

§ 650.7

traineeship program announcement and made part of the award:

INTELLECTUAL PROPERTY RIGHTS

The National Science Foundation claims no rights to any inventions or writings that might result from its fellowship or traineeship awards. However, fellows and trainees should be aware that the NSF, another Federal agency, or some private party may acquire such rights through other support for particular research. Also, fellows and trainees should note their obligation to include an Acknowledgment and Disclaimer in any publication.

§ 650.7 Awards affected by international agreements.

(a) Some NSF awards are made as part of international cooperative research programs. The agreements or treaties underlying many of these programs require an allocation of patent rights different from that provided by the Patent Rights clause in § 650.4(a). Therefore, as permitted by § 401.5(d) of the implementing regulations for the Bayh-Dole Act (37 CFR 401.5(d)), paragraph (b) of the standard Patent Rights clause in § 650.4(a) has been modified to provide that the Foundation may require the grantee to transfer to a foreign government or research performer such rights in any subject invention as are contemplated in the international agreement. The award instrument will identify the applicable agreement or treaty.

(b) After an invention is disclosed to the Patent Assistant, the recipient of an award subject to an international agreement will be informed as to what rights, if any, it must transfer to foreign participants. Recipients may also ask the Program Manager to provide them with copies of the identified international agreements before or after accepting an award.

§ 650.8 Retention of rights by inventor.

If an awardee elects not to retain rights to an invention, the inventor may request the NSF Patent Assistant for permission to retain principal patent rights. Such requests should be made as soon as possible after the awardee notifies the Patent Assistant that it does not want to patent the invention. Such requests will normally be granted unless either the awardee or

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the employer of the inventor shows that it would be harmed by that action. As required by § 401.9 of the implementing regulations for the Bayh-Dole Act (37 CFR 401.9), the inventor will be subject to the same conditions that the awardee would have been, except that the special restrictions imposed on nonprofit organizations will not apply to the inventor.

§ 650.9 Unwanted inventions.

(a) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication in scientific and engineering journals or as a statutory invention registration under section 157 of title 35 of the United States Code. Except as provided in paragraph (b) of this section, the NSF Patent Assistant will acknowledge a negative election by encouraging the awardee and inventor to promptly make all research results available to the scientific and engineering community.

(b) If the NSF Patent Assistant believes that another Federal agency is interested in the relevant technology, he or she may, after receiving the awardee's election not to patent and ascertaining that the inventor also does not want to patent, send a copy of the invention disclosure to that agency to give it an opportunity to review and patent the invention. Unless the agency expresses an interest in the invention within thirty days, the Patent Assistant will acknowledge the awardee's negative election by encouraging prompt publication of all research results. If the agency does express an interest in patenting the invention, the Patent Assistant will transfer to it all rights to the invention.

§ 650.10 Inventions also supported by another Federal Agency.

Section 401.13(a) of the implementing regulation for the Bayh-Dole Act (37 CFR 401.13(a)) provides that in the event that an invention is made under funding agreements of more than one federal agency, the agencies involved will, at the request of the grantee or contractor or on their own initiative, designate one agency to be responsible