



POSITION STATEMENT

INVENTION RIGHTS FOR EMPLOYEES

*Adopted by the IEEE-USA
Board of Directors, 20 Nov. 2009*

IEEE-USA recommends adoption of legislative standards clarifying invention rights for employees.

Pre-employment intellectual property assignment agreements, or other agreements with similar terms, and covenants constitute a material part of an employment offer, potentially equaling or exceeding monetary considerations in importance. When such terms and covenants are required, they are usually a precondition of employment. Under circumstances where such agreements do not sufficiently protect employees' rights to separate inventions unrelated to the scope of their employment, these agreements discourage employees from engaging in the type of creative and innovative activity that leads to inventions and advances in technology. These agreements also reduce those entrepreneurial activities that create a large share of new high quality jobs in the United States.

Therefore, IEEE-USA recommends enacting legislation to set a standard that would prevent an employer from demanding an assignment of rights in an employee's inventions unless it falls within the definition of "employment invention." An employment invention is an invention produced by an employee during the term of employment:

- as a result of his or her normal or specifically assigned duties;
- based on non-public information acquired from the employer; or
- where the employee is in a special position of trust with respect to the employer or hired in an R&D capacity to invent.

IEEE-USA also recognizes a need for an exception to be made in the case of an invention that is not an employment invention but was produced by the employee with a substantial use of the employer's time, materials, equipment, facilities or funds. In these instances, the employer may require the employee to grant the company a non-transferable, non-exclusive, royalty-free license to practice the invention in addition to whatever other remedies an employer may have from the unauthorized use of time, materials, equipment, facilities or funds.

This statement was developed by IEEE-USA's Intellectual Property Committee and represents the considered judgment of a group of U.S. IEEE members with expertise in the subject field. IEEE-USA advances the public good and promotes the careers and public policy interests of more than 210,000 engineers, scientists and allied professionals who are U.S. members of IEEE. The positions taken by IEEE-USA do not necessarily reflect the views of IEEE or its other organizational units.