

Ars Hermeneutica, Limited
6505 Alexis Drive
Bowie, MD 20720-4760
10 October 2006

Internal Revenue Service
4921-CHI, 17th Floor, Rm 1720
230 S. Dearborn Street
Chicago, IL 60604

Attention: M. Ranney

Re: Question concerning intellectual property, in letter dated
27 September 2006, for:
Ars Hermeneutica, Limited
EIN: 20-2143388

Dear Mr. Ranney,

I am sending the enclosed pages in response to your question concerning
Ars Hermeneutica's *Application for Recognition of Tax-Exempt Status,*
Form 1023, and our plans concerning control and ownership of the
results of our research.

I appreciate the opportunity to look into this question about intellectual
property in more detail. Following you will find your original question
followed by our response; please let me know if there are points where I
might provide more clarity.

Sincerely,

Jeffrey N. Shaumeyer
President, Ars Hermeneutica, Limited

Question. In our previous letter we requested the information reprinted below. In your response you did not note who would retain ownership of any of the intellectual material. Also, please note, it is permissible for an IRC 501(c)(3) tax-exempt organization to retain the intellectual property rights resulting from the research it performs; that does not constitute a private interest. Please provide the complete information requested in the original question reprinted below.

State who will retain ownership or control of any patents, copyrights, processes, or formulas resulting from your research.

Ars Hermeneutica is committed to its program of scientific research in the public interest. Therefore, it is our intent to comply with all applicable laws and regulations concerning scientific research as a 501(c)(3) tax-exempt activity.¹

The laws and regulations that govern our retention of ownership in intellectual properties that result from our research depend on the source of funds that support that research, although the final positions will be substantially similar. The three sources of research funding are

1. government funds (federal, state, or local);
2. for-profit companies; and
3. grants from private foundations.

Research performed with government funds

Ownership of intellectual property created in the course of government-sponsored research is governed by the Bayh-Dole Act of 1980², which obligates the exempt organization to notify its government sponsor of inventions conceived or first reduced to practice during the course of the

¹ The subject of intellectual property in relation to tax-exempt, scientific-research organizations is surveyed in: Roderick Darling and Marvin Friedlander, "Intellectual Property", *IRS Exempt Organizations Continuing Professional Education Technical Instruction Program for FY 1999*. Available online at <http://www.irs.gov/pub/irs-tege/eotopicb99.pdf>

² The Bayh-Dole Act ("Patent and Trademark Amendment Act") of 1980, PL 96-517, is codified in US Code of Federal Regulations, Title 37-Patents, Trademarks, and Copyrights, Part 401; available online at <https://s-edison.info.nih.gov/iEdison/37CFR401.jsp>

government-contracted work. The organization has the first right to elect title of the invention and pursue a patent or other protection of the intellectual property. Protection gained, the organization then is expected to make the property available to the public, since the research has been done in the public interest.

The Bayh-Dole act gives the government a paid-up, perpetual, non-exclusive license to use the invention. It also gives the government "march-in rights", a procedure by which the government may assume licensing of the invention if the organization fails in its obligation to make the invention available to the public. Additional rights and obligations are covered in standard clauses that are included in government-sponsored research contracts, as specified by 37CFR401.

Therefore, Ars Hermeneutica will generally retain ownership of intellectual property created, discovered, or produced during research supported by government funds, in order that we may fully control sharing the results of our research with the interested public.

Research sponsored by for-profit companies

The relationship between an exempt organization and the intellectual property that it produces during research sponsored by a for-profit company does not have the clarity of federal statute; rather, it seems largely governed by case law and IRS regulation.

In particular, IRS regulation 1.501(c)(3)-1(d)(5)(iv)(b) is of central importance. It states that an organization will not be organized and operated for the purpose of carrying on scientific research in the public interest and consequently will not qualify under IRC 501(c)(3) as a scientific organization if

(b) Such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae available to the public."

In this case, the important test is whether the organization makes "such patents, copyrights, processes, or formulae available to the public."

In developing our own approach to retaining ownership of intellectual property created during corporate-sponsored research, we have examined the practice and published policies of a number of university research institutes governing their cooperative research endeavors with private companies.

There are a few key areas where clear understanding between our organization and the for-profit sponsor is required in any contracted

research if our research is to remain an exempt activity and in the public interest:

- ♦ The results of our research must not exclusively benefit the interests of the company sponsor;
- ♦ Sponsored research is not "work for hire" – the sponsor does not "own" the results of the research;
- ♦ Research contracts must not restrict our scientists' freedom to select projects, collaborate with other scientists, determine the types of sponsored research activities they wish to participate in, and communicate their research findings at meetings and by publication and through other means; and
- ♦ Ars Hermeneutica must be free to publish and otherwise publicly disclose all of its research results in a timely manner, since we perform research in the public interest.

Research contracts between Ars Hermeneutica and the sponsoring company will recognize additional provisions, for instance, that we would respect the company's trade secrets, and that the company retains the rights to intellectual property that it creates or discovers; that rights and title to joint intellectual property shall be jointly owned; and that the sponsoring company may be offered an option for an exclusive license to use intellectual property developed by Ars Hermeneutica during research sponsored by that company, provided that license fees reflect fair market value.

Ars Hermeneutica will retain the rights to any intellectual property that it creates or discovers during the course of corporate-sponsored research, so that we may make the results of our research available to the interested public without hindrance.

Research supported by private foundations

The situation with intellectual property resulting from research funded by private foundations is simpler than either case discussed above. It is not governed by extensive federal statute, as with government-sponsored research, nor must we guard against commercial imperatives that might conflict with our own commitment to research in the public interest.

Research (and educational) projects proposed by Ars Hermeneutica will be funded by private foundations when our goals are the same. That is, Ars Hermeneutica and the funding foundation agree that the research is valuable and that we share a mission of disseminating the results of the research to public. Furthermore, because of the foundations' own commitment to public benefit, they generally do not seek to control the products of our research.

Therefore, we quickly arrive at a policy in harmony with those developed in the sections above. Namely, that Ars Hermeneutica will retain title and rights over all intellectual property discovered or created by Ars Hermeneutica in the course of research sponsored by private foundations.

Summary

Although there are multiple reasons for our policy on intellectual property that results from our exempt research – depending on the source of funding for the research – they all converge on a unified position that reflects our overriding concern that our research is performed in the public interest.

Ars Hermeneutica will generally retain title and rights to intellectual property that it discovers, creates, or develops during the course of its research, so that it can freely and accurately disseminate the results of that research to the interested public in a timely manner. Government sponsorship of research imposes additional rights and responsibilities specified in the US Code of Federal Regulations, Title 37–Patents, Trademarks, and Copyrights, Part 401.