

## OTHER FORMS FOR INTELLECTUAL PROPERTY RIGHTS involved in commercialization

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Source: extract from Best Practices handbook, BIC project

Patent is the most important form of IPR at research organizations and most of technology transfer is based on licensing the patents to companies. However, not all inventions can and need to be protected with a patent.

In some cases a patent may be impossible to get (e.g. due to lack of novelty/inventiveness or non-technical nature of the invention) or the foreseeable scope of the patent may be too narrow to justify the high costs of patenting. Furthermore, to obtain a patent means that the invention must be fully revealed in the patent application, including detailed descriptions of materials and methods required to set the assay up. The patent application (unless withdrawn) will become public in 18 months and it is no longer possible to keep the invention as trade secret after that. In case of IVD-applicable biomarker assays, patents remain to be the decisive form of IPR in technology transfer. In most cases it would anyway be difficult to keep secrecy of the analytes measured. In the healthcare settings, clinicians would rarely rely on “black box” tests without a possibility to understand the results obtained. Furthermore, the submissions for regulatory approvals are in some respects public.

IVD assays are naturally also launched and sold without patent protection. Other forms of IPR such as registered trademarks may help a company to achieve a foothold on the market, but competition for the underlying technology is then free and it is not likely that any single company reaches a monopoly for an important marker.

From the perspective of technology transfer, non-patent IP transfer strategies can include, for example:

- Knowledge transfer – e.g. instructions, recipes, results and other documents specified in a license agreement
- Database licensing – e.g. access to clinical data, raw data and/or results database
- Copyright – e.g. computer software
- Trade secrets – e.g. complex algorithms in connection with biomarker signatures
- Material licensing – e.g. cell lines and antibodies.
- Providing services-for-fee directly from the unit is another means for commercializing special knowhow.