

My IP is not your IP: Clear terms are key in joint development agreements

By Leslie A. Demers, Esq., Douglas R. Nemeck, Esq., Resa K. Schlossberg, Esq., and Anisa Dagher, Skadden, Arps, Slate, Meagher & Flom LLP*

FEBRUARY 11, 2026

Key points

- Joint development agreements are a common way to structure collaborative development and growth projects, but they can come with risks, including potential disputes over confidential information and intellectual property ownership.
- Companies can mitigate these risks through thoughtful and careful drafting that clearly delineates each party's rights and obligations during the joint development activities.
- Implementing and maintaining clear policies and procedures internally will also help minimize exposure from the risks associated with these transactions.

Provisions and practices relating to confidential information

Protecting a company's confidential information — and ensuring there is the ability to sort through whose confidential information is whose — is of the utmost importance in a joint development agreement. Thus, the language parties use in drafting their agreement and the practices they implement during the relationship can make or break trade secret or breach of contract cases.

Whose “confidential information” is protected? In complex collaborations, it is nearly inevitable that both sides will share some confidential information. As a result, companies should consider ensuring that confidentiality obligations flow both ways and ensure that the reality of the arrangement is reflected.

Controlling what is designated as confidential. Parties can create procedures to govern the designation of information as confidential.

- Requiring parties to mark information as confidential to be treated as confidential can be helpful down the line. Be aware, however, that in agreements with this obligation, failure to mark can be fatal. Taken together with the fact that marking obligations can be overly burdensome,

consider whether a clause providing that marking is not dispositive is more appropriate.

- Beyond contractual provisions, parties would be well advised to document the disclosure of critical trade secret information. Though in practice this may be difficult to implement for all confidential information, tracking and documenting the disclosure (and receipt) of key trade secret information like chemical compositions or manufacturing procedures can be invaluable in a downstream intellectual property litigation.

Management of destruction or return of confidential information. While it is important to include provisions in agreements that require parties to destroy or return all confidential information at the end of the agreement, practically speaking, it can be difficult to implement these provisions.

Unpacking which party invented which technology can be thorny.

In order to comply with them, parties may want to consider whether to provide specifics in their destruction request, even if the contract does not require them. For example, indicating that the other side should destroy all documents reflecting patented chemical compositions or trade secret manufacturing processes allows the counterparty to deploy more bespoke deletion efforts.

Delineating IP ownership

A vital aspect of a JDA are the provisions that allocate ownership of IP that existed before the agreement and IP that will be developed by the parties during the relationship. While this may seem simple on paper, in practice, unpacking which party invented which technology can be thorny. Implementing tracking procedures and robust documentation can help, particularly if and when the collaboration unwinds.

Identification of preexisting IP. Parties should consider specifically identifying all preexisting IP owned by each prior to entering a JDA, when possible.

A simplistic provision specifying that jointly developed IP is jointly owned will not be enough to avoid disputes.

Ideally, each piece of preexisting IP should be specifically listed to avoid disputes over ownership. This includes listing patents, trade secrets and other IP that parties believe they are bringing to the collaboration. Having this conversation and specifying the preexisting boundaries up front can help protect against foundational disputes down the line.

That being said, identifying preexisting IP is not practical in most matters. If that is the case, it is important to maintain strong records on the origin and development of IP to help bolster an ownership claim in a potential future dispute.

Careful consideration of the treatment of jointly developed IP. In many scenarios, a simplistic provision specifying that jointly developed IP is jointly owned will not be enough to avoid disputes. Being intentional about post-agreement ownership rights to inventions conceived of during the course of the relationship is important.

About the authors



Resa K. Schlossberg is a partner in the IP and technology department and can be reached at resa.schlossberg@skadden.com. **Anisa Dagher** is a law clerk in the IP litigation department and can be reached at anisa.dagher@skadden.com. The authors are based in New York. This article was originally published Jan. 13, 2026, on the firm's website. Republished with permission.

More generally, joint IP introduces complexities that parties should anticipate in the agreement, including expectations on revenue-splitting, decision-making on enforcing IP against third-party infringers and rights to use IP — both during and after the relationship.

Equally important is creating internal procedures to document employees' contributions to inventions that fall under the collaboration. Detailed invention disclosures can be critical down the line when assessing which inventions count as joint IP as opposed to IP solely owned by a party.

Other helpful safeguards in the event of future litigation

Alternative dispute resolution procedures. Even though parties enter into agreements hoping for a fruitful collaboration, they still should prepare for disputes. Building in procedures for face-to-face meetings of executives and potentially other team members to resolve disputes before litigation can be helpful in some collaborations.

Companies should also be mindful to provide for a right to seek injunctive relief where appropriate, so that they are not stuck in a waiting period when they face the threat of imminent irreparable harm.

Termination clauses. JDAs are rarely meant to last indefinitely. Termination provisions should account for the fact that the parties may need or want to use information gained during the collaboration even after the agreement has concluded. For some arrangements, this may extend to background information of the other party.

(L-R) **Leslie A. Demers** is a partner in the intellectual property litigation department at **Skadden, Arps, Slate, Meagher & Flom LLP**. She can be reached at leslie.demers@skadden.com. **Douglas R. Nemec** is also a partner in the IP litigation department and can be reached at douglas.nemec@skadden.com.

This article was published on Westlaw Today on February 11, 2026.

* © 2026 Leslie A. Demers, Esq., Douglas R. Nemec, Esq., Resa K. Schlossberg, Esq., and Anisa Dagher, Skadden, Arps, Slate, Meagher & Flom LLP

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.