

Exhibit 3

Prior User Rights

Notice: Language that appears in *italic and between brackets*, [example], is still under discussion by the Industry Trilateral. Language in adjacent brackets represents possible alternative language.

Objective and principles

To fairly balance (1) the interests of a third party, who in good faith has [*independently without reliance on another inventor's discovery and development*] made commercial use of an invention or at least the serious and effective preparation to commercially exploit the invention involving a significant investment (possibly without seeking patent protection for the invention because the third party intends to keep the invention as a trade secret), and (2) the interests of an independent innovator, who later seeks to patent that same invention, a limited Prior User Right (PUR) defense to a charge of infringement by the owner of the patent should be provided.

Individual elements resulting from the recommended approach:

Feature	Details
Requirements for accrual of PURs	<p>PURs accrue with respect to a later patented invention:</p> <ul style="list-style-type: none">(i) where such invention is commercially used by the third party or(ii) where serious and effective preparations for commercial use have been made by the third party <p>prior to the actual filing date or the priority date, whichever is earlier.</p> <p>PURs do not apply when the third party obtained or used the relevant knowledge of the invention in an illegal way.</p> <p>PURs [<i>do</i>][<i>do not</i>] apply where the third party derived knowledge of the invention from a pre-filing disclosure (PFD) of the patentee, innocently and in good faith.</p>
Loss of PURs	<p>If a PUR accrues but the third party later abandons its use of the invention, the PUR is lost.</p>

Feature	Details
Critical Period for Accrual of PURs	Anytime before the actual filing date or the priority date, whichever is first.
Territorial scope of PURs	PURs are effective over the entire territory covered by the later patent based upon the acts, within any part of that territory, that gave rise to the PUR.
Exceptions to PURs	There should be no exceptions to PURs. PURs apply without discrimination to the type of patentee or subject matter of the claimed invention.
Burden of proof	The third party has the burden of proving PUR.
Changes in third party activity	PURs should allow for the continued practice of any patented inventions. A court determining the ultimate scope of the defense should consider several equitable factors.
	Third party rights are limited to the patent claims covering the product or process for which the third party accrued the PUR. The third party may modify its product or process so long as it does not infringe claims for which it did not accrue PURs. PURs should not necessarily extend to the entire scope of the patent.
	The third party should not be permitted to modify the underlying nature of its business [<i>except on occasions of force majeure or other circumstances beyond the control of the third party</i>].
Transfer of PUR	The PUR defense is not transferable by assignment or license, other than to the patent owner or to a purchaser of the entire business or relevant line of business.