



FAULKNER UNIVERSITY

INTELLECTUAL PROPERTY AND PATENT

Section: **Other Regulations**
Policy Number: **390**

Effective: **May 7, 2008**
Revised: **N/A**

Scope: Faculty, Staff

Purpose: The policy is intended to encourage the patenting of discoveries and inventions and the development and utilization of patents for the benefit of the public and the inventors for all patents in which the University has equity.

GENERAL PROVISIONS

Faulkner University (hereinafter sometimes referred to as “University” or “the University”) seeks to encourage creativity, research and publication, invention and patentable ideas among its faculty and students that is in-keeping with the University’s purpose and mission statement. Works of Intellectual Property, whether a work of creativity, research and publication, invention, or patentable idea, which are attributable to Faulkner University are considered, in part, the property of Faulkner University as set forth in this policy.

Furthermore, this policy offers a mechanism for patenting discoveries and inventions of the faculty, employees and students in which the University has no equity but may acquire equitable interest in order to assist the faculty, other employees or students.

This policy is general and reflects the position of Faulkner University in its activities to assist prospective patentees develop their discoveries and inventions for patenting for the benefit of the public and the inventors.

PROCEDURE FOR PRESENTING PROPOSAL & INVOKING APPLICABILITY

An employee or student wishing to receive the University’s support for a work of creativity, research and publication, invention or patentable idea must comply with the following procedures:

1. The employee or student must create a research proposal;
2. The employee or student must complete the “Proposal for Research IRB Form”;
3. If an employee has teaching duties, the employee must present the proposal to the department chair and receive the approval of the department chair. The department chair and the employee will work together with respect to release time, payment, course loads and budgeting;
4. The employee or student must present the proposal, complete, along with all administrative forms and cover sheets, to the Institutional Review Board. The Institutional Review Board will not accept incomplete applications for processing;
5. The research proposal, as specified in “# 4”, must be submitted to the Institutional Review Board by September 1 in the calendar year preceding the budget year in which the University’s assistance is requested. For example, if an employee wants release time during the 08-09 budget year, complete proposals must be submitted by September 1, 2007;
6. The Institutional Review Board will review all proposals and accept or reject the proposal within 90 days. All proposals, even those submitted by the September 1 deadline, will be reviewed by the Institutional Review Board and accepted or rejected, within 90 days, or in any event, no later than December 1 of the calendar year in which the proposal is made;
7. The Institutional Review Board will report all of its findings with respect to proposals to (1) the Academic Vice President, (2) the employee, and (3) the Department Chair of the department in which the employee teaches.

APPLICABILITY OF POLICY

This policy shall not apply to any work of creativity, research and publication, invention or patentable idea that is work produced by a student or employee where the work of creativity, research and publication, invention or patentable idea is not attributable to Faulkner University.

Attributable to Faulkner University

As to students: “Attributable to Faulkner University” means that the work of creativity, research and publication, and/or invention is created by the student and one for which he receives the University’s assistance/support, and is:

1. a work for which the student was required to seek the approval of the Institutional Review Board; and
2. a work for which the student seeks the University’s assistance in receiving a grant, patent, copyright or trademark for the work.

As to employees: “Attributable to Faulkner University” means that:

1. the work of creativity, research and publication , invention, or patentable idea of the employee is created while making a substantial use of the physical facilities and/or resources belonging to Faulkner University; or
2. the work of creativity, research and publication , invention, or patentable idea of the employee is created during the course of their employment with Faulkner University and was one for which “release time” or “payment” was granted;
 - a. “Release Time” is any time for which a University employee receives credit (course load) without teaching a course. Employees must apply for and have release time approved in advance of embarking upon a work of creativity, research and publication, invention, or patentable idea for which they wish to receive release time. The release time is accepted by the employee with the understanding that it serves as payment for the work of creativity, research and publication, invention, or patentable idea, and that the release time invokes the applicability of this policy. The University will have equity in the project and ally royalties will be subject to the section of this policy entitled “Division of Equities.”
 - b. “Payment” is monetary consideration paid to the employee over and above his regular salary. The payment is accepted by the employee with the understanding that the payment is made for the work of creativity, research and publication, invention, or patentable idea, and that the payment invokes the applicability of this policy. The University will have equity in the project and all royalties will be subject to the section of this policy entitled “Division of Equities.”

Or,

3. the work of creativity, research and publication , invention, or patentable idea of the employee is created using funds or grants received through his position with Faulkner University; or
4. the work of creativity, research and publication , invention, or patentable idea of the employee is to be conducted on Faulkner University’s campus using live subjects; or
5. the work of creativity, research and publication , invention or patentable idea of the employee is sponsored or co-sponsored by Faulkner University, via University support, payment, release time, or University assistance; or
6. a work of creativity, research and publication , invention or patentable idea is one for which the employee seeks the University’s assistance in receiving a grant, patent, copyright or trademark for the work.

Applicability of Policy and Institutional Review Board

The Institutional Review Board is the University’s agent and has a duty to review and accept or reject all proposals for works of creativity, research and publication, invention or patentable idea. Where the Institutional Review Board rejects a proposal, the University is deemed to have rejected the proposal.

1. Where a student or employee (faculty or staff) of Faulkner University wishes to engage in a work of creativity, research and publication, invention or patentable idea to which this policy applies, a proposal must be submitted to the Institutional Review Board.
2. A work of creativity, research and publication, invention or patentable idea that are not submitted to the Institutional Review Board for approval prior to the time that the work on said project begins is:
 - a. not eligible for grants or funding from or through Faulkner University; and
 - b. not eligible for University support or University assistance; and
 - c. is not an undertaking for which “release time” will be granted.

This clause is not intended to include and does not include any preparatory work that must be done in preparing a proposal for research so that the proposal can be made to the Institutional Review Board.

3. Where a proposal is made but rejected by the Institutional Review Board, the student or employee is still free to engage in their work of creativity, research and publication, and/or invention. However, they do so with the knowledge that:
 - a. the work is not considered a part of their course of study or employment; and
 - b. they are not eligible for grants, funding, support or assistance from the University;
 - c. the University takes no sponsorship of the work; and
 - d. neither release time nor payment will be granted for the undertaking of the project.
4. Employees and students shall report to the University, through the Institutional Review Board, all discoveries or inventions deemed patentable arising from research or other activities conducted within the field of their official duties and responsibilities and/or in the course of their employment with the University. Such potentially patentable discoveries and inventions should be reported using the disclosure of invention form available from the Institutional Review Board.
5. Inventors are cautioned that a patent application must be filed within a year after open publication of the disclosure of an invention or the idea becomes part of the public domain and unpatentable.

NON-APPLICABILITY OF POLICY

From time to time, employees and students may engage in works of creativity, research and writing (with or without publication) that do not involve live subjects or for another reason are not items that must be proposed to the Institutional Review Board before they are undertaken. This policy does not apply to those items.

This policy shall not apply to any work of creativity, research and publication, invention, or patentable idea undertaken by a student or employee that is completed by the individual using his time and resources.

Where a student or employee makes a proposal to the Institutional Review Board that is rejected, this policy does not apply.

Where an employee does not receive University support in the form of sponsorship, substantial use of facilities & resources, funding, grants, release time or payments for the work of creativity, research and publication, invention, or patentable idea, this policy does not apply.

Nothing in this policy shall be construed to mean that work prepared by a student as a part of his course requirements is or becomes the property of the University. Unless a student takes action to trigger applicability (see section, “Applicability of Policy”), the work prepared by the student belongs to the student.

Nothing in this policy shall be construed to mean that the work prepared by an employee as a learning aid or lecture enhancement, or as part of their professional development, or as part of their normal class preparation becomes the property of the University. Unless an employee takes action to trigger applicability (see section, “Applicability of Policy”), the work prepared by the employee belongs to the employee.

DURATION

This policy shall be effective between Faulkner University and each faculty member or other employee commencing with his employment and ending upon the employee's resignation or termination.

This policy shall be effective between the University and each student commencing with his enrollment and continuing until the termination of his last period of enrollment.

CLASSES OF INTELLECTUAL PROPERTY RIGHTS AFFECTED

The ownership and control of patent rights to patentable discoveries and inventions resulting from work or research that is attributable to Faulkner University, as outlined in the section, "Applicability of Policy," are subject to this policy.

The ownership and control of patent rights to patentable discoveries and inventions resulting from research sponsored by industrial or governmental agencies that are attributable to Faulkner University, as outlined in the section, "Applicability of Policy," are subject to this policy.

The University's equity in discoveries and inventions not covered by such contractual agreements, but which are attributable to Faulkner University, as outlined in the section, "Applicability of Policy," are subject to this policy.

This policy covers patentable subject matter and patents but does not extend to copyrightable or copyrighted material.

Patentable subject matter involving the act of invention covers:

1. Processes, machines, compositions of matter and other articles of manufacture. "Process" includes improvement of a known process or an entirely new method for making a composition of matter or article of manufacture
2. Design
3. Invention involves:
 - a) Conception, a mental act;
 - b) Reduction to practice
4. Unpatentable subject matter covers:
 - a) Discovery of natural phenomenon;
 - b) Product of nature;
 - c) Mere ideas or concepts;
 - d) Inventions relating to atomic weapons

Internally Sponsored Projects

The patent rights to inventions and developments resulting from research or other activities conducted by faculty, other employees, or students within the field of their official duties and responsibilities, or programmed or substantially supported by the University are retained by the University. Disposition of patent rights is handled by the University. However, the faculty members, other employees and/or students, who are the inventors of record may participate in the income from discoveries and inventions on which patents are obtained in accordance with the section of this policy entitled, "Division of Equities."

In the event Faulkner University does not elect, within three months after submission of a disclosure, to pursue a patent or patents on any discovery or invention, the inventor or inventors become the sole proprietor(s) of all rights to the invention or discovery.

The University or its agent will bear all costs of pursuing the obtaining of patents for all inventions and discoveries retained by the University, but these costs will be deducted from the proceeds prior to any payments to the inventor or inventors.

Personal Research

Projects conducted by students and faculty or employees as a part of formal instruction or thesis projects are considered personal research, are outside the scope of official duties and responsibilities and

programming, and are the personal property of the individual, unless such thesis projects are conducted as a part of a contractual research effort or are attributable to, or supported by, the University.

Faculty, other employees and students submitting patentable ideas and discoveries resulting from personal research to the University that are accepted for patenting will participate in the income from these patents in accordance with the section of this policy entitled, "Division of Equities."

The University or its agent will bear the costs of pursuing the obtaining of patents for all accepted inventions and discoveries, but these costs will be deducted from the proceeds prior to any payment to the inventor or inventors.

Industrial Research

The ownership and control of patent rights to patentable discoveries and inventions resulting from research sponsored by industry at the University are determined by the contractual arrangement between the sponsor and the University. In general, the University retains ownership and control of the patents; however, if required by the sponsor, the University will assign and convey to the sponsor, under the contractual arrangements, rights to all patentable discoveries and inventions resulting from the sponsored research. Where the University retains ownership and control of patents resulting from sponsored research, the University treats these patents the same as though resulting from its own research and the section of this policy entitled, "Division of Equities" is applicable.

Government Research

Faulkner University complies with the government patent policies as set forth by the various Executive Departments and Agencies of the Federal government. The question of ownership and control of patents resulting from Federal or State supported research is determined in each specific contract. Contracts with the State of Alabama shall be governed by the section of this policy entitled, "Division of Equities" unless otherwise provided.

EQUITIES WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS AFFECTED

The ownership and control of patent rights to patentable discoveries and inventions resulting from work or research that is attributable to Faulkner University, as outlined in the section, "Applicability of Policy," are subject to this policy, and such rights will be determined in compliance with the guidelines set forth below.

The ownership and control of patent rights to patentable discoveries and inventions resulting from research sponsored by industrial or governmental agencies will be determined on the basis of the contractual agreement between the sponsor and the University.

DUTIES OF FAULKNER UNIVERSITY

Faulkner University, via the Institutional Review Board, shall consider promptly all reports of inventions and discoveries and shall make the determinations required herein within a reasonable time and in no case longer than three months. The University personnel or students involved shall be entitled to appear before the Institutional Review Board and present evidence to the report, or may choose to submit only the required paperwork.

The University's determination shall be made in writing and shall contain a statement of findings and grounds for decision. In all cases where the University declines to pursue a patentable idea or potential patent the ownership of the rights to such idea or patent are released to the inventor(s) unless prior restraints exist between the University and a sponsoring agency.

The University shall maintain the confidentiality of all patentable ideas so as not to jeopardize the patentability of such ideas.

The University shall have the right to determine how and for what consideration any patent rights assigned to the University will be used.

Where the University determines not to pursue a work of creativity, research and publication, invention or patentable idea, this policy does not apply and the work of creativity, research and publication, invention, or patentable idea is the exclusive property of the individual.

DIVISION OF EQUITIES

Funding of Projects and Division of Equities

Where this policy applies and the University provides 100% of the necessary funding for a work of creativity, research or publication, faculty, other employees and/or students as inventor or co-inventors may receive jointly percentages of the net proceeds as indicated below:

- 50% of net proceeds with net proceeds up to \$100,000;
- 45% of net proceeds with net proceeds between \$100,000 and \$200,000;
- 40% of net proceeds with net proceeds between \$200,000 and \$300,000;
- 35% of net proceeds with net proceeds for everything \$300,000 or more.

Net Proceeds

“Net proceeds” is defined as the proceeds minus all costs of obtaining the patent and of defending and/or marketing the patent. The percentage of net proceeds to the inventor or co-inventors will be distributed annually.

Royalty Income/Equities

Net royalty income will be determined by the following method:

1. All out-of-pocket University expenses for obtaining, defending and marketing the patent will be recovered.
2. A 10% administrative charge will be used to provide resources, to encourage invention disclosures, and to process these in a timely manner, and to facilitate the transfer and commercialization of discoveries and inventions.

Agreement as to Division of Equities

Faulkner University shall, if it determines that more than one individual is entitled to an equity in an invention or discovery, determine the manner in which the equity awarded to the group shall be divided among the individuals constituting the group unless such individuals have made an agreement among themselves, in which case such agreement shall be conclusive.

Assignment of Equities

Notwithstanding any determination of Faulkner University, or any other provision of this policy, faculty, employees and students shall have no equities or rights whatsoever in inventions and discoveries belonging to the University unless and until a written agreement has been executed by the University and University faculty, other employees and/or students consistent with the determination of the University guided by this policy.

The inventor or inventors are required to execute such as assignments and other documents that the University determines to be necessary in obtaining the patent.

Payment of Equities:

Payment of any equity or royalties due to an employee or student must be made annually no later than September 30 of the year.

UNIVERSITY COPYRIGHT AND INTELLECTUAL PROPERTY APPEALS COMMITTEE

A University Copyright and Intellectual Property Appeals Committee shall review the application of this policy and shall submit its recommendations to the President in the event of disagreement between the

employee and the Institutional Review Board. Either the employee or the Institutional Review Board may request a review. The Copyright appeals Committee shall be appointed by the Academic Vice President and shall consist of a minimum of seven members: at least one representative from the Harris College of Business; at least one representative from the V.P. Black College of Biblical Studies; at least one representative from the Great Books Honors College; and at least four members from the Alabama Christian College of Arts and Sciences.

The committee shall meet as necessary and can do so with no less than five members present. The majority vote of the committee shall be a governing decision.

PROPOSED CHANGES TO FAULKNER UNIVERSITY PATENT POLICY

This policy can be amended or changed via a recommendation from the faculty and approved by the Board of Trustees and the University's President, or via a recommendation from the faculty and a signed petition/vote by 80% of the faculty.

The policy is subject to change and a copy of the current policy will be kept on file in the office of the Institutional Review Board and Department of Human Resources.

DISSEMINATION OF POLICY

This policy shall be published in the Faculty Handbook or other appropriate document distributed to the faculty and employees and the Student Handbook, the official publication for students of Faulkner University. The policy shall be referenced in initial employment papers of faculty and other employees of Faulkner University, administrative digests and other appropriate documents for faculty, other employees and students.