

East Carolina University Patent Policy - Interim

Version 5

 Print

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Title	East Carolina University Patent Policy
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Related Policies	UNC Policy 500.2-Patent and Copyright Policies (https://www.northcarolina.edu/apps/policy/doc.php?id=216) UNC Policy 300.2.2-Conflicts of Interest and Commitment (https://www.northcarolina.edu/apps/policy/doc.php?id=90) UNC Code: Appendix I (https://www.northcarolina.edu/apps/policy/doc.php?id=71) UNC Policy 500.6 University Equity Acquisition Policy (https://www.northcarolina.edu/apps/policy/doc.php?id=222) REG10.40.02 East Carolina University Copyright Regulation (https://policy.ecu.edu/10/40/02) ECU Faculty Manual Part VIII, (II) Policy on Conflicts of Interest and Commitment and External Activities of Faculty and Other Professional Staff (https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part8section2.pdf)
Additional References	U.S. Patent Laws 35 U.S.C. 1A7A7 1-376 (https://www.uspto.gov/web/offices/pac/mpep/consolidated_laws.pdf) ECU Patent Assignment Agreement (https://rede.ecu.edu/innovation/ecu-patent-agreement-and-assignment-2022-2/) Invention Management SOPs

1. Introduction

1.1. East Carolina University (the “University”) is dedicated to the pursuit of education, research and public service, including economic development and community engagement in North Carolina. Inventions, discoveries, and other intellectual assets may arise as a result of the conduct of these activities by University personnel and others who use University facilities, equipment, materials, resources or funds administered by the University. The Board of Governors of the University of North Carolina determined that patenting and licensing these intellectual property assets is consistent with the purposes and mission of the University of North Carolina. This Patent Policy is subject to and supplements the patent and copyright policies of the University of North Carolina.

2. Coverage

2.1. University Personnel. This Patent Policy applies to all University personnel and others as a result of use of University facilities, equipment, materials, resources or funds administered by the University. This Patent Policy is a condition of employment of every employee of the University and attendance of every student at the University.

2.2. Non-University Persons. Upon prior written agreement between non-University persons or entities and the University, this policy may be applied to persons not associated with the University who make their Inventions available to the University under circumstances where the further development and refinement of such Inventions are compatible with the mission of the University.

2.3 Implementation. The Office of Licensing and Commercialization (“L&C”) is responsible for implementing this policy, including developing procedures designed to supplement and interpret the ownership aspects of this policy, providing advice regarding ownership of specific works, releasing institutional rights, and accepting an assignment of rights to the University from an Inventor.

2.4 Patent Committee. The Patent Committee, appointed by the Chancellor or designee and consisting of no less than three members, is charged with reviewing and recommending to the Chancellor, or his delegate, the procedures for the implementation of this policy; resolving questions of Invention ownership that may arise between the University, university personnel and other individuals; recommending to the Chancellor the expenditure of the patent royalty fund; and making such recommendations as are deemed appropriate to encourage disclosure and assure prompt and expeditious handling, evaluation, and prosecution of patent opportunities; and to protect the interests of both the University and the public. The Director of L&C shall chair, administer and provide support for the Committee.

3. Definitions

3.1 “Gross Revenue” means all income received by the University as consideration for a license, option, or other transfer of rights to Inventions that are subject to the Patent Policy. Gross Revenue may include option fees, royalties, license issue fees (whether cash or equity when liquidated), milestone payments, and any other related payments, less any amount required to be paid from gross receipts without deduction to another entity pursuant to a sponsored research agreement, inter-institutional agreement or other legally binding agreement.

3.2 “Invention” means technical information, trade secrets, developments, discoveries, innovations, processes, compositions, life forms, Tangible Research Materials, know-how, methods, formulae, data, processes and/or other proprietary information or matter, whether patentable or not.

3.3 “Invention Management Fund” means a University fund in which license revenue is distributed as required under the Revenue Sharing provision of this policy. The Invention Management Fund shall be used to support research, development, commercialization and education activities, and may include expenses incurred by the University in operating L&C or any successor unit managing the University’s intellectual property.

3.4 “Inventor” means an individual who makes an inventive contribution to an Invention and, for patentable subject matter, meets the criteria for Inventorship under United States patent laws and regulations, which requires a contribution to the conception of ideas claimed in a patent.

3.5 “Net Revenue” means Gross Revenue arising from license activities, minus all direct out-of-pocket costs associated with University’s ownership and/or administration of Inventions. Such costs may include costs of (1) evaluating Invention disclosures, (2) patentability or trademark searches, (3) drafting and prosecuting intellectual property applications, (4) preparing and recording assignments, (5) maintaining patents or other intellectual property, (6) marketing and licensing of Inventions, and (7) litigation for the enforcement or protection of intellectual property, for royalty collection, or for any other claim filed by or against University and related to University’s administration of intellectual property, including prosecution or defense of same, attorneys’ fees, court costs, expert fees, compromise, settlement, and judgment satisfaction. Net Revenue does not include funds received as gifts or for the support of sponsored research.

3.6 “University Employment Responsibilities” means employment responsibilities at the University directly related to research, service, teaching activities and administrative duties.

3.7 “Inappropriate Use or Exploitation of University Resources” means the use of University-administered funds or the use of services, facilities, equipment, supplies, or personnel, which members of the general public may not freely, use for other than the conduct of University responsibilities

3.8 “Tangible Research Material” means unique research products or tools, such as biological materials or chemical compounds, whether or not patentable. Biological materials include organisms, transgenic animals, plants and plant varieties, cells, cell lines, viruses, cell products, cloned DNA, DNA sequences, nucleic acid and protein sequences, transgenic animals, mapping information and crystallographic coordinates.

4. Disclosure and Invention Administration

4.1 Patent and License Management. L&C is charged with administering the University’s patent management and licensing program, including, but not limited to filing, prosecuting, and maintaining the University’s patent portfolio and maintenance of the University’s license portfolio.

4.2 Invention Disclosure. Each Invention must be disclosed promptly upon its creation, conception or discovery to L&C. The form of disclosure shall be determined by L&C, or its designee, and may include such information as name of the Inventor and a description of the Invention. Inventorship shall be determined in accordance with U.S. patent law, when applicable, or through procedures of L&C. Failure to disclose an Invention may prevent the Invention from being patented and may subject the University to risks of noncompliance with federal laws and/or contractual obligations. Since publication or public use of an Invention can be an immediate bar to patentability in most foreign countries, it is the duty of the Inventor to report to the L&C any publication, submission of manuscript for publication, sale, public use, or plans for sale or public use, of an Invention sufficiently in advance so that the L&C can consider measures to protect the University’s intellectual property interests and compliance requirements.

4.3 Inventor Cooperation. The Inventor, upon L&C’s request, shall sign all contracts, assignments, declarations, waivers or other legal documents necessary to vest all Invention rights in the University or its assignees, including complete assignment of any patent, patent applications, trademarks, or copyrights relating to the Invention. In addition, the Inventor shall cooperate with L&C and patent counsel if the University files for intellectual property protection.

4.4 Declined Administration. L&C may decline or cease Invention administration due to lack of resources, uncertainty of patent protection, lack of commercial interest, or other reasons L&C deems appropriate. In such case, L&C may assign the Invention to the Inventor, subject to any rights retained by the United States Government or other sponsor. In addition, the Inventor shall agree (1) that the University reserves a royalty-free, non-exclusive, irrevocable right to use the Invention for research and educational purposes; (2) to allow other academic and non-profit institutions similar use on similar terms; and (3) to indemnify the University against any liability arising from commercialization. All requests by an Inventor related to assignment of Invention rights to the Inventor must be submitted in writing to L&C.

5. University Ownership of Inventions

5.1 University Ownership. All Inventions arising from the following are owned by the University: (1) research conducted with University-administered funds, (2) work within the Inventor's University Employment Responsibilities, or (3) use of University resources available to the Inventor because of Inventor's affiliation with University.

5.2 Sponsored Research/University-Administered Funds. The University is obligated under the Bayh-Dole Act and other statutes to be responsible stewards of Inventions funded with public money. The provisions of this policy are also subject to these and other applicable laws and regulations, as well as, specific provisions of grants or contracts which govern the rights in Inventions or discoveries made in connection with sponsored research. Under the terms of certain contracts and agreements between the University and various agencies of government, private and public corporations, and private interests (the "Funding Source"), the University is or may be required to assign or license all rights to Inventions or discoveries that arise in the course of work conducted under such agreements. The University retains the right to enter into these agreements whenever such action is considered to be in the best interest of the University, in the public interest, and/or of mutual benefit to the University and the Funding Source.

5.3 Assignment of Inventions. In the case of University ownership of Inventions, Inventors hereby irrevocably assign to the University, all right, title and interest in and to Inventions and related patent applications and patents and shall cooperate fully with the University in the preparation and prosecution of patent applications and patents. Assignment of Inventions is a condition of employment, enrollment, or access to University facilities.

5.4 Patent Agreement and Assignment. As required by 37 CFR § 401.14, as amended, all University employees shall sign a Patent Agreement and Assignment, upon employment.

6. Inventor Ownership of Inventions

6.1 Inventor Ownership. An Invention arising from activities conducted (1) without use of University administered funds, (2) outside of Inventor's University Employment Responsibilities, (3) without Inappropriate Use or Exploitation of University Resources, and (4) without interfering with Inventor's obligation to carry out all of his/her primary University duties in a timely and effective manner, are owned by the Inventor, an "Inventor-Owned Invention".

6.2 If the subject matter of an Invention is within the Inventor's University Employment Responsibilities or permitted entrepreneurial activities at the University, the Invention may be an invention owned by the Inventor if it results from an external professional activity. An invention owned by the Inventor which results from an external professional activity means that:

6.2.1. it meets conditions (1), (3), and (4) as set out in Article 6.1;

6.2.2. is made in the course of an Inventor's external professional activities in compliance with the University's Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay;

6.2.3. is not based on or, if to be practiced, does not require the use of intellectual property owned by the University;

6.2.4. arises out of a specific scope of work defined in a written agreement between the Inventor(s) and a third party; and

6.2.5 if such Invention is within the subject area of an Inventor's University Employment Responsibilities, such Inventor has received prior approval from his/her departmental chair, dean, unit director or similar administrative officer to engage in such external professional activity and notice of such approval has been provided to L&C.

6.3 Disclosure. Any person claiming that an Invention is an Inventor-Owned Invention has the responsibility to disclose such Invention to L&C and provide additional information, as requested by L&C, in order to demonstrate that such Invention qualifies as an Inventor-Owned Invention as defined herein. Such Invention shall be

disclosed in accordance with L&C's Invention disclosure procedures. Upon its final determination, L&C will acknowledge in writing whether such Invention is an Inventor-Owned Invention.

6.4 The University does not claim any rights in Inventor-Owned Inventions

7. Student Inventions

7.1 Student Ownership. Inventions arising from student activities conducted (1) without use of University-administered funds, (2) outside of a student's University Employment Responsibilities, (3) without Inappropriate Use or Exploitation of University Resources, and (4) without the obligations of a University Inventor who has a duty to make assignment or has made assignment to the University, are owned by the Student. For students enrolled in a course of study, use of course laboratory, computing and library facilities, software, supplies and materials at a level ordinarily provided to students in the course are not considered to be Inappropriate Use or Exploitation of University Resources.

7.2 Proprietary Projects. Students, who engage in projects in which proprietary information of the University or a third-party is involved, may be asked to agree to the terms of a participation agreement to outline the rights and responsibilities of the parties, and define ownership of any resulting intellectual property rights. Should the student decline to participate in such a project in a non-elective course, then the student shall have the option of taking part in another class project where consideration of intellectual property rights is not required.

7.3 Special Program Exemption. The University may offer courses or programs to promote entrepreneurship, innovation, and economic development and in some instances may offer prizes in the form of cash, goods and/or services. The Patent Committee may exempt these courses and programs from University Ownership of Inventions for Inventions either previously conceived by the students or conceived during their participation. Notwithstanding, substantial inventive contribution by an employee of the University is subject to this Patent Policy. Requests related to a Special Program Exemption should be made in writing to the Director of L&C.

8. Consulting and the Patent Policy

8.1 Conflicts of Interest. The Board of Governors Policy on Conflicts of Interest and Commitment, UNC Policy Manual, 300.2.2, recognizes the value to the University to permit faculty and EHRA employees to engage in professional consulting. This activity can enhance the competence and expertise of faculty and EHRA employees and may aid in the development of University intellectual property and university-industry relations. However, private consulting may create a conflict of interest when the company's consulting contract requires that faculty assign intellectual property or accept other terms inconsistent with the individual's University employment contract. In all consulting relationships, employees have a duty to ensure that their employment responsibilities to the University are not compromised in a consulting agreement.

8.1.1 Employees may not sign agreements with outside entities or individuals that may abrogate the University's rights as stated in the Patent Policy or as provided in any sponsored research agreement or grant. Consulting agreements may not in any way limit the right of any University personnel to engage in teaching, research, or service at the University. For example, faculty and employees should not accept contract terms that (1) prohibit publication of University research or the reporting of results to research sponsors; (2) preclude faculty or employee from assigning to the University intellectual property owned by the University or (3) are designed to circumvent University policies and procedures for disclosure of Inventions.

8.2 Ownership. Ownership of Inventions arising under consulting agreements will be determined in accordance with this Patent Policy and, to the extent that any terms of a consulting agreement are inconsistent with this Patent Policy, this Patent Policy will control. However, the University will make no claim to an Invention if the Invention is determined to be an Inventor-Owned Invention as set out in Section 6 above.

9. Publication Restrictions

9.1 Acceptable restrictions. The University supports publication and exchange of scholarly outcomes. However, circumstances may arise which require a publication restriction for a limited period of time. Limited publication restrictions may be required for the following reasons:

9.1.1. Review for removal of sponsor-provided confidential information; or

9.1.2. Review for patentable information and if necessary timely filing of a patent application

9.2 Sponsor Review. Sponsors are provided a time-limited period to review manuscripts for proprietary and/or patentable information. Additional time may be required to timely file a patent application but in no event shall the total period of delay be longer than one year from the date of the notice of intent to submit for publication.

10. Revenue Sharing

10.1. Revenue Sharing. It is the policy of the University to distribute any Net Revenue received from commercialization of Inventions among the Inventor, the Inventor's College and Department/Unit, and the Invention Management Fund.

10.2. Revenue Distribution. Net Revenue shall be distributed as follows:

First \$1,000 Net Revenue: 100% to Inventor(s);

Greater than \$1,000 Net Revenue: 50% to Inventor(s), 15% to Department(s), 5% to School / College(s), 25% to Invention Management Fund, 5% to Division of Research, Economic Development and Engagement
L&C is responsible for managing the Invention Management Funds, in accordance with Section 10.4.

10.3. Exceptions. Applicable laws, regulations or provisions of grants or contracts may, however, require that a lesser share be paid to the Inventor(s). In the case of co-Inventors, each percentage share due to a sole Inventor shall be subdivided equally among the co-Inventors unless all the co-Inventors provide the University a written instrument signed by each of them allocating ownership among them other than in equal shares. In no event shall the share payable to the Inventor(s) in the aggregate by the University be less than 15% of gross revenue received by the University.

10.4. University Allocation of Funds. To the extent practicable and consistent with State and University budget policies, amounts allocated to the University pursuant to Section 10.2 above will be dedicated to support University research, development, commercialization and education activities.

10.5. Separation of Inventor from University. In the event that an Inventor leaves the University, either voluntarily or involuntarily, and the Inventor is entitled to receive compensation in accordance with this Policy, then the Inventor shall continue to be entitled to revenue pursuant to this Policy. In the event of death of an Inventor who is entitled to distribution of revenue pursuant to this policy, then such payments will be paid to the Inventor's estate or as directed in accordance with a court approved action.

10.6 Tangible Research Materials. To the extent practicable, Tangible Research Materials shall be treated as Inventions for purposes of ownership and revenue sharing. The L&C will promulgate rules regarding distribution of revenue for Tangible Research Materials that are not the subject of a patent application.

10.7 Additional Rules. The L&C shall adopt such other rules and procedures as needed to administer revenue distribution equitably and consistently with UNC System and University policies.

11. Dispute Resolution

11.1. Jurisdiction. Any individual subject to this policy may seek resolution to questions of Invention ownership that have arisen by filing a written request with the Chair of the Patent Committee. The Chair shall appoint a 5-member Dispute Resolution Panel ("the Panel") to address the dispute with at least 3 panel members being selected from the membership of the Patent Committee. In the event that the dispute involves the Chair of the Patent Committee, the Vice Chancellor for Research, Economic Development, and Engagement (the "Vice Chancellor") shall appoint the Panel. The Panel shall elect a chair from its membership. The University shall

provide appropriate support to the Panel including, but not limited to, patent counsel or other patent expert. The Panel shall conduct a review to address the dispute within four weeks of receipt of the written request for resolution.

11.2. Conduct of the Hearing. In its sole discretion, the Panel may elect to conduct a hearing or may make a recommendation based upon the written record, provided that all parties to the dispute are given an opportunity to present evidence and arguments in support of their respective positions. The hearing shall be conducted in accordance with procedures adopted by the Chair of the Panel. A party may be accompanied at the hearing by a non-participating advisor.

11.3 Disposition. The Panel shall report its written findings, conclusions and recommendations for disposition of the matter to the Vice Chancellor. Copies of such findings, conclusions and recommendations shall be provided to all parties, subject to confidentiality of third-party interests, if any. Upon receipt of such findings, conclusions and recommendations, the Vice Chancellor will conduct any further investigation deemed necessary and will issue the final University written decision. The final written decision shall be issued within six weeks of the Panel's review and/or hearing.

12. Works Subject to Protection by Both Copyright & Patent Laws

12.1. In cases where an Invention or creation is subject to protection under both patent law and copyright law, if the University elects to retain title to its patent rights, then the Inventor shall assign such patent and copyright rights to the University.

13. Policy Exceptions

13.1. In rare circumstances, an exception to this Policy may be approved by the Chancellor or designee if it is determined to be in the University's best interest, and the exception remains consistent with UNC policies and federal and state law.

East Carolina University

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