

Executive Board

(Systemwide Senate Review) Proposed revisions to Presidential Policy on Inventions, Patents, and Innovation Transfer

Table of Contents

Exec Systemwide Senate Review of proposed revisions to Presidential Policy on Inventions, Patents, and Innovation Transfer	1
Exec IP Policy.v14.120822.Tracked Changes	4
---I. POLICY SUMMARY	4
---II. DEFINITIONS	4
---III. POLICY TEXT	6
---IV. COMPLIANCE / RESPONSIBILITIES	9
---V. PROCEDURES	9
---VI. RELATED INFORMATION	10
---VII. FREQUENTLY ASKED QUESTIONS	10
---VIII. REVISION HISTORY	10
Exec IP Policy.v14.120822_Clean Copy	12
---I. POLICY SUMMARY	12
---II. DEFINITIONS	12
---III. POLICY TEXT	14
---IV. COMPLIANCE / RESPONSIBILITIES	14
---V. PROCEDURES	14
---VI. RELATED INFORMATION	15
---VII. FREQUENTLY ASKED QUESTIONS	15
---VIII. REVISION HISTORY	15



OFFICE OF THE VICE PRESIDENT - RESEARCH AND INNOVATION

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

February 27, 2023

CHANCELLORS
ACADEMIC COUNCIL CHAIR COCHRAN
LABORATORY DIRECTOR WITHERELL
ANR VICE PRESIDENT HUMISTON

Re: Systemwide Review of Proposed Presidential Policy on Inventions, Patents, and Innovation Transfer

Dear Colleagues:

Enclosed for systemwide review are proposed revisions to the Presidential Policy on Inventions, Patents, and Innovation Transfer.

In December 2019, the Board of Regents formed the Regents Working Group on Innovation Transfer and Entrepreneurship to understand how the University could better promote innovation transfer and entrepreneurship and take advantage of campus-based opportunities. In May 2021, the Regents Working Group on Innovation Transfer and Entrepreneurship published a [report](#) recommending updating policies, including the existing UC Patent Policy, to reflect current business needs. The report states that the responsibility, authority, and accountability for innovation transfer and entrepreneurship shall reside generally with the campuses. In conjunction with the report, the Board of Regents issued [Regents Policy 5105: Innovation Transfer & Entrepreneurship](#), further recommending that UCOP modernize its policies governing innovation transfer and entrepreneurship.

In response, the Research Policy Analysis and Coordination (RPAC) unit assembled a Patent Policy Review Group to review and revise the existing UC Patent Policy. The group focused on shifting UCOP's authority over intellectual property to campuses, removing outdated procedural details, and expanding the policy's scope to many types of intellectual property that are important to innovation transfer. The revised version of the Patent Policy explicitly gives campuses authority over innovation transfer and intellectual property related decisions and expands the scope of the policy to address unpatentable innovations of interest to extramural sponsors and licensees. It also renames the policy to the Policy on Inventions, Patents, and Innovation Transfer to reflect the expanded scope.

Systemwide Review

Systemwide review is a public review distributed to the Chancellors, the Chair of the Academic Council, the Director of the Lawrence Berkeley National Laboratory, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, especially affected employees, about policy proposals. Systemwide review also includes a mandatory, 90-day full Senate review.

Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

We would appreciate receiving your comments no later than May 31, 2023. Please submit your comments to RPAC@ucop.edu with the subject line "Inventions, Patents, and Innovation Transfer Policy Comments." If you have any questions, please contact Felice Lu a at Felice.Lu@ucop.edu or (510) 987-0348.

Sincerely,



Theresa A. Maldonado, Ph.D., P.E.
Vice President, Research & Innovation
University of California Office of the President

Enclosures:

- 1) Draft Presidential Policy on Inventions, Patents, and Innovation Transfer (clean copy)
- 2) Draft Presidential Policy on Inventions, Patents, and Innovation Transfer (tracked-changes copy)
- 3) Model Communication

cc: President Drake

Provost and Executive Vice President Newman
Executive Vice Chancellors/Provosts
Executive Vice President Byington
Executive Vice President and Chief Operating Officer Nava
Senior Vice President Bustamante
Vice Provost Haynes
Vice President and Vice Provost Gullatt
Vice President Lloyd
Vice Provosts/Vice Chancellors of Academic Affairs/Personnel
Associate Vice Provost Lee
Associate Vice President Matella
Deputy General Counsel Woodall
Assistant Vice Provosts/Vice Chancellors for Academic Personnel
Executive Director and Chief of Staff Henderson
Executive Director Motton
Executive Director Lin
Executive Director Silas
Interim Chief of Staff Halimah
Chief of Staff Kao
Chief of Staff Levintov
Chief Policy Advisor McAuliffe
Director Anders
Director Roller
Director Sykes

Associate Director Dicaprio
Associate Director Nguyen
Associate Director Weston-Dawkes
Associate Director Woolston
Assistant Director LaBriola
Senior Research Policy Manager Lu
Manager Crosson
Administrative Manager Garcia
Manager Garza
Analyst Durrin
Administrative Officer Babbitt
Policy Advisory Committee



Patent Policy on Inventions, Patents, and Innovation Transfer

Responsible Officer:	VP — Research & Graduate Studies <u>and Innovation</u>
Responsible Office:	RGR <u>I - Research & Graduate Studies</u> <u>and Innovation</u>
Issuance Date:	10/1/1997 <u>xx-xx-2023</u>
Effective Date:	10/1/1997 <u>xx-xx-2023</u>
Scope:	Faculty, Staff and Students <u>All UC locations</u>

Contact:	Janna Tom <u>Deborah Motton</u>
Title:	<u>Executive Director</u>
Email:	Janna.tom <u>Deborah.Motton</u> <u>@ucop.edu</u>
Phone #:	(510) 987-6059 <u>587-6053</u>

I. POLICY SUMMARY

The University of California (“University”) is a major driver of economic and social prosperity in the State of California. This is primarily accomplished through the education of a highly trained workforce, the publication of research results, and the development of societal solutions through research and service initiatives. The University strives to manage intellectual property assets for the long-term benefit of both the University and the people of the State of California.

This policy supports the practical application of University research and the Regents Policy on Innovation Transfer & Entrepreneurship by establishing the University’s ownership of intellectual property, facilitating legal protection under applicable intellectual property laws, promoting campus innovation transfer, and committing to an equitable distribution of intellectual property commercialization income.

II. DEFINITIONS

Intellectual Property: broadly defined to include inventions, discoveries, developments, improvements, systems, methods, processes, and materials, as well as copyrightable works retained by the University under the Copyright Ownership Policy or Ownership of Course Materials Policy. For the avoidance of doubt, Intellectual Property excludes scholarly and aesthetic works transferred to academic authors under the Copyright Ownership Policy.

Intellectual Property includes legally recognized rights in patents, registered or unregistered copyrights, registered or unregistered trademarks, service marks, trade secrets, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models, organisms, machines, devices, designs, apparatus, instrumentation, circuits, biological materials, chemicals, other compositions of matter, and plants. Future advances in science and the arts may result in new structures for intellectual property protection and they also fall within this policy.

University IP: all Intellectual Property created: 1) within the course or scope of University employment, 2) using University Research Facilities, or 3) using gifts, grants, or contracts received by or through the University.

Inventor: an individual covered by this policy who meets the criteria for inventorship under United States patent laws and regulations.

Invention: a unique or novel device, method, composition, process, machine, manufacture, design, or composition of matter, or any new and useful improvements, or any variety of plant which is or may be patentable under United States patent laws and regulations.

Net Commercialization Income: gross income received in consideration for a license or option, less the costs of patenting, protecting, and preserving patent and other property rights, maintaining and/or prosecuting Intellectual Property, litigation and audit expenses, the marketing and licensing of Intellectual Property rights, payments to third parties and such other costs, or taxes.

University Research Facilities: University premises or resources dedicated in whole or in part to the performance of research. ~~Not applicable.~~

III. POLICY TEXT

PREAMBLE

~~It is the intent of the President of the University of California, in administering intellectual property rights for the public benefit, to encourage and assist members of the faculty, staff, and others associated with the University in the use of the patent system with respect to their discoveries and inventions in a manner that is equitable to all parties involved.~~

~~The University recognizes the need for and desirability of encouraging the broad utilization of the results of University research, not only by scholars but also in practical application for the general public benefit, and acknowledges the importance of the patent system in bringing innovative research findings to practical application.~~

~~Within the University, innovative research findings often give rise to patentable inventions as fortuitous by-products, even though the research was conducted for the primary purpose of gaining new knowledge.~~

~~The following University of California Patent Policy is adopted to encourage the practical application of University research for the broad public benefit; to appraise and determine relative rights and equities of all parties concerned; to facilitate patent applications, licensing, and the equitable distribution of royalties, if any; to assist in obtaining funds for research; to provide for the use of invention-related income for the further support of research and education; and to provide a uniform procedure in patent matters when the University has a right or equity.~~

STATEMENT OF POLICY

~~**A. Copyright and Course Material Policies.** This policy is not intended to modify the ownership rights provided in the University policies regarding copyright ownership or course material ownership.~~

~~**B. Ownership.** The University owns University IP. This ownership statement fulfills in part the requirements imposed by federal, state, and sponsor policies or regulations, including California Labor Code sections 2860 and 2870. The Patent Acknowledgment is the document that confirms the University's ownership of Inventions and all University employees must sign the Patent Acknowledgment at the time of hiring.~~

~~An agreement to assign inventions and patents to the University, except those resulting from permissible consulting activities without use of University facilities, shall be mandatory for all employees, for persons not employed by the University but who use University research facilities, and for those who receive gift, grant, or contract funds through the University. Such an agreement may be in the form of an acknowledgment of obligation to assign. Exemptions from such agreements to assign may be authorized in those circumstances when the mission of the University is better served by such action, provided that overriding obligations to other parties are met and such exemptions are not inconsistent with other University policies.~~

~~Those individuals who have so agreed to assign inventions and patents shall promptly report and fully disclose the conception and/or reduction to practice of potentially patentable inventions to the Office of Technology Transfer or authorized licensing office. They shall execute such declarations, assignments, or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent or analogous property rights, to assure that title in such inventions~~

~~shall be held by the University or by such other parties designated by the University as may be appropriate under the circumstances. Such circumstances would include, but not be limited to, those situations when there are overriding patent obligations of the University arising from gifts, grants, contracts, or other agreements with outside organizations. In the absence of overriding obligations to outside sponsors of research, the University may release patent rights to the inventor in those circumstances when:~~

~~the University elects not to file a patent application and the inventor is prepared to do so, or~~

~~the equity of the situation clearly indicates such release should be given, provided in either case that no further research or development to develop that invention will be conducted involving University support or facilities, and provided further that a shop right is granted to the University.~~

C. Income Distribution. Subject to previous versions of this policy and the University's contractual obligations, the University agrees to pay Inventor(s) 35% of the University's Net Commercialization Income from Inventions. Bayh-Dole regulations require the University uses remaining Net Commercialization Income from Inventions for scientific research, development, and education. When two or more Inventors are eligible to receive Net Commercialization Income for the same Invention, each Inventor shares equally, unless all Inventors agree in writing to a different sharing arrangement. The distribution of Net Commercialization Income from non-Invention University IP is determined at the campus or Laboratory level. The DOE Laboratory may establish separate royalty distribution formulas, subject to approval by the President.

~~A. Subject to restrictions arising from overriding obligations of the University pursuant to gifts, grants, contracts, or other agreements with outside organizations, the University agrees, following said assignment of inventions and patent rights, to pay annually to the named inventor(s), or to the inventor(s)' heirs, successors, or assigns, 35% of the net royalties and fees per invention received by the University. An additional 15% of net royalties and fees per invention shall be allocated for research related purposes on the inventor's campus or Laboratory. Net royalties are defined as gross royalties and fees, less the costs of patenting, protecting, and preserving patent and related property rights, maintaining patents, the licensing of patent and related property rights, and such other costs, taxes, or reimbursements as may be necessary or required by law. Inventor shares paid to University employees pursuant to this paragraph represent an employee benefit.~~

~~When there are two or more inventors, each inventor shall share equally in the inventor's share of royalties, unless all inventors previously have agreed in writing to a different distribution of such share.~~

~~**Distribution of the inventor's share of royalties shall be made annually in November from the amount received during the previous fiscal year ending June 30th, except as provided for in Section II.D. below. In the event of any litigation, actual or imminent, or any other action to protect patent rights, the University may withhold distribution and impound royalties until resolution of the matter.**~~

~~B. The DOE Laboratories may establish separate royalty distribution formulas, subject to approval by the President. Distribution of the inventor's share of DOE Laboratory royalties shall be made annually in February from the amount received during the previous fiscal year ending September 30th. All other elements of this policy shall~~

~~continue to apply.~~

~~C. Equity received by the University in licensing transactions, whether in the form of stock or any other instrument conveying ownership interest in a corporation, shall be distributed in accordance with the Policy on Accepting Equity When Licensing University Technology.~~

~~D. In the disposition of any net income accruing to the University from patents, first consideration shall be given to the support of research.~~

~~PATENT RESPONSIBILITIES AND ADMINISTRATION~~

~~A. Pursuant to Regents' Standing Order 100.4(mm), the President has responsibility for all matters relating to patents in which the University of California is in any way concerned. This policy is an exercise of that responsibility, and the President may make changes to any part of this policy from time to time, including the percentage of net royalties paid to inventors.~~

~~B. The President is advised on such matters by the Technology Transfer Advisory Committee (TTAC), which is chaired by the Provost and Executive Vice President—Academic and Health Affairs. The membership of TTAC includes the Executive Vice President—Business Operations, the Director of the Office of Technology Transfer, and representatives from the campuses, DOE Laboratories, Academic Senate, the Division of Agriculture and Natural Resources and the Office of the General Counsel.¹ TTAC is responsible for:~~

- ~~1. reviewing and proposing University policy on intellectual property matters including patents, copyrights, trademarks, and tangible research products;~~
- ~~2. reviewing the administration of intellectual property operations to ensure consistent application of policy and effective progress toward program objectives; and~~
- ~~3. advising the President on related matters as requested.~~

~~C. The Provost and Executive Vice President—Academic and Health Affairs is responsible for implementation of this Policy, including the following:~~

- ~~1. Evaluating inventions and discoveries for patentability, as well as scientific merit and practical application, and requesting the filing and prosecution of patent applications.~~
- ~~2. Evaluating the patent or analogous property rights or equities held by the University in an invention, and negotiating agreements with cooperating organizations, if any, with respect to such rights or equities.~~
- ~~3. Negotiating licenses and license option agreements with other parties concerning patent and or analogous property rights held by the University.~~

⁴ ~~Titles updated June 5, 2008~~

~~4. Directing and arranging for the collection and appropriate distribution of royalties and fees.~~

~~5. Assisting University officers in negotiating agreements with cooperating organizations concerning prospective rights to patentable inventions or discoveries made as a result of research carried out under gifts, grants, contracts, or other agreements to be funded in whole or in part by such cooperating organizations, and negotiating with Federal agencies regarding the disposition of patent rights.~~

~~6. Approving exemptions from the agreement to assign inventions and patents to the University as required by Section II.A. above.~~

~~7. Approving exceptions to University policy on intellectual property matters including patents, copyrights, trademarks, and tangible research products.~~

IV. COMPLIANCE / RESPONSIBILITIES

As a public, state-funded university, the University must manage its assets fairly and prioritize its mission of research, education, and public service. Decisions related to patenting and commercialization will be made in the campus' sole and absolute discretion using processes developed and administered at the campus level. All commercialization decisions must take into account the University's status as a 501(c)(3) organization, and be compliant with other University policies, applicable laws, and third-party obligations. To support the University's research and education purposes, all licenses and grants of rights must include a retained right for the University and other non-profits to practice University IP.

See Patent Responsibilities, above

V. PROCEDURES

A. Patent Acknowledgment. As stated in the Policy Text, all University employees must sign the Patent Acknowledgment at the time of hiring. Only employees who have signed the Patent Acknowledgment may perform under University gifts, grants, or contracts. Individuals not employed by the University but who use University Research Facilities, or who perform under University gifts, grants, or contracts are also subject to this Policy and must sign the Patent Acknowledgment prior to accessing such facilities or performing such work. Thereafter, all individuals subject to this Policy must provide to University any additional documents necessary for entering into commercialization agreements and/or obtaining legal protection for University IP. All individuals subject to this Policy are responsible for ensuring that any employment/consulting agreements with third parties do not conflict with their preexisting and ongoing obligations to the University.

Campus Chancellors, the Vice President, Agriculture and Natural Resources, Laboratory Director and/or their delegates may authorize exemptions and exceptions from signing the Patent Acknowledgment, provided that such exemptions or exceptions are consistent with other University policies, applicable laws, and third-party obligations.

B. Reporting. All individuals subject to this Policy must promptly report and fully disclose all Inventions to the authorized licensing office.

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C. Income. Net Commercialization Income under this policy will be distributed at least once per year based on income and costs from the previous year. In the event of any significant future expense such as litigation, actual or imminent, or any other action to protect patent rights, the University may withhold distributions to cover costs until resolution of the matter.

D. Exceptions. In special circumstances, it may be in the best interests of the University to enter into agreements that require exceptions to this policy. Campus Chancellors, the Vice President, Agriculture and Natural Resources, Laboratory Director and/or their delegates may authorize such exceptions in accordance with other University policies, applicable laws, and third-party obligations.

Not applicable

VI. RELATED INFORMATION

Regents Policy on Innovation Transfer & Entrepreneurship

United States Patent Laws

Bayh-Dole Act

California Labor Code Section 2860 and 2870

Copyright Ownership Policy

Ownership of Course Materials

Patent Acknowledgment

UC Patent Policy 1985

University of California State Oath of Allegiance, Patent Policy, and Patent Acknowledgement [UPAY585 (R-11/2011)]

Business and Finance Bulletin G-40, University of California Patent Program (August 1, 1994)

VII. FREQUENTLY ASKED QUESTIONS

Not applicable

VIII. REVISION HISTORY

January XX, 2023: To implement Section A (Governance) of the Regents Policy on Innovation Transfer & Entrepreneurship, this policy gives campuses sole authority and discretion to execute its innovation transfer programs. Also, this policy addresses unpatentable intellectual property which can generate commercialization income.

This Policy is also reformatted to meet Web Content Accessibility Guidelines (WCAG) 2.0

This policy rescinds the Patent Policies dated October 1, 1997. June 5, 2008

~~On May 1, 2007, the newly created position of Executive Vice President -- Business Operations assumed responsibility for the implementation of the University Patent Policy with the elimination of the Senior Vice President -- Business & Finance position within the organizational structure of the Office of the President. On August 13, 2007, responsibility for the implementation of the University Patent Policy was transferred to the Provost and Executive Vice President -- Academic and Health Affairs in conjunction~~



Policy on Inventions, Patents, and Innovation Transfer

Responsible Officer:	VP – Research and Innovation
Responsible Office:	RI - Research and Innovation
Issuance Date:	xx-xx-2023
Effective Date:	xx-xx-2023
Scope:	All UC locations

Contact:	Deborah Motton
Title:	Executive Director
Email:	Deborah.Motton@ucop.edu
Phone #:	(510) 587-6053

I. POLICY SUMMARY

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[Ownership of Course Materials Policy](#). For the avoidance of doubt, Intellectual Property excludes scholarly and aesthetic works transferred to academic authors under the [Copyright Ownership Policy](#).

Intellectual Property includes legally recognized rights in patents, registered or unregistered copyrights, registered or unregistered trademarks, service marks, trade secrets, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models, organisms, machines, devices, designs, apparatus, instrumentation, circuits, biological materials, chemicals, other compositions of matter, and plants. Future advances in science and the arts may result in new structures for intellectual property protection and they also fall within this policy.

University IP: all Intellectual Property created: 1) within the course or scope of University employment, 2) using University Research Facilities, or 3) using gifts, grants, or contracts received by or through the University.

Inventor: an individual covered by this policy who meets the criteria for inventorship under [United States patent laws](#) and regulations.

Invention: a unique or novel device, method, composition, process, machine, manufacture, design, or composition of matter, or any new and useful improvements, or any variety of plant which is or may be patentable under [United States patent laws](#) and regulations.

Net Commercialization Income: gross income received in consideration for a license or option, less the costs of patenting, protecting, and preserving patent and other property rights, maintaining and/or prosecuting Intellectual Property, litigation and audit expenses, the marketing and licensing of Intellectual Property rights, payments to third parties and such other costs, or taxes.

University Research Facilities: University premises or resources dedicated in whole or in part to the performance of research.

III. POLICY TEXT

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B. Ownership. The University owns University IP. This ownership statement fulfills in part the requirements imposed by federal, state, and sponsor policies or regulations, including [California Labor Code sections 2860 and 2870](#). The [Patent Acknowledgment](#) is the document that confirms the University's ownership of Inventions and all University employees must sign the [Patent Acknowledgment](#) at the time of hiring.

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Campus Chancellors, the Vice President, Agriculture and Natural Resources, Laboratory Director and/or their delegates may authorize exemptions and exceptions from signing the [Patent Acknowledgment](#), provided that such exemptions or exceptions are consistent with other University policies, applicable laws, and third-party obligations.

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VI. RELATED INFORMATION

[Regents Policy on Innovation Transfer & Entrepreneurship](#)

[United States Patent Laws](#)

[Bayh-Dole Act](#)

[California Labor Code Section 2860 and 2870](#)

[Copyright Ownership Policy](#)

[Ownership of Course Materials](#)

[Patent Acknowledgment](#)

VII. FREQUENTLY ASKED QUESTIONS

Not applicable

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