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# **INNOVATION FUND PATENT INCENTIVE FUND for RESEARCH INSTITUTIONS (HIGHER EDUCATION INSTITUTIONS AND SCIENCE COUNCILS) Policy and Guidelines for Application**

## **BACKGROUND**

The National R&D Strategy, 2002 emphasises the need to increase the rate of patenting of inventions based on publicly financed research. Thus, there is an urgent need to increase the number of patent applications filed for, and patents granted, particularly for inventions arising out of publicly funded research. It is upon this background that the Patent Incentive Fund has been put in place by the Innovation Fund.

Thus, the purpose of the Incentive Fund is to encourage innovation and increase patenting activity by students and researchers at publicly funded research institutions (in particular Higher Education Institutions (HEI) and Statutory Science Councils (Science Councils)) by providing incentives to students and researchers to file patent applications at the South African Patent Office.

The Incentive Fund is applicable to each granted South African patent, which cites a Higher Education Institution and/or a Statutory Science Council, as patentee or assignee. The Incentive Fund will run for an initial period of 5 (five) years, i.e. for patents granted during the periods 2003 to 2007, both inclusive, and may be renewed for a further period thereafter or be terminated altogether, at the discretion of the Innovation Fund or the Department of Science and Technology ("DST"), subject to the extent to which it achieves its purpose. The Innovation Fund also reserves the right to alter the structure of the Patent Incentive Fund, including the amounts of the awards, subject to budget allocation by DST and any other considerations.



## **AWARDS UNDER THE PATENT INCENTIVE FUND**

1. Under the Incentive Fund, inventors at a Higher Education Institution and Statutory Science Councils will, subject to compliance with policy conditions, be eligible for an award as set out below:
  - **Single Inventor** - the inventor will receive R25 000;
  - **Two or three Inventors** - each inventor will receive R20 000;
  - **Four Inventors** - each inventor will receive R18 000 each;
  - **Five or more Inventors** – R80 000 per patent, to be shared equally amongst the inventors
  - **Serial Inventors** - Where an inventor secures a number of patents during the course of a given year, the incentive will be limited to only one award, being the higher amount. Thus, where inventor is a sole inventor in one patent and a co-inventor in a patent citing four inventors, the inventor will be entitled to the higher amount award, i.e. R25 000.
  - **Co-Inventors from other institutions** - If there are co-inventors on the patent and the patent meets the requirement that all the rights have been properly assigned to a public institution (a tertiary institution or a science council, or the Innovation Fund), all the co-inventors who are employees of, or students at a public institution, shall be rewarded, as per above.
2. The awards are to be made on an annual basis, retroactively from 2003, with the inventors for patents published in 2003, receiving their award in 2004, and the inventors for patents published in 2004, receiving the award in 2005, etc.
3. The awards will be paid to the inventor(s) through the TTOs, where available, otherwise, through the Office of the Deputy Vice-Chancellor for Research or similar. Unless otherwise determined by SARS, the awards will be subject to PAYE deductions, which the institution should effect prior to making payments to the inventor(s). Where the Institution has a policy in place that allows for cash awards to be paid into a researcher's research budget<sup>1</sup>, the inventor may elect to have the award or part thereof, paid into his/her research budget.
4. The Innovation Fund may at its sole discretion, consider providing assistance to the TTOs (financial and/or manpower) for administrative purposes under the Incentive Fund.

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<sup>1</sup> Policy must be made available to the Innovation Fund.



### **Award Conditions:**

1. The selection of the patent applications for completion and finalisation, should be made by the Technology Transfer Office (TTO) or such offers designated by the Institution of the public institution and the patent application should be completed by a registered South African patent (or other eligible) attorney.
2. The TTO/Institution shall certify that they are satisfied that the inventors are indeed the complete set of inventors for the patent and that each cited inventor has demonstrated a clear inventive contribution to the invention covered by the patent.
3. The following conditions shall apply to the awards;
  - i. the TTO and/or the inventor(s) and/or the Institution must not be aware of any grounds that the patent may be invalidated. In this regard, it is a material requirement that the inventor(s) and/or the TTO and or the Institution must submit copies of all prior art searches and examination reports of corresponding foreign patent applications (e.g. PCT), if any were filed.
  - ii. the invention is protected by a granted patent which is novel, and the granted patent must be in-force.
  - iii the inventor must be a duly registered student, or employee, or researcher at a South African Institution at the date of filing of the complete patent application.
4. If an inventor has emigrated from the country at the time the award is made or the institution is unable to locate an inventor the amounts paid to the institution in respect of such an inventor shall be paid back to the Innovation Fund within 12 (twelve) months of receipt of said amounts by the Institution.
5. The inventor(s) must undertake to use their best efforts to assist the Institution to commercialise the patent, and failure to comply with this undertaking will result in the Innovation Fund demanding repayment of any monies paid under the Incentive Fund.
6. The TTO/Institution shall certify that the Institution has (i) taken assignment of the patent; and (ii) that it understands its obligation to repay the Innovation Fund the incentive awards paid should the patent be assigned to a third party, who is not a public institution or spin-out thereof.