

## **Drake University**

### **Statement of Policy and Rules Relating to Patents**

#### **5.221 Introduction**

Drake University is committed to the development and transmission of ideas and knowledge and to the discovery of new ideas and knowledge. In fulfilling its mission in that respect, members of the University community<sup>1</sup> engage in research as a part of or incident to their teaching and learning. It is not the purpose of the University to pursue research in anticipation of profits.

Faculty, staff, and students may conceive ideas, may originate or improve processes or inventions, or may make discoveries that are patentable under the laws of the United States. When this happens, the question may arise who is entitled to pursue or to own the patent and who may be entitled to royalty income, if any. In some cases the University may have contributed significantly to the effort that produced the idea, process, invention or discovery, while in other cases the University's contribution may have been minimal or nonexistent. In still other cases a patentable invention or process may have been developed through sponsored research pursuant to a grant or contract from a third party, and the grant or contract may contain controlling provisions concerning ownership rights and rights to royalty income.

Drake University, like other institutions of higher learning, seeks to interpret and apply the patent law so as to encourage the discovery of new ideas, new processes or inventions or ways in which existing processes or inventions may be improved, and other discoveries of new knowledge. The purposes of this statement of policy and rules relating to patents are (1) to articulate and define the relative rights of all parties concerned and (2) to provide a uniform procedure in patent matters in which the University may assert a right or equity.

#### **5.222 Definition**

A patent is a grant made by the government to an inventor conveying and securing to the inventor the exclusive right to exclude others from making, using, or selling the invention for a term of years. More specifically, under United States law, “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements” of the law.

#### **5.223 General Rule Regarding Ownership of Patents and Rights to Royalty Income**

The University community member is entitled to the ownership of the patent and any rights that may accrue from it to receive royalty income (1) unless the University significantly contributed to the development of the patentable idea, process, invention, or discovery, or (2) unless a grant or contract with a third party is involved which is controlling. The University's contribution, if any, will be regarded as “significant” if exceptional resources were made available to and utilized by the University community member, i.e., beyond what is customarily provided by the University. Ordinary assistance of University staff, use of supplies or equipment such as computers that are typically provided to faculty, and ordinary use of University facilities such as

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<sup>1</sup> For purposes of this Statement of Policy and Rules relating to Patents, the phrases “members of the University community” or “University community member” are defined as including any faculty member, staff member, administrator, or part- or full-time student.

one's office shall not be regarded as "significant" for purposes of this policy. The University may be regarded as significantly contributing to the development of a patentable idea, process, invention, or discovery, i.e., as providing more than "ordinary assistance," when it provides specialized resources for the purpose of the University community member's research that leads to the discovery or when the University has specially enhanced laboratories used by the University community member in the development of the patentable idea, process, invention, or discovery, or when the University pays the fees for seeking patent coverage.

When a patentable invention or process is developed through a sponsored grant or contract with a third party, the provisions concerning ownership rights and rights to royalty income contained in that grant or contract must prevail. The University shall accept no grant or contract unless there is a written agreement concerning the rights of the University and University community members in any patent or resulting royalty income.

#### **5.224 Disclosure Obligation and Right to Proceed**

Because questions may arise as to who is entitled to ownership of the patent and/or rights to royalty income, it is the obligation of any member of the Drake University community to disclose to the Provost any idea, process, or invention which the individual has conceived or invented and has reason to believe might be useful, patentable, or otherwise protectable, and the circumstances of the discovery.

Except in cases where a grant or contract with a third party otherwise provides, it shall be presumed that the member of the University community who has made a discovery is entitled to pursue and to own the patent resulting from such discovery. Within ninety (90) days of disclosure to the Provost as required by the preceding paragraph, the Provost shall determine and communicate to the University community member whether, in the opinion of the Provost, the University has significantly contributed to the development of the patentable idea, process, invention or discovery. If the Provost determines that the University has significantly contributed to the development of the patentable idea, process, invention or discovery, the Provost and the University community member shall negotiate the share of any royalty income to which the University may be entitled. However, all royalty income shall be applied first to cover the costs of securing, protecting, and licensing the patent.

If a member of the University elects not to pursue or fails to pursue, within one year after a determination by and communication from the Provost to the University community member that the University is entitled to share in any royalty income, a patent and/or the introduction of an invention into public use, the University has the sole right to determine whether title shall vest in the University. If title is to vest in the University, the University shall have the right, either directly or through an outside agent, to evaluate and seek patent or other protection of the invention, and to undertake efforts to introduce the invention into public use. The individual is then expected to cooperate in every necessary way (but at no expense to the individual) with the University and/or outside agent, including assigning to the University any ownership rights the individual may have in order to permit the University or the outside agent to evaluate the invention, to seek a patent, and/or otherwise to introduce the invention into public use. Royalties or other income resulting from the invention will be shared among (1) the University community member(s) who made the patentable discovery, (2) the University, and (3) the outside agent (if

any) in accordance with any relevant terms of any agreement between the agent and the University. The University's arrangements with an outside agent and/or a licensee for handling inventions should reflect the importance of serving the public interest in these matters.

### **5.225 Disputes**

The Provost shall administer the policies of the University relating to copyrights and patents. When a disagreement arises concerning the ownership of a copyright or patent or entitlement to royalty income attributable to the copyright or patent, the member of the University community and the Provost, or representatives they may designate, shall attempt in good faith promptly to resolve any such disagreement or dispute by negotiation. If the matter has not been resolved by these persons within forty-five (45) days of notification by the Provost that the University asserts a claim to the copyright or patent or to any of the royalty income attributable thereto, the University community member and the University shall endeavor to settle the dispute by mediation. If mediation does not lead to agreement or settlement within ninety (90) days of the initiation of mediation, the University community member and the University agree to resolve the dispute by binding arbitration in accordance with the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution. The arbitration panel shall consist of three arbitrators. The University community member shall appoint one arbitrator; the University shall appoint a second arbitrator; and the two arbitrators thus appointed shall appoint a third, who will serve as Chair of the arbitration panel. Judgment upon the arbitrators' award may be entered by any court having jurisdiction. The place of the arbitration shall be Des Moines, Iowa.