



DEPARTMENT OF THE INTERIOR

DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION (DIAR)

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SUBPART 1427.2 -- PATENTS

1427.203 Patent indemnification of Government by contractor

1427.203-6 Clause for Government waiver of indemnity

Approval to exempt specific United States patents from the patent indemnity clause shall be obtained from the CCO with legal review and concurrence.

1427.205 Adjustment of royalties

(a) The CO shall report to the Assistant Solicitor for Procurement and Patents the results of any action taken in compliance with [FAR 27.205](#).

SUBPART 1427.3 PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

1427.303 Contract clauses

The HCA is authorized to make the determination to sublicense foreign governments or international organizations, as prescribed in [FAR 27.303\(a\)\(3\)](#), [27.303\(b\)\(2\)](#), and [27.303\(c\)\(3\)](#).

(d)(1) If one of the exceptions in [FAR27.303\(d\)\(1\)](#) is used, then insert clause [1452.227-70](#). Appeals of Use of Exceptions. The exception in FAR 27.303(d)(1)(iii) to use alternative provisions restricting or eliminating a contractor's right to retain title to any subject invention shall be made by the HCA, after consultation with the Assistant Solicitor for Procurements and Patents.

(d)(2) Within 30 days after contract award copies of determinations to use exceptions under [FAR 27.303\(d\)\(1\)](#) shall be forwarded by the CO to the Assistant Solicitor for Procurement and Patents for submission to the Secretary of Commerce and, if required, to the Chief Counsel for Advocacy of the Small Business Administration. The determinations shall include all supporting documentation.

1427.304 Procedures

1427.304-1 General

(a) *Contractor appeals of exceptions.*

(3) The Associate Solicitor for General Law shall issue a decision on the appeal.

(4) If the Associate Solicitor for General Law determines that the appeal notice raises a genuine dispute over the material facts, a fact-finding hearing shall be conducted by the OHA. The hearing shall be conducted at a location convenient to the parties concerned as determined by the Director, OHA, and on a date and time stated. The contractor may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the determination. A transcribed record of the proceedings shall be made and shall be made available at cost to the contractor upon request, unless the requirement for the transcribed record is waived by mutual agreement of the contractor and the OHA.

(5) The OHA shall prepare written findings of fact and transmit to the Associate Solicitor for General Law.

(7) The OHA may hear oral arguments after fact-finding provided that the contractor, its counsel, or other duly authorized representative is present in order to have the opportunity to make arguments and rebuttal. The Associate Solicitor for General Law shall issue a decision.

(b) *Greater rights determinations.* Determinations on requests for greater rights in subject inventions by contractors shall be made by the HCA after consultation with the Assistant Solicitor for Procurement and Patents. Appeals of such determinations shall be made to the IBCA in accordance with the procedures in [1427.304-5\(b\)](#).

(g) *Exercise of march-in-rights.* After notification of the contractor of information warranting the exercise of march-in rights, the CO shall prepare a written notice to the contractor after consultation with the Assistant Solicitor for Procurement and Patents. The notice shall be prepared and signed by the Associate Solicitor for General Law. Within the time constraints, if any information submitted by the contractor (assignee or exclusive licensee) after notice of march-in is received is determined by the Associate Solicitor for General Law to raise a genuine dispute over material facts, a fact-finding hearing shall be conducted by the OHA. The Associate Solicitor for General Law shall issue a final determination, after consideration of any further written or oral arguments from the parties. An unfavorable determination to a contractor (assignee or exclusive licensee) shall be subject to appeals.

(h) *Licenses and assignments under contracts with nonprofit organizations.* COs may approve contractor requests for assignment of rights or exclusive licenses after obtaining the advice of the Assistant Solicitor for Procurement and Patents. Solicitations containing [FAR clause 52.227-11](#) shall state that contractors should forward such requests to the CO.

1427.304-5 Appeals

(a) The CO is authorized to make any of the determinations listed after consultation with the Assistant Solicitor for Procurement and Patents.

(b) Determinations made under paragraph (a) above shall be considered final decisions under the Contract Disputes Act and may be appealed to the IBCA in accordance with the procedures in [DIAR Subpart 1433.2](#).

1427.306 Licensing background patent rights to third parties

(b) Any proposed determination to be made to require third party licensing shall be submitted by the HCA through the Assistant Solicitor for Procurement and Patents for signature of the AS/PMB. The contractor may request a public hearing on the record prior to the above determination. In such cases, the proposed determination and the contractor's request for a hearing shall be referred to the OHA. The OHA shall conduct public hearings as set forth in [1427.304-1\(a\)\(4\)](#) and shall forward its findings and recommendations to the AS/PMB for a final determination. The final determination shall inform the contractor of the right to judicial review within sixty (60) days of the AS/PMB determination.

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