

Université de Lausanne

and

Centre Hospitalier Universitaire Vaudois

Policy on Intellectual Property

1. Preamble

Researchers from the University Hospital of Lausanne and the University of Lausanne (CHUV and UNIL, respectively) collaborate with research teams from all over the world in order to advance science, to develop innovative solutions, to push back boundaries of human knowledge, and improve peoples' lives. For this latter reason in particular, the interface between academic institutions and industry is very important. Therefore, beside their research and teaching missions, CHUV and UNIL encourage the development by industry of inventions and technologies resulting from the institutions' research, and strive to facilitate the transfer of such technology for the use and benefit of the society.

The transfer of the discoveries to the commercial sector is coordinated through intellectual property management and commercialisation for which PACTT, the joint technology transfer office of UNIL and CHUV, is competent. PACTT is responsible for all matters relating to the identification, protection, and exploitation of intellectual property, mainly patents, trademarks and copyrights. It is an indispensable support of the institutions' investigators in their collaborations with industrial and academic partners and in projects to create spin-off companies.

PACTT is therefore the primary contact for researchers with regard to the disclosure of inventions and other potentially exploitable results, and during the subsequent stages of evaluation, protection, licensing and other activities. These activities require careful balancing between economic and academic interests.

The purposes and policies concerning the commercialization of intellectual property at CHUV and UNIL are described in the relevant federal and cantonal laws and in the institutional guidelines. The present IP Policy document is a brief summary of the main pieces of legislation governing ownership, management and exploitation of the institutions' intellectual property. It is intended as a quick reference primarily for institutions' employees, and provides guidance on rights and obligations relating to publication and exploitation of intellectual property, and the sharing of financial returns from knowledge transfer activities.

2. Ownership of Intellectual property

Intellectual property (IP) refers to creation of the mind such as inventions; literary and artistic works; symbols, names and images used in commerce. All material generated by employees may potentially be IP and generate intellectual property rights (IPR). Examples of IPR include patents, copyright, design rights and trademarks.

For the purpose of this policy¹, IP means the rights relating to all creations of the intellect and research results obtained by employees while carrying out activities on behalf of CHUV or UNIL, excluding copyright works.

Employees are compelled to disclose to PACTT any results or creations that could potentially be commercialized. IP developed by employees in the course and scope of their employment belong to the respective institution, and therefore, only the institutions have the authority to assign or grant exploitation rights to third parties. Under no circumstances may employees grant such rights on their own behalf.

The institutions retain ownership of IPR and pursue technology exploitation mainly through licensing to existing or newly created spin-off companies or any other means they decide.

Exemptions to institutions ownership of IP

As an exception to the above, where IP is generated on research or third party contracts, the terms of such contracts may attribute certain IP rights to third parties.

Moreover, following a negative evaluation by PACTT in relation to protection and exploitation of duly disclosed IP, CHUV or UNIL may decide upon request to assign the ownership of the IP to the creator(s), subject only to contractual obligations, if any, towards a third party. The terms of such assignment have to be agreed in writing between the employee(s) and the institution concerned.

In all cases where an invention is assigned to the inventor, the institutions will retain the right to a non-exclusive, non-transferable, irrevocable, royalty-free, worldwide right and license on the invention for research (including use in clinical trials) and educational purposes and a right to grant the same rights to other non-profit institutions.

¹ See Art. 3 of « Règlement sur la valorisation des résultats de recherche au sein de l'Université de Lausanne et des Hospices cantonaux (RVRR, RSV 414.11.2).

Ownership of Copyright

Copyright such as literary and artistic works developed by employees in the course and scope of their employment do not belong to the institutions. The author owns the copyright for that work.

Computer programs are also protected under copyright. As an exception to the above, the employer is by law entitled to exercise the exclusive rights to the computer programs developed by employees.

Ownership of IP created by students and guest scientists

IP rights developed by students and all guest scientists may be assigned as per the agreements they sign with CHUV or UNIL before any of the institutions' resources are made available to them. In the absence of such agreement, ownership of IP created by students and guest scientists is determined in accordance with applicable law and as per the agreement between the guest scientist and his home institution.

3. Publication

Being public research institutions, UNIL and CHUV make every effort to disseminate research results and new knowledge rapidly and widely. The constitutional right to freedom of scientific research and freedom of opinion and expression includes the right to publish research results without restrictions other than those expressly provided by law. However, such publication may not affect confidentiality rights of third parties and, if the question arises, adequate steps have to be taken to secure patent or other protection. With regards to the latter, contractual terms on publication may not exceed a delay of four months.

4. Exploitation of IP

CHUV and UNIL pursue exploitation of research results with the support of PACTT, whose competences and responsibilities² include:

- validating and managing contracts, including research and service contracts, exploitation contracts as well as material transfer agreements and confidentiality agreements;
- identifying and promoting technology transfer projects;
- filing and managing patent application;

² See art. 21 of « Directive du Conseil de Direction UNIL-CHUV du 02.12.2009 relative aux contrats et à la valorisation de la recherche ».

- promoting academic research targeting the economic community;
- establishing and maintaining networks with other national and international technology transfer offices;
- advising and supporting researchers in the creation of start-ups.

Collaboration contracts

As it is the case for any matter relating to IPR and any collaboration with the commercial sector, an employee wishing to enter into a collaboration contract with a commercial partner or any other third party shall promptly notify PACTT. PACTT will provide the relevant agreement template, if applicable, and in collaboration with the employee will deal with all aspects related to negotiation and signature of such contracts. Applicable institutions' guidelines³ set forth the elaboration and validation processes, as well as the person within the unit or the department in charge of monitoring reporting obligations.

An overhead applies to the collaboration with such third parties to allocate the indirect costs of the institutions related to the execution of contracts. Applicable institutions' guidelines⁴ set forth the rate of charge, possible exemptions as well as the methods whereby it is collected.

Disclosure of IP

In most countries, non-confidential disclosure of an invention, e.g. in form of discussion, presentation, poster or publication, renders the protection through a patent impossible. For this reason, a timely and complete disclosure - using the designated disclosure forms⁵ made available online via the PACTT website - must be made to PACTT.

Employees shall notify PACTT promptly and in any case before public disclosure, of any IP and are expected to take all reasonable steps to ensure that the institutions' IPR is properly protected, notably:

- not disclosing any results until a patent application is filed or the institution decides not to pursue exploitation;
- keeping state of the art lab notebooks and records;
- complying with recommendations and best practices published in PACTT's website.

³ See CHUV's guidelines « Contrats conclus entre le CHUV et un tiers en matière de recherche, de services scientifiques et de sponsoring »; and, above-mentioned « Directive du Conseil de Direction UNIL-CHUV du 02.12.2009 relative aux contrats et à la valorisation de la recherche ».

⁴ See CHUV's guidelines « Redevance forfaitaire sur les contrats de recherche et de services financés par des tiers (overhead) »; and, UNIL's guidelines « Directive de la Direction 4.1 Signature des contrats de recherche et de prestations de service ».

⁵ Disclosure Forms IDF or SwDF, available at <http://www.pactt.ch/documents/disclosure-form-idf-or-swdf/>.

PACTT will promptly evaluate the potential of the disclosed IP with regards to aspects such as patentability, field of use, societal impact and economic potential, and will develop an exploitation strategy.

Obligation of cooperation and assistance

Researchers shall cooperate with PACTT and assist by signing and furnishing all required documents for the filing and prosecution of the patent (e.g. assistance in connection with any objections by the examiners during the prosecution of the patent). They should also collaborate in identifying potential partners interested in exploiting the IP (e.g. presentation of the IP to prospective partners).

Support to start-ups

CHUV and UNIL support the creation of start-up in an effort to develop and exploit research results obtained at the institutions. In the instance where employees wish to become active in such a start-up company, institutions' guidelines apply regarding conflict of interests⁶ and ancillary activity⁷, including, among others, provisions regarding access to equipment and the provision of personnel.

Equity participation

In pursuit of exploitation of its IPR, UNIL may acquire a stake in the capital of a company, provided that i) such company is granted the right to commercially exploit the IP; and, that ii) UNIL's stake is limited to no more than 49 % of the capital or the voting rights.

The acquisition of shares is decided by the managing board within the limits set by applicable laws⁸ and is made through intangible assets such as compensation of credit arising from license agreements or granting of exploitation rights under the patent. In cases where other sources of financing are not available or if financing through intangible assets reveals insufficient, UNIL may supplement financing through cash.

All shares owned by UNIL are managed by PACTT and relevant decisions are made by UNIL's managing board.

⁶ See « Gestion du risque lié aux conflits d'intérêts (activités de recherche, formation et soins) (*Directive institutionnelle CHUV*); and, « Directive de la Direction 4.2. Intégrité scientifique dans le domaine de la recherche et procédure à suivre en cas de manquement à l'intégrité » (*Directive UNIL*).

⁷ See « Activités accessoires et leurs revenus » (*Directive institutionnelle CHUV*); and, « Directive de la Direction 1.25 Activités accessoires à l'Université de Lausanne » (*Directive UNIL*).

⁸ See Loi sur les participations de l'Etat et des communes à des personnes morales (LPECPM, RSV 610.20).

Income sharing

Revenues or equity benefits resulting from the exploitation of IPRs (after deduction of all patent application expenses, overhead, and a fixed rate of 10% to cover operational costs of the PACTT) are distributed as follows:

- 1/3 to the inventor;
- 1/3 to the inventors' research unit;
- 1/3 to the institution.

In some cases (e.g. termination of employment, or acquisition by the employee/inventor of a stake of more than 3% in the capital of the company contributing an amount for exploitation) the institution's managing board may decide to derogate from this distribution schedule.

5. Prevalence of laws and guidelines

For the avoidance of doubt, in the case of any contradiction between this policy and the applicable laws, regulations and guidelines, the provisions of the latter shall prevail.

6. References

Constitution fédérale de la Confédération suisse (Cst., RS 101)

<https://www.admin.ch/opc/fr/classified-compilation/19995395/index.html>

Loi sur le personnel de l'Etat de Vaud (LPers-VD, RSV 172.31)

<http://www.vd.ch/themes/etat-droit-finances/personnel-de-letat/bases-legales/>

Loi sur l'Université de Lausanne (LUL, RSV 414.11)

http://www.rsv.vd.ch/rsvsite/rsv_site/index.xsp

Loi fédérale sur le droit d'auteur et les droits voisins (LDA, RS 231.1)

<https://www.admin.ch/opc/fr/classified-compilation/19920251/index.html>

Règlement sur la valorisation des résultats de recherche au sein de l'Université de Lausanne et des Hospices cantonaux (RVRR, RSV 414.11.2)

http://www.rsv.vd.ch/rsvsite/rsv_site/index.xsp

Directive du Conseil de Direction UNIL-CHUV du 02.12.2009 relative aux contrats et à la valorisation de la recherche

http://www.unil.ch/files/live//sites/interne/files/shared/textes_leg/dir_valor_UNIL_CHUV.pdf

Directive institutionnelle "Contrats conclus entre le CHUV et un tiers en matière de recherche, de services scientifiques et de sponsoring, available on the intranet

Directive de la Direction 4.1 Signature des contrats de recherche et de prestations de service

http://www.unil.ch/interne/files/live/sites/interne/files/textes_leg/4_rech/dir4_1_signature_contract_recherche6.pdf

Directive institutionnelle « Redevance forfaitaire sur les contrats de recherche et de services financés par des tiers (overhead), available on the intranet.