

## § 200.448 Intellectual property.

### (a) Patent costs.

(1) The following costs related to securing patents and copyrights are allowable:

- (i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;
- (ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal government to be conveyed to the Federal government; and
- (iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459 Professional service costs).

(2) The following costs related to securing patents and copyrights are unallowable:

- (i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;
- (ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal government.

### (b) Royalties and other costs for use of patents and copyrights.

(1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

- (i) The Federal government already has a license or the right to free use of the patent or copyright.
- (ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
- (iii) The patent or copyright is considered to be unenforceable.
- (iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

- (i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.
- (ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
- (iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed should not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.