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January 7, 1999

University of North Dakota

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Minutes of the University Senate Meeting

January 7, 1999

1.

The January meeting of the University Senate was held at 4:05 p.m. on Thursday, January 7, 1999, in room 7, Gamble Hall. Mary Kweit presided.

2.

The following members of the Senate were present:

Antes, James	Hoffmann, Mark	Munski, Douglas
Bagheri, Fathollah	Huang, Shihlung	Nelson, Berly
Baker, Kendall	Hunter, Susan	Nelson, Richard
Bass, Gerald	Knoll, Harvey	Nelson, Tami
Bengiamin, Nagy	Korom, Scott	Nichols, Elizabeth
Boyd, Robert	Korsmo, Tom	O'Kelly, Marcia
Bridewell, John	Kweit, Mary	Poehls, Alice
D'Andraia, Frank	Lee, Randy	Rakow, Lana
Davis, W. Jeremy	Leier, Kent	Richard, Don
Dockter, Sally	Markovich, Stephen	Rieke, Judy
Elsinga, Lillian	Marshall, David	Robertson, Charles
Ettling, John	McElroy-Edwards, Jackie	Rowley, David
Gabrynowicz, Joanne	Melland, Helen	Schwartz, Rhonda
Gard, Betty	Mochoruk, James	Sheridan, Daniel
Grabe, Mark	Moen, Janet Kelly	Sickler, Jonathan
Hansen, Kenneth	Mohr, Thomas	Snortland, Steve
Harris, Mary	Moretti, Charles	Sukalski, Katherine

The following members of the Senate were absent:

Cesari, Aaron	Liere, Sara	Rice, Dan
DeMers, Judy	Lindholm, Lynn	Schneider, Mary Jane
Elbert, Dennis	Luber, Patrick	Shaeffer, James
Eggert, Heather	Lucke, Peggy	Stofferahn, Curtis
Fivizzani, Albert	Luebke, Christopher	Swisher, Wayne
Fry, Patricia	Meyers, Elizabeth	Wagner, John
Galde, Carmen	Nelson, Adam	Wieland, Sarah
Handy-Marchello, Barbara	Perry, David	Wilson, H. David
Jacobsen, Bruce	Prelis, Chaminda	

4.

The Chair made the following announcements:

- 1) The *Faculty Handbook* revisions are nearing completion. The Chair has named an ad hoc committee to define processes to assure the *Handbook* will be updated continuously. The committee is comprised of Senators Randy Lee, Janet Kelly Moen, and Frank D'Andraia.

Stacie Varnson, who is directing the Handbook process, was introduced. She stated the *Administrative Handbook* will not be merged with the *Faculty Handbook*. The *Faculty Handbook* is 90% completed; it has been reduced in size, redundancies have been removed, and it has been refocused as a faculty resource.

- 2) The Senate Admissions Committee has been asked by the Chair to evaluate the level of success of students admitted to the University without the required core of high school courses, those without the minimal level of 17 on the ACT, and those who transfer from other system schools. The committee is to coordinate with the Academic Policies Committee if the success rates of those students is deemed lower than desirable. The Academic Policies Committee could consider if policies need to be established to increase the success rate of those students.

5.

The Chair asked if there were additions or corrections to the minutes of the December 3, 1998 meeting. There being none, the minutes were approved as distributed.

6.

The Chair introduced the Question Period. Ms. Poehls asked Mr. Boyd if the University currently has, or plans to name a Retention Officer. Mr. Boyd stated he would investigate and report back to the Senate.

7.

Mr. Mochoruk moved to consider informally the proposed amendment to the North Dakota Century Code [47-28-01 through 47-28-04] related to intellectual property initiated by the North Dakota Board of Higher Education. Mr. Snortland seconded the motion. The Senate recognized Scot Stradley, Council of College Faculties (See representative, who summarized the proposed changes. Discussion followed. Attachment)

Mr. Mochoruk moved the following resolution:

The University of North Dakota University Senate hereby asks that the Board of Higher Education delay the forwarding of the proposed amendments to the North Dakota Century Code related to intellectual property until the next legislative session in the next century.

Mr. Marshall seconded the motion. Discussion followed. The motion was approved by a vote of 49 for and 1 other.

8.

The Senate recognized Mr. Raymond Fischer, Chair of the Honorary Degrees Committee, who recommended three candidates for Honorary Degrees. Mr. Knull made a motion to approve the three nominations. Mr. Lee seconded the motion; it was voted upon and carried by a vote of 49 for and 1 other. (#1, John MacFarland, #2, Dale Morrison, #3, Eugene Dahl)

9.

Mr. Snortland moved to consider informally the structure for discussion to be used when Chancellor Larry Isaak attends the February 4 Senate meeting. Mr. Munski seconded the motion, which was voted upon and carried by a vote of 49 for and 1 other. Discussion followed. The Chair stated the Chancellor may be available by phone on February 4, 1999. Mr. Hansen moved and Mr. Mochoruk seconded a motion to ask the Chancellor to schedule a meeting with the University Senate at some time during the semester when he is able to be present. The motion was voted upon and carried by a vote of 49 for and 1 other.

Mr. Robertson moved to consider informally the structure for discussion to be used when Mr. Isaak meets with the Senate this semester. Ms. Harris seconded the motion. It was voted upon and carried unanimously. Informal discussion commenced.

The Senate expressed interest in asking Mr. Isaak to focus specifically on Board of Higher Education policy on the authority and responsibilities of Presidents and campus constitutions. Further, the Senate would like the Chancellor to expand upon his March 10, 1998 letter to the BHE in which he recommends streamlining the work of the BHE and giving "campus presidents more responsibility to run their campuses." The Chair stated that unless the Senate objected, the Senate Executive Committee would summarize these suggestions in a letter to Chancellor Isaak.

10.

Mr. Marshall made a motion to adjourn. The meeting adjourned at 4:50 p.m.

Alice Poehls, Secretary

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

Bill Number _____

A Bill for an ACT to amend and reenact Sections 47-28-01, 47-28-02, 47-28-03, and 47-28-04 of the North Dakota Century Code, relating to protecting and marketing of inventions and discoveries of employees of state institutions of higher learning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

Section 1, Amendment. Section 47-28-01 of the North Dakota Century Code is amended and re-enacted as follows:

47-28-01. ~~Patenting~~ Protecting and marketing inventions and discoveries by faculty, officials, and employees of state institutions of higher learning. ~~All letters patent on~~ Ownership of inventions or discoveries resulting from employment or research sponsored by a state institution of higher learning and conducted by faculty, officials or employees of a state institution of higher learning shall inure to and be taken out by or assigned to the respective state institution of higher learning in accordance with a general policy established by each institution of higher learning with the approval of the state board of higher education. Ownership, control, management, and disposal of such inventions or discoveries by faculty, officials, or employees of such inventions or discoveries by faculty, officials, or employees of each institution of higher learning shall be vested in each respective institution, or in an independent foundation created for the purpose of ~~obtaining patents or protecting and marketing~~ inventions and discoveries, receiving gifts, administering or disposing of such ~~patents~~ inventions and discoveries and promoting research at the respective institution by every proper means. For the purpose of this chapter, "inventions and discoveries" includes all intellectual property, including, but not limited to, patents, copyrights, trademarks, trade secrets and know how.

Section 2, Amendment. Section 47-28-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-28-02. ~~Sharing of income from patents~~ inventions and discoveries with inventor or discoverer. Each faculty member, official, or employee of a state institution of higher learning who conceives any inventions or makes any discovery as a result of employment or research sponsored by the faculty member's, official's, or employee's respective institution ~~and discharges any obligations to the institution~~ is entitled to share in any net proceeds that may be derived from the assignment, grant,

license or other ~~disposal~~ transfer of the invention or discovery. The amount of the net proceeds must be computed by or with the approval of the state board of higher education, with reasonable promptness after collection thereof, and after deducting from gross proceeds the costs and expenses as may be reasonably allocated to the particular invention or discovery. The amount of the net proceeds paid to the faculty member, official, or employee of the institution must be determined by the institution as a general policy determination with the approval of the state board of higher education. ~~A minimum of thirty percent of the net proceeds must be paid to a faculty member, official, or employee of a state institution of higher learning who solely conceived or made the invention or discovery, and~~ The amount must be paid in shares to two or more faculty members, officials, or employees who jointly made the invention or discovery in such respective proportions as each institution may determine.

Section 3 Amendment. Section 47-28-03 of the North Dakota Century Code is amended and reenacted as follows:

Disclaimer by state institutions of higher learning of inventions and discoveries by faculty, officials, and employees. Where it is deemed inexpedient for by a state institution of higher learning, or its authorized agency, to hold ~~letters patent~~ legal ownership on an invention or discovery of a faculty member, official, or employee, it will then be permissible, after release by the state institution of higher learning, or its authorized agency, ~~for the staff member himself that person~~ to secure a patent legal ownership and to license or dispose of the same.

Section 4 Amendment. Section 47-28-04 of the North Dakota Century Code is amended and reenacted as follows:

Cooperating agencies to have an equity in inventions or discoveries resulting from cooperative research. ~~While the results of experimental work, including patentable discoveries, carried on under the direction of the staff of the state institution of higher learning, belong to the state institution of higher learning and to the public, it is recognized that the party who originates a research problem, brings it to the state institution of higher learning for solution, and~~ pays ~~contributes to~~ the cost of the research, ~~has~~ may have an equity in the fruits of that investigation: in the case of cooperative investigations, special agreements for preferential licensing or other technology transfer may be made with the cooperating interests, with a view to compensating in part for the financial assistance rendered in the investigation. It is recognized, also, that the state institution of higher learning has an obligation to use its facilities to the best interest of industry as a whole and of the general public, and should, therefore, employ the most suitable and practical methods to have its laboratory discoveries made available as speedily as possible, safeguarding the public from undue exploitation while recognizing the interest of the originator and supporter of the research.

NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION
POLICY MANUAL

4832

PAGE: 611.2 (1 of 2)

SUBJECT: PERSONNEL

EFFECTIVE: April 25, 1989

ISSUED: April 25, 1989

Section: 611.2 Employee Responsibility and Activities: Patents

POLICY

1. The North Dakota Board of Higher Education encourages the faculty, staff, and others associated with the institutions under its jurisdiction to seek patents on inventions as a method of bringing recognition and remuneration to all parties involved. Each institution shall establish a "patent review procedure" to define the institution's processing of such inventions or discoveries, consistent with Board policy. The inventor(s) shall submit to the institution the conception and/or reduction to practice of all potentially patentable discoveries prior to public "enabling" disclosure.
2. A patentable discovery may arise from the development of a new and useful process, device or apparatus, article of manufacture, composition of matter (including chemical compounds, microorganisms, and the like), plant, or related improvement, or a new use for a known material or device. A public "enabling" disclosure is one which will enable others in the same or a related field to fully understand and practice the invention. The institutional "patent review procedure" shall assure provision of guidelines to the inventor(s) in defining what constitutes a public "enabling" disclosure.
3. The institution shall have the right of first refusal to the title of all patentable discoveries derived with the use of facilities, gifts, grants, or contract funds through the university, subject to restrictions arising from the overriding obligations of the institution pursuant to gifts, grants, contracts, or other agreements with outside organizations. The inventor(s) shall provide all necessary declarations, assignments, or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent rights to assure that title in such inventions shall be held by the institution or other parties as may be appropriate under the circumstances.
4. The institution shall have six months in which to assess the technical and commercial viability and patentability of the discovery in accordance with institutional procedures. If the institution judges the discovery not to be patentable, or decides not to pursue a patent, and in the absence of over-riding obligations to outside sponsors of the discovery,

NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION
POLICY MANUAL

4833

PAGE: 611.2 (2 of 2)

SUBJECT: PERSONNEL

EFFECTIVE: April 25, 1989

ISSUED: April 25, 1989

Section: 611.2 Employee Responsibility and Activities: Patents

all rights will revert to the inventor. In no instance, and regardless of ownership of the patent, may the institution's name be used in connection with the marketing of the invention.

5. Subject to restrictions arising from overriding obligations of the institution pursuant to gifts, grants, contracts, or other agreements with outside organizations, the institution agrees, for and in consideration of the assignment of patent rights, to pay annually to the named inventor(s), or to the inventor(s)' heirs, successors, or assigns, a minimum of 30% of the net royalties and fees received by the institution. Net royalties are defined as gross royalties and fees less the expenses incurred by the institution in conducting the research and in procuring, protecting, preserving, maintaining, and licensing the patent and related property rights, and such other costs, taxes, or reimbursements as may be necessary or required by law.
6. When there are two or more inventors, each inventor shall share equally in the inventor's share of royalties, unless all inventors have agreed in writing to a different distribution of such share. The institution will have final authority over any agreement purporting to share rights and/or royalties between participating parties.
7. In addition to the inventor(s) share, the net royalties shall be dispersed by negotiated agreement with allocations to the originating department, the originating college/school, and the institution. In the disposition of any net royalty income accruing to institutional parties, other than the inventor(s), support of research shall receive first consideration. The "patent review procedure" shall outline the negotiation and distribution mechanism at each institution.

HISTORY: (Replaces the current 611.2) New policy. State Board of Higher Education Minutes, April 24-25, 1989, page 5812.

PAGE: 611.3 (1 of 2)

SUBJECT: PERSONNEL

EFFECTIVE: June 26, 1987

ISSUED: June 26, 1987

Section: 611.3 Employee Responsibility and Activities:
Copyrights

STATUTORY REFERENCE

Chapter 47-21, N.D.C.C.

1. Employees who write articles and books in the course of pursuits or their scholarly discipline are encouraged to seek and retain copyright ownership of these works.
2. If the institution directly supports the production of a copyrightable work, the ownership of which is vested in the individual employee, the institution shall be reimbursed out of the royalties, in accord with an agreement between the employee and the institution, up to the amount of the institution's direct support. The institution will be reimbursed for the fair market value of the use of any facilities, personnel or resources, except those considered part of the normal academic environment including library facilities.
3. If employees are employed or commissioned by the institution or agencies of the institution for the production of materials, or if by prior agreement they are assigned to produce or develop materials as educational or instructional aids in the course of their regular duties, and if such materials are deemed appropriate for copyright, they must be reported to the Faculty Research Committee. (Educational materials may include video and audio recordings, study guides, tests, syllabi, bibliographies, and tests. Instructional aids may include films, filmstrips, charts, transparencies and other visual aids, programmed instructional materials, and video or audio broadcasts.)
 - a) In such instances the Faculty Research Committee shall have the first option to secure copyright in behalf of and in the name of the institution. Should the Committee decide it would not be appropriate to secure copyright, the employee then may proceed to personally secure the copyright.
 - b) Royalties received as a result of copyright ownership by the institution will be dispersed at least 30 percent to the originator and the remainder to the support of the Faculty Research Program.

PAGE: 611.3 (2 of 2)

SUBJECT: PERSONNEL

EFFECTIVE: June 26, 1987

ISSUED: June 26, 1987

Section: 611.3 Employee Responsibility and Activities:
Copyrights

AMENDS AND REPLACES

Replaces Article III, Section 5(D).

HISTORY: (State Board of Higher Education Minutes, December 9-10, 1982, Page 5101.) Amendment, State Board of Higher Education Minutes, June 25-26, 1987, page 5614.