



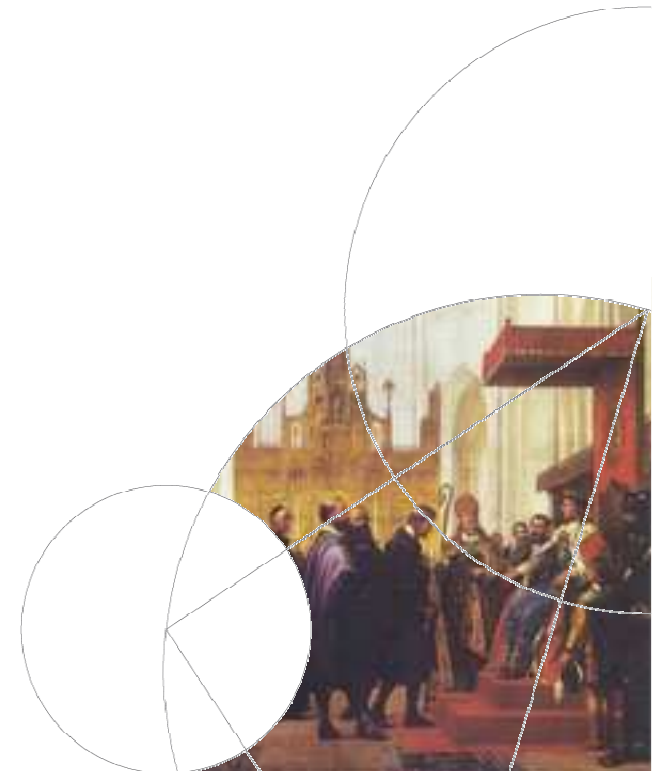
Faculty of Law



IP management by universities  
**Patents and Universities: An Odd Combination**

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Dias 1



## Patents and (publicly funded research) Universities: An odd combination

- Universities
  - Alma Mater: The "nourishing mother"
    - Education and the pursue of knowledge as such
    - Free thought and Academic Freedoms
- Patents
  - Exclusivity to the technical application of knowledge for industrial purposes.



## Then and now

- The traditional starting point: “The Professor Privilege”
  - No transfer of rights as part of the employment and professors may take out patents themselves.
- Now: General movement towards “Bay Dole”-style legislation which
  - i) seeks to patent inventions which spring from university research  
  
and does so by
  - ii) a property shift which transfers (patent/invention) rights to universities.



## Why this development?

The basic premise

- Patents = Money
- “Europe lacks behind the US” in terms of universities’ contribution to the number of patents

Three basic assumptions:

- 1) University research = inventions
- 2) University ownership = more patents
- 3) Universities = good patent holders



## University research = inventions?

Universities conduct basic research. Inventions which are linked to such research often

- Come close to being (unpatented) discoveries
- relate to basic (up stream) technologies
- This in turn may have broader impacts:
  - The patent requirements may move “downwards”
  - Hold-up problems may occur
- Conclusion: The typical university patent doesn't fit well in the patent matrix. University patents may have negative effects on the patent system and on innovation



## University ownership = more patents?

- Does university ownership lead to more patents as such?
- According to a recent study of Danish patent data:  
Probably NOT

“Academic Patenting and the Professor’s Privilege: Evidence on Denmark from the KEINS database” by Francesco Lissoni, Peter Lotz, Jens Schovsbo, and Adele Treccani (forthcoming in Science and Public Policy, October 2009)

- Confirms similar studies: The “underperformance” of European universities compared to US ones in terms of their contribution to domestic patenting appears much reduced when the contribution is measured not only by university-owned patents but also the university-invented ones.



## Universities = good patent holders?

- A good patent owner is someone who uses patents according to the ideas behind the patent system i.e. in the interest of society in innovation and technology diffusion
- Structural difficulties
  - Universities are not businesses
  - Universities are funded by the public
  - Patents are only of a secondary (economic) interest
  - University administrations (including tec.-trans units) are normally understaffed and underfunded
- Conclusion: Universities CANNOT generally be expected to be good patent owners



## Conclusion: What should universities do?

- Cherish “Alma Mater” and acknowledge a special social responsibility to keep basic knowledge free for everybody to use
- Object to rules which impose ownership of inventions on universities. Explain to politicians that such rules are normally bad for society and for universities and businesses and have hidden and unwanted effects on the patent system and on university behavior and values
- If that doesn’t work: Opt for restrictive transfer models e.g. models which make transfer of rights from employees voluntarily
- Apply a restrictive patent policy: Patent few inventions and NEVER inventions which particularly harmful to research and development (e.g. research tools and inventions in new fields which are close to being discoveries)
- Adopt clear strategies for licensing and make the strategy serve the goals of the university: Universities shouldn’t patent to make money but to create wealth in society. Take special care towards the non-commercial use by other universities, developing countries, and of “essential” technologies (e.g. climate or medical technologies)







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Dias 9

