



POSITION STATEMENT

DISCLOSURE OF INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENTS

**(Approved by the IEEE-USA
Board of Directors, 14 Nov. 2008)**

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 non-voluntary precondition of employment. Therefore, IEEE-USA supports the following minimum standards of ethical conduct with respect to assignment agreements:

- Timely and complete disclosure of required terms and covenants prior to, or simultaneously, with an offer of employment, not after the acceptance of that offer. Given the close relationship between such terms and covenants, the employee's everyday duties and livelihood, and the unforeseeable but potential material implications, the mandate of professional ethics for disclosure is not dependent upon the level of interest expressed by the prospective employee.
- The employer's ethical obligation of disclosure also extends to established employees. When an employer proposes alterations to previously agreed upon terms and covenants as a condition of continued employment, the employer has an ethical responsibility to provide a period of acceptance sufficient for the employee to obtain alternative employment.
- Consideration by the employer of reasonable objections and requests for modification of terms and covenants is an ethical necessity in all instances. Modification requests should not be unreasonably refused. Refusal to accept alterations on the mere basis of unwillingness to approach an officer of sufficient authority, or for lack of precedent, is considered to be contrary to ethical standards. Exclusion from the pre-employment agreements of existing intellectual property rights of the prospective employee is conclusively reasonable.
- An employer's efforts to obtain intellectual property rights may extend beyond the term of an inventor's employment. A pre-employment agreement may require further reasonable efforts of the inventor to cooperate with the employer, even after the termination of employment, but ethical standards require that the inventor be reasonably compensated.

This statement was developed by the IEEE-USA 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 the 215,000 engineers, scientists and allied professionals who are U.S. members of the IEEE. The positions taken by IEEE-USA do not necessarily reflect the views of IEEE or its other organizational units.

Background

Since 1975, the IEEE-USA and its Intellectual Property Committee have endeavored to encourage and improve use of intellectual property rights. Intellectual property rights are an integral part of an inventor's economic well-being.

Generally, employers do not show new employees intellectual property assignment agreements, and similarly required documents, before the day employment commences. While such documents can be a routine matter, in some unfortunate instances, terms are required that are onerous and burdensome. Lack of pre-employment disclosure serves to deprive new employees of the opportunity to perceive potential difficulties before committing to employment.

Prospective employees may ask to inspect such forms before accepting an offer, and we encourage them to do so where forms are not voluntarily pre-disclosed. Nevertheless, failure to ask is no proof of lack of interest. Our collective experiences and those of our correspondents, demonstrate that employers often have a dominant bargaining position. A request to review documents may be held as a demonstration of suspicion, and does little to please prospective superiors.

The ethical solution is the simplest. Employers should automatically provide prospective employees with copies of the forms they will be required to sign, at the time of an offer. At the very least, it is a simple professional courtesy.

The opportunity to comprehend and question overbearing or ill-conceived clauses is imperative for all employees. These questions and consequent modifications that arise will reflect real needs, enhancing the viability of our industry.