



August 29, 2013

VIA ELECTRONIC MAIL AND USPS

Dr. Thomas F. Rosenbaum
Provost
University of Chicago
5801 South Ellis Avenue, Suite 501
Chicago, Illinois 60637

Dear Provost Rosenbaum:

Dr. Ross M. Stolzenberg, professor of sociology with tenure at the University of Chicago, has requested the assistance of the American Association of University Professors regarding his dispute with the university's administration over the recent promulgation of an intellectual property policy. The Patent Agreement and Assignment policy (PAA) imposes sanctions on faculty members who decline to agree in writing to assign to the university all patent rights arising out of any future research. According to the PAA,

[w]here research or other activities carried out at the University, or with substantial aid of its facilities or funds administered by it result in inventions, discoveries, or device-like software, such intellectual property shall be disclosed to the University from inception. The Patent Policy also provides that the University requires faculty and others covered by the Policy to execute assignments of inventions to the University to effectuate the University's rights.

Faculty members are required to sign a web-based form indicating their agreement with the following provisions:

As a condition of my employment or other involvement in research or other activities at the University of Chicago, or research or other activities carried out with substantial aid of University facilities or funds administered by it, . . . I hereby acknowledge my acceptance of the University of Chicago Patent Policy, and I agree to assign and do hereby assign to the University of Chicago all of my ownership, right, title, and interest in any discovery or invention that is the product of University research, including without limitation any patent and

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other intellectual property rights therein, whether I acquired those rights before signing this Agreement or acquire them in the future. . . .

Although Professor Stolzenberg has stated that he is unlikely to seek any patents as a result of his research, he has informed us that he declined to sign the PAA and that the administration has consequently withheld a university-approved raise in his salary.

As Professor Stolzenberg explained in a July 4 letter to Dr. Roy E. Weiss, the deputy provost for research, he refused to sign the PAA because he believes that the university's effort to coerce compliance with what he regards as a misguided and possibly illegal policy sets a "harmful precedent." In a letter to the AAUP, he wrote that, in *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc.* (a Supreme Court case in which the AAUP filed an amicus curiae brief), the Court "decided that no university could use a defective contract to claim patent rights to inventions and discoveries of its faculty members" and that now the University of Chicago has "devised a policy to trivialize the impact of *Stanford v. Roche* and to make meaningless the amicus arguments of the AAUP" that won Court endorsement. He warned that "if this policy succeeds at the University of Chicago, similar policies seem likely to appear at other universities," thus rendering "inconsequential" the significant achievement of *Stanford v. Roche*.

As you may be aware, in *Stanford v. Roche*, Stanford University argued that faculty members were employees hired to invent and thus not entitled to ownership of their inventive research. The AAUP in its brief argued that academic researchers and inventors are, and have traditionally been, much more than employees of their institutions. They play a key role in the production of knowledge, and their research advances the common good, a position first set forth in the AAUP's foundational 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*. The Court agreed, ruling that US patent law has favored and should continue to favor the rights of individual inventors and that universities seeking to claim rights to inventions must get explicit agreement from the researchers involved. Such agreement is to be voluntary, not coerced, and can be negotiated only after an individual invention actually exists.

We concur in Professor Stolzenberg's appraisal of the PAA, which appears to undermine the academic freedom of faculty members to decide how their inventions will be disseminated. Moreover, it seems to have been imposed without any significant faculty role in its formulation. We share Professor Stolzenberg's concern about the troubling precedent it sets. We are concerned that the threat of financial penalties to

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non-signers adds a considerable element of coercion to the policy and that the administration has effectively altered the employment conditions of faculty members without their consent.

The PAA policy is publicly available on the university's website, and the FAQ that follows it enumerates sanctions that may be imposed on non-signers, including withholding of salary increases. Beyond that, the information in our possession concerning Professor Stolzenberg's particular case comes primarily from him, and we appreciate that you may possess additional information that would contribute to our understanding of what has occurred. We would therefore welcome your comments. Because of its implications for academic freedom, we shall be following the case closely and may well wish to address future developments. Meanwhile, if our understanding of the facts is essentially correct, we would urge the University of Chicago administration to reconsider its current intellectual property policy and to lift the sanction that it has imposed on Professor Stolzenberg.

Sincerely,



Gregory F. Scholtz

Associate Secretary and Director

Department of Academic Freedom, Tenure, and Governance

Cc: Dr. Robert J. Zimmer, President

Dr. Roy E. Weiss, Deputy Provost for Research

Professor Henry Reichman, Chair, Committee A on Academic Freedom and Tenure

Professor Cary Nelson, Chair, Subcommittee on Intellectual Property and Academic Freedom, AAUP Committee A on Academic Freedom and Tenure

Professor Michael J. Harkins, President, Illinois Conference AAUP

Professor Peter Kirstein, Chair, Illinois Conference Committee A on Academic Freedom and Tenure

Ms. Carol Wilinski, Secretary of the Faculties

Professor Ross M. Stolzenberg