay remuneration before a patent grant and before completion of the

commercialisation, DTU is entitled to withhold an amount for payment of future expenses for patenting and commercialisation.

### **Remuneration in the form of equity shares**

If DTU's income is in the form of equity shares or options for acquisition of equity shares, see section 16 of the Act on Inventions at Public Research Institutions, a share of these will be transferred to the inventor if the inventor so desires, unless a transfer in the concrete case would be contrary to DTU's policy regarding employees' interest in private enterprises.

The inventor's share is fixed at a holding corresponding to 1/3 of the value of DTU's equity shares less direct expenses, see above. If the inventor opts to defer the payment until DTU realises its equity shares or if a transfer of equity shares would be contrary to DTU's policy, 1/3 of DTU's net proceeds will be paid to the inventor when DTU has received its proceeds in connection with the realisation of the equity shares.

If payment is received in the form of share acquisition options, the transfer to the inventor must be deferred until DTU exercises the options. In this case as well, the inventor's share will be 1/3 of the equity shares less the recognised direct expenses.

### **Cash one-off amount**

#### **PCT remuneration (in connection with Nol's received before 1.7.2018)**

DTU pays a cash remuneration of DKK 25,000 to be distributed among the inventor(s) if DTU files an international patent application under the PCT, provided that DTU is responsible for the patent process.

The cash remuneration will be paid to the inventor(s) who is/are still employed at DTU and receives salary from DTU at the time at which the international application (PCT application) is filed with the patent authorities.

The cash remuneration will be distributed according to inventor shares.

The cash remuneration will be deducted from potential sales or royalty income.

If DTU decides to abandon patenting but still wants to temporarily pursue the application with the sole purpose of publishing the application via the patent system, no remuneration is payable.

#### **Commercialisation remuneration (in connection with Nol's received between 1.7.2018 – 31.12.2018)**

DTU pays a cash remuneration of DKK 25,000 to the inventor(s) if the invention is commercialised, i.e. via license agreement, sales agreement or DTU ownership agreement with a spin-out.

The cash remuneration will be paid only to the inventor(s) who is/are still employed at and receives salary from DTU at the time at which the invention is commercialised, given that he/she supports the commercialisation process.

The cash remuneration will be distributed according to inventor shares.

The cash remuneration will be deducted from potential sales or royalty income.

The cash remuneration will not be paid in connection with commissioned research.

**There will be no remuneration for Nol's received on or after 1.1.2019.**

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## **If DTU does not take over the rights to the invention or DTU returns the rights to an invention**

In cases where DTU chooses not to take over the invention, the inventor is required by law to pay remuneration to DTU if he/she chooses to exploit the invention commercially. The same applies if DTU chooses to return an invention to the inventor at a later stage in order to allow the inventor to exploit his/her own invention commercially.

### **Payment to DTU**

DTU's remuneration according to the Act on Inventions at Public Research Institutions is fixed following negotiation with the inventor according to the following principles:

The payment to DTU, which can e.g. be a one-off payment, payment in instalments, per-item fees, regular license payments or equity shares or any combination thereof, must be fixed in accordance with normal market conditions in the area concerned, and correspond to 1/3 of the net income, see below.

If the inventor receives an income as a consequence of the inventor's commercial exploitation of the invention, e.g. through sale or licensing, the inventor must pay 1/3 of such net income to DTU. Net income is understood as revenue less direct expenses as mentioned above.

If the inventor leaves the commercial exploitation to a company wholly or partly owned by himself/herself, the inventor must ensure that such company takes over his/her payment obligation to DTU. This also applies to subsequent transfers or licensing between companies wholly or partly owned by the inventor.

The payment to DTU is distributed with 50% to the department at which the inventor was employed when he/she made the invention and 50% to the institution DTU. If inventors from several departments are involved, the department share will be distributed among the departments corresponding to the inventor share of the individual departments, unless otherwise agreed.

The inventor must regularly update DTU about matters that have an influence on payments to DTU.

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### **Deviations**

Under very special circumstances, the principles described for calculation of remuneration to the inventor and DTU, respectively, may be deviated from. A reasoned application for a deviation should be sent to the Head of DTU Legal & Technology Transfer who will obtain consent for any deviations from DTU's president and the inventors involved.

### **Students**

In cases where students, see section 2(4) of the Circular of the Danish Ministry of Education of 16 July 1973 concerning the use of students' work and their rights in relation thereto, are part of a research project and in this connection are the inventors of an invention, such students will receive the same remuneration as employees, see section 1(3) of the Circular. In each individual case an agreement must be concluded with the student regarding transfer of the right to inventions.

### **Tax**

DTU has no liability for any tax consequences in connection with remuneration in the form of equity shares, calculation of remuneration and times of payment of such. Therefore, the inventor is encouraged to consult his/her own professional advisers before making a decision on the concrete remuneration model he/she wishes to agree on with DTU.

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