

KINGSTON GENERAL HOSPITAL

ADMINISTRATIVE POLICY MANUAL

Subject: Intellectual Property – Queen’s Faculty Members with Hospital Appointments

Number: 01-122

Prepared/Reviewed by: Geoff Flynn, Vice President Research & Development,
Planning Committee

Page: 1 of 3

Original Issue: 2000.05

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Preamble

1. a) This policy applies to all faculty members of Queen’s University with Hospital appointments (Appointees) and the intellectual property (IP) created by Appointees which results from the use of the Hospital space, funding, facilities, staff or patients (Hospital resources) and is intended to complement the existing intellectual property policy contained in the collective agreement between Queen’s University and the Queen’s University Faculty Association (QUFA).
- b) The policy is designed to encourage patenting and commercial development of and promote maximum public benefit from the fruits of intellectual endeavour of Appointees using Hospital resources.

Definition

2. For the purposes of this policy, intellectual property means any result of intellectual activity created by an Appointee that can be owned by a person and includes inventions, publications, computer software, industrial and artistic designs, composition of matter, new or improved devices, systems, chemical compounds and any other creation that can be protected under patent, copyright or trademark laws.

Ownership

3. Intellectual property which results from the use of Hospital resources is owned by the Appointee, unless some other arrangement has been agreed to in advance.

Hospital’s License

4. The Hospital has a non-exclusive, royalty free, fully paid up license to use for non-commercial educational and research purposes within the Hospital, all intellectual property created by Appointees using Hospital resources.

Disclosure

5. a) Appointees who wish to exploit the commercial potential of intellectual property must report, in writing, to the Vice President, Research Development, of the Hospital and the Vice President (Research) of Queen’s University prior to seeking protection or commercialization. The Vice President, Research Development and the Vice-Principal (Research) of Queen’s University shall determine whether the Hospital or Queen’s University will take the lead role in commercializing the results of the intellectual property.
 - i) If Queen’s University takes a lead role and the Hospital has an interest in the IP, negotiations between the Vice Principal (Research) of Queen’s University and the Vice President, Research Development of the Hospital shall take place to determine the respective interests of Queen’s University and the Hospital in any net revenues;
 - ii) If the Hospital takes the lead role, the provisions of the remainder of this policy shall be in effect.

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- b) PARTEQ Research and development Innovations (PARTEQ) is the agent chosen by the Hospital to protect and commercialize intellectual property which results from the use of Hospital Resources.
- c) Following the disclosure to the Vice President and the Vice-Principal, if PARTEQ is a suitable vehicle for the exploitation of the intellectual property, it shall have an exclusive opportunity for sixty (60) days to make a proposal for exploitation acceptable to the Appointee. Any disclosure shall be kept in confidence by PARTEQ and the Hospital. The Appointee has no obligation to accept a PARTEQ proposal if PARTEQ is unsuitable.
- d) Unsuitability of PARTEQ shall be based upon:
 - i) An inadequate capacity to undertake the exploitation in an expeditious manner; or
 - ii) Insufficient prior experience with the type of intellectual property or with the types of exploitation, which are likely to yield a good return for such intellectual property.
- e) Any dispute between the Hospital and the Appointee as to whether PARTEQ is a suitable vehicle for exploitation shall be resolved by consensual mediation or arbitration as set out below.

Dispute Resolution

- 6. a) **MEDIATION** - In the event that the Appointee and the hospital are unable to decide on the suitability of PARTEQ, either the Appointee or the Hospital may request mediation of the dispute within forty-five days after the Appointee has advised the Hospital that PARTEQ is not suitable vehicle. The other party has five working days within which to indicate its consent to mediation. If the parties agree to proceed to mediation, the mediator shall be chosen by mutual agreement between the Appointee and the Hospital within ten days.
- b) **ARBITRATION** - In the event the parties do not proceed to mediation or the mediation is unsuccessful, either the Hospital or the Appointee shall give a notice of its intent to proceed to arbitration within forty-five days after the Appointee has advised the Hospital that PARTEQ is not a suitable vehicle or within ten days of an unsuccessful mediation.
- c) The arbitration panel shall be formed as follows: the Appointee shall select one member of the panel, the Vice President, Research shall appoint another member of the panel, and the two panel members shall appoint a chair. The Hospital and the Appointee agree that the selection of the panel shall be conditional upon the panel members agreeing that:
 - i) the arbitration shall commence within sixty days of the selection of the panel;
 - ii) the expected number of days needed to complete the arbitration, which shall have been determined in advance by the Hospital and the Appointee, shall be scheduled within a mutual agreeable time; and

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- iii) the panel agrees that its decision will be delivered within sixty days of the completion of the evidence.

Commercialization through PARTEQ

- 7. a) If the Appointee elects to use the services of PARTEQ and PARTEQ agrees to commit its resources to protection and commercialization, the sharing of net revenues with the Appointee will be in accordance with the business practices of PARTEQ, as approved by its Board of Directors.
- b) If PARTEQ is the agent selected to commercialize the intellectual property, negotiations between the Vice President, Research Development, the Vice-Principal (Research) of Queen’s and PARTEQ shall take place to determine the respective interests of the Hospital and Queen’s in any net revenues.
- c) Appointees have the right to withdraw from agreements with PARTEQ under certain circumstances:
 - i) where the restrictions associated with the exploitation are interfering with the ability of the Appointee to pursue the scholarly research, and the Appointee agrees not to seek subsequently to exploit the intellectual property for commercial purposes; or
 - ii) PARTEQ has failed to bring appropriate skills and effort to bear on the exploitation over a period of time.
- d) Any dispute about whether withdrawal is warranted shall be resolved as set out in section 6.

Commercialization by Independent Action

- 8. If the Appointee elects to protect or exploit intellectual property developed with Hospital resources without PARTEQ and if PARTEQ was a suitable vehicle for such exploitation and if the Appointee receives any net proceeds of exploitation, the Appointee shall pay to the Hospital twenty-five percent of any net proceeds of exploitation exceeding \$500,000.00. If Queen’s has an interest in the intellectual property Queen’s and the Hospital shall enter into negotiations to determine their respective interests in said twenty-five per cent interest.

Net Proceeds

- 9. Any net proceeds to which the Hospital becomes entitled shall be used as follows: Net proceeds will be placed in a Trust Fund for the general purpose of supporting patient-based research in the Kingston General Hospital.

Authorizing Signature

P. A. R. Glynn
President and Chief Executive Officer