

# **Committee on Intellectual Property, Patents, and copyright (IPPC)**

## **Annual Report**

### **Membership**

Member	Source	Term Expires
Guy Rub (chair)	Faculty Council	2024
Vijay Pancholi	Faculty Council	2024
Pelagia Gouma	Faculty Council	2024
Ash Faulkner	Faculty Council	2025
Tracy Owens	Faculty Council	2025
Mara Frazier	Presidential	2025
Anand Mhatre	Presidential	2026
Michael Freitas	Presidential	2026
Brian Rocha	CGS	2024
Kevin Taylor, Sr. Associate VP for Technology Commercialization		

Until recently, Faculty Rule 3335-5-48.19 stated that the 11<sup>th</sup> committee member would be the VP of Research, a position that has been terminated. Consequently, this year, IPPC only had ten members. However, in consultation with IPPC, in May, Faculty Rule 3335-5-48.19 was amended to allow the Executive Vice President for the Enterprise for Research, Innovation and Knowledge to appoint an 11<sup>th</sup> member to IPPC.

In addition to its ten members, Becky Kaufman, the Associate Vice President & Senior Associate General Counsel, and David Mess, the Interim Executive Director of Licensing at the Technology Commercialization Office, were invited and participated in all IPPC meetings.

### **Duties and Responsibilities**

1. Review, recommend, and advise the university senate on matters relating to the university policy on intellectual property, patents, and copyright and faculty rules 3335-13-06 and 3335-13-07 of the Administrative Code.
2. Convene at least twice per year to review the procedures used in implementing and administering the university policy on intellectual property, patents and copyrights, and where deemed necessary, develop and recommend changes in standards and procedures to the vice president for technology commercialization, the vice president for research, the executive vice president and provost, and other appropriate officers of the university.

3. Consult with the vice president for technology commercialization, the vice president for research when requested.
4. Serve as a board to which a researcher may appeal actions of the vice president for technology commercialization, subject to appropriate review of the standards and procedures contained in the policy on patents and copyrights.

## **Activities**

In addition to its regular activities, such as hearing about commercialization activities on campus and providing reporting to various senate bodies, IPPC has engaged in two main activities this year.

## **Amending the IP Policy**

In April, the Faculty Council and the University Senate approved IPPC's proposed amendment to the IP Policy. IPPC's memorandum from the time explains this change. It reads in the relevant parts:

The heart of the amendment concerns the definition of "direct expenses." This definition matters because the university's income from commercializing a specific intellectual property is initially applied against the direct expenses. Only after the direct expenses, if there are any, are recovered, are additional funds distributed to those who created the intellectual property.

The amendment is designed to clarify and narrow the definition of direct expenses. In particular:

1. The amendment clarifies that direct expenses are those incurred by the university's Technology Commercialization Office (TCO). In recent years, on *rare* occasions, a few university units argued that *their* expenses should also count as direct expenses. The TCO has always rejected such claims, although the policy, as currently written, is ambiguous. The amendment removes this ambiguity and adopts TCO's interpretation.
2. The amendment adopts a narrower and more precise definition of direct expenses. Instead of an open definition stating that any costs directly attributable to IP being commercialized are direct expenses, the amendment specifies the type of costs that can be considered direct expenses. Unlike the current version, the amendment also specifies certain expenses (such as OSU employees' salaries) that cannot be considered direct expenses. The new definition is consistent with TCO's interpretation of the current policy.
3. In Sections V.A.1 and V.C.1, the policy states that the TCO will share some of its income stream with units that have "borne ... the direct expenses in connection

with the commercialization of' the IP for which proceeds were received. Because units are no longer paying for expenses related to the commercialization of specific intellectual properties, the amendment removes this convoluted language.

### **Appeal Concerning IP Misappropriation**

In February, a faculty member filed an appeal with IPPC pursuant to Article VII of the IP Policy. In May, after multiple discussions, IPPC sent a report summarizing its findings to the Provost and the Executive Vice President for the Enterprise for Research, Innovation and Knowledge. The executive summary of this report reads (with identifying information redacted):

On June 14, 2023, Dean [redacted] determined that Dr. [redacted] had violated several university policies, including by misappropriation of the university's intellectual property ("IP"). In accordance with Faculty Rule 3335-5-04, she imposed a three-year restriction on his status as Principal Investigator and on activities involving external funding, as well as a three-year ban on all external consulting and other financially beneficial external activities. On September 9, 2023, then-Provost Melissa Gilliam rejected Dr. [redacted]'s appeal.

On February 1, 2024, Dr. [redacted] filed an appeal to the university's Committee on Intellectual Property, Patents, and Copyright ("IPPC") concerning his matter.

After careful examination, IPPC concludes that the report by the College of [redacted] Investigation and Sanctioning Committee ("ISC"), which formed the basis for Dean [redacted]'s decision, failed to substantiate the claim of IP misappropriation. The report occasionally misapplied the law and did not undertake the necessary steps to demonstrate such misappropriation.

IPPC does not take a position as to whether the university's IP was indeed misappropriated. Addressing that question would require a detailed analysis that, to the committee's knowledge, has not been conducted. This report suggests how such an inquiry could have been conducted.

IPPC's authority regarding appeals derives from Faculty Rule 3335-13-06 and the university's Intellectual Property Policy ("IP Policy"). Consequently, its review and this report are confined to issues directly related to the IP Policy and, more broadly, IP law. IPPC has not addressed, nor does it take any position on, any other aspects of Dr. [redacted]'s case. Specifically, IPPC takes no position as to whether its findings regarding IP issues should affect the ultimate resolution of the case against Dr. [redacted] or the sanctions imposed on him.

Dr. [redacted]'s case raises broader, complex issues regarding the ownership of inventions by OSU faculty that relate to their expertise as university employees but that were discovered with minimal other connections to the university. This is a nuanced issue. Furthermore, the ambiguity surrounding this issue could potentially

deter beneficial activities such as inventorship and commercialization. Therefore, it may be desirable for the IPPC to investigate these broader concerns further, gather additional information, and potentially develop procedures to improve the current situation. Meanwhile, OSU inventors are encouraged to engage with the university's TCO at the earliest opportunity.

### **Future matters**

Next year, IPPC might consider one of the following topics (among others):

- Who owns inventions created by OSU faculty members working for a private company without using OSU's resources.
- Whether there is a need to adjust IPPC's appeal authority when disciplinary proceedings under Faculty Rule 3335-5-04 are involved, and if so, what is the best way to do it.