

Concerns of University Licensing

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Addressing concerns unique to agreements derived from university research requires special attention.

University researchers, in the United States particularly, have long played a significant role in developing and defining new technological frontiers. The basic, fundamental research conducted at U.S. universities often leads to pioneering discoveries, which spawn entirely new industries, or transform older industries.¹ In the 20th century, many U.S. universities have established or joined technology transfer organizations to commercialize their applied inventions.² Although these efforts have ignited significant innovations,³ such commercialization is likely to become increasingly prominent.⁴

* For example, discussions related to technology law, especially university-related topics, present an interesting study of our society, especially since "patent transactions, legal-ethical issues, and new models emerge." The importance of technology, including the ability to negotiate, in engineering, physics, and other sciences, developed a reputation.

1. The first such organization, Wisconsin Alumni Research Foundation (WARF), was established in 1920, and today more than 100 universities participate in such technology transfer organizations. See, e.g., "University in the Lead," *Newsweek*, 20-22 Jan. 20, 1989; G. Condon, *University Licensing Management*, 2nd ed. (1992).

2. Nevertheless, while the study of university research often may appear toward almost most basic, fundamental research, the patent law is not necessarily the best model for university licensing. See, e.g., "University Licensing: A Study in the Patent Law," *Journal of Patent Law & Practice*, 67 (1992), 67-74; "University Licensing: A Study in the Patent Law," *Journal of Patent Law & Practice*, 67 (1992), 67-74; "University Licensing: A Study in the Patent Law," *Journal of Patent Law & Practice*, 67 (1992), 67-74.

3. Universities can also generate important commercialized innovations to supplement studies or broader public benefit. Private funding is often the best for the university.

The commercialization of these new inventions will rely heavily on established legal instruments, including establishing property rights in the invention through patents and transferring those rights through licenses.

This article looks past the controversies related to the entrepreneurial explosion occurring at universities. It considers one aspect of the practical effect of such explosion: What special concerns does the licensing of a university patent raise? A license agreement involving a patent derived from university research is largely similar to other patent licenses. However, several issues exist which, although not peculiar to the university patent, are influenced by different or additional concerns. The parties involved in such a license should be aware of these concerns.

First, who owns the rights to the patent? Common law principles generally recognize the actual inventor as the owner. Many universities, however, claim broad ownership rights to any inventions made by their faculty, without a clear legal basis. In addition, federal statutory provisions regarding ownership are applicable when the invention is federally funded.

Second, to whom can university patent rights be licensed? Some restrictions exist in regards to who can acquire the patent rights of inventions developed through federally funded research.

Third, what is the university patent worth? Although the appropriate royalties remain primarily a function of the invention and the

patent involved, some aspects of the university patent may affect the relative bargaining positions of the parties when negotiating the appropriate compensation.

Finally, how does enforcement of the university patent differ from other patents? Issues involved with the licensing of university patents should be aware of recent statutory changes which impact the effect of state sovereign immunity on enforcement of university patents.

DEFINITIONS

There have been a plethora of personal property. As such, a patent or patent application may be assigned to others by an instrument in writing.⁵ In addition, the exclusive rights to the patent or patent application may be granted (license) in whole or in part to others.⁶ However, such property transfers are ineffective if the grantor is not the true owner of the patent or has no other rights to grant a license. Patent licenses typically protect themselves against such contingencies through the use of representations or warranties in the license.⁷ Trade secret law or contracts may provide contractual remedies⁸ in the event that the licensee is not the owner. However, these contractual remedies may not be sufficient

* 35 U.S.C. 261.

1. U.S.C.

2. U.S.C.

3. U.S.C.

4. For example, "The license agreement and warrants that it covers the Licensed Party and Licensed Party shall include such terms as may be necessary to protect the interests of the licensee, including the right to sue for damages." See, e.g., 35 U.S.C. 261(2)(b).

5. Such an assignment requires an enforceable contract or enforceable instrument in writing, including a license.

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to cause the licensee's potential tort liability if the third party uses the licensee for infringement or misappropriation. Hence, further protection requires verifying that the patent either vests the patent being licensed or is legally entitled, as a licensee of the patent, to sublicense the patent rights.¹¹ Despite the significant reasons for doing so, verification of ownership is often neglected.¹²

When a university patent is being licensed, the need for protection via verification of ownership is even more substantial, because of potential legal uncertainties that exist in regards to a university's claims to ownership rights in the invention. These uncertainties exist because a university's claim of ownership to inventions made by its faculty is often not supported by its common law, which generally recognizes the inventor as being the owner of an invention. If the invention was developed through federally funded research, however, federal statutory provisions regarding ownership are applicable, and may strengthen the university's ownership claim. Hence, in addition to the verification steps associated with non-university patents, a potential licensee of a university patent should review the particular university's patent ownership policies, and also investigate the source of funding from which the invention was developed.

Common Law Ownership Principles

In the absence of contrary statutory provisions,¹³ the patent rights to an invention vest initially with the inventor, upon conception of the invention.¹⁴ The inventor may then assign his or her exclusive rights by express contractual agreement,¹⁵ or

alternatively, be bound to assign the rights under common-law principles related to employment relationships. Although an employee generally retains ownership rights in an invention, an employer may assert ownership under theories of implied contract or assignment arising from the purpose of the employment relationship being specifically directed to a particular invention, the employee holding a position of trust within the organization, or employee manuals or handbooks setting out the employer's policy requiring the inventor to assign his or her patent rights to the employer. In situations where there is no express or implied assignment by which the employer may assert ownership, the employer may still be entitled to an implied non-assign or "shop-right" in the invention. All surrender of the inventor's rights, express or implied, is constrained by the idea that an inventor cannot agree in advance to give up the rights to an invention not yet developed.

The general rule in regards to employee inventions is that an employee retains ownership in an invention conceived or reduced to practice during the course of employment, even if the employee develops the invention during working hours using employer facilities.¹⁶ The courts have generally applied this rule in a manner that provides broad protection to the employee inventor's ownership rights. In *United States v. Daboll-Decker Corp.*,¹⁷ the seminal case, two full-time laboratory researchers at the U.S. Department of Commerce's Bureau of Standards developed three inventions that applied interesting current concepts to broadband reception and amplification. Although the researchers developed the inventions while on the job using the Bureau's facilities and resources, with the support of their

superisors, the court held that the researchers retained ownership in the inventions, since they had not been specifically directed to invent them. Similarly, in *Arma Standard Engineering Co. v. Kurland*,¹⁸ an in-house engineer was assigned to work on a special design project, but received no increased compensation for that work. After successfully completing the project and applying for a patent with a joint inventor, the engineer was laid off. He refused to assign ownership rights to Arma. The court found that under the circumstances, and in the absence of an express assignment, the employee retained the rights to the invention. In *Apfen v. Corcoran*,¹⁹ a doctor at a Veterans Administration hospital, whose responsibilities included administration, teaching, research and clinical duties, invented a camera capable of whole body nuclear imaging. Although the invention was developed partially during working hours with the use of hospital resources and facilities, the court held that the doctor was entitled to retain ownership rights in the camera. The court reasoned that although the doctor's employment called for general research, it did not have a specific objective of inventing.

• Exception •

However, the courts have also recognized exceptions to the general rule. First, if the employee/inventor is employed to make an invention and does so during his or her employment, then the inventor is bound to assign any patent obtained in the employee's²⁰ In this situation, the employee must have been specifically hired to develop the invention that resulted or to solve a particular problem.²¹ Second, if the employee holds a position of trust, such as the president of a corporation, then the employee is bound to assign any patents obtained while employed in such a capacity.²² Third, an implied contract to assign a patented invention may exist, upon demonstration

11. See *Verifications* (under the heading of assigned assignments in the U.S. Patent and Trademark Office) under the patent examiner's attention, between individuals, and possible interactions with the invention themselves. See generally, J. M. McInerney, *Ownership of Patents*, 14 *Pat. & Trademark J.* 100 (1987).

12. See also *Verifications* (under the heading of assigned assignments) under the heading of assigned assignments. Common law ownership principles generally do not bar all non-employees from inventing.

13. When a university, whether inventor or not, is the proprietor of the patent, it is necessary that the licensee is a single individual,

14. The assignment may be a position within an employment contract or may be an implied contract. See *Cheney v. Ford*, 3 *Pat. & Trademark J.* 100 (1987). Patent law generally requires patents to be assigned. 35 *U.S.C.* § 261 (1988).

15. *Amendments Inventing Co. v. Inventor*, 10 *Pat. & Trademark J.* 100 (1987). See also *U.S. v. Daboll-Decker Corp.*, 35 *U.S.C.* § 261 (1988). See also *Apfen v. Corcoran*, 50 *Pat. & Trademark J.* 100 (1987).

16. 35 *U.S.C.* § 261 (1988).

17. 35 *U.S.C.* § 261 (1988).

18. 35 *U.S.C.* § 261 (1988).

19. 35 *U.S.C.* § 261 (1988).

20. 35 *U.S.C.* § 261 (1988).

of the jury that a reasonable employee in the inventor's position would have concluded that the employer's manual required assignment, and further, that there was valid after-acquired and consideration in regards to the policy manual.³⁷

The first exception was applied in *Standard Fire Co. v. Hub*,³⁸ where an employee who developed an improved automobile spring, and subsequently obtained a patent on the invention, was found to assign the invention to the employer. The court reasoned that since the employee was hired to devote himself to the development of process and machinery, and received compensation therefor, the inventor had implicitly assigned the ownership rights in the invention. Similarly, in *Spick v. North Carolina Dairy Association*,³⁹ a university professor who had both teaching and research responsibilities developed a method for adding a beneficial bacteria to milk without negatively affecting the taste. The court reasoned that the professor, who made the invention with university time and resources, was hired to invent, and therefore, was found to assign the invention to the university. The second exception is exemplified in *Great Lakes Press Corp. v. Paine*,⁴⁰ where the president of a corporation was held to have, as part of his fiduciary responsibilities, a duty to assign inventions patented while he held that position of trust. Finally, the court in *University of Texas, Inc. v. Kilgus*⁴¹ recognized the third exception in holding that a university professor who, as part of his research discovered that Vitamin A was effective in treating scurvy, may be under an implied contract to assign the ownership rights to the university. The implied contract was based on university patent policies contained in several administrative and research handbooks which the professor had reviewed, but never specifically acknowledged.

Despite these exceptions to the general rule, after colleges operate

to limit the degree to which these exceptions limit the employee's vesting from forfeiting his or her patent rights. Because of the personal, intellectual nature of the inventive process, courts should be hesitant to find implied agreements to assign inventions.⁴² The courts are also hesitant in enforcing even express assignments of future inventions that operate after an employee has left the employer seeking to enforce the assignment.⁴³ In addition, courts are more likely to follow the general rule unless there are exceptions due to recognized equitable principles, which provide the employer with some lesser rights to the invention, often absent of ownership. In situations in which the employee developed the invention during his working hours or using the employer's facilities, the employer is not entitled to ownership, but rather, only to a non-exclusive, non-transferable, royalty-free license (i.e. "shop right").⁴⁴

Statutory Ownership Provisions for Federally Funded Research - The Bayh-Dole Act

The source of the research funds from which an invention was developed impacts the issue of patent ownership because of federal statutory provisions that apply where an invention is developed from federally funded research. Where applicable, these federal statutory provisions preempt the common law ownership principles.

Funding for university research comes from many sources, including the federal, state and local governments, the university itself, industrial enterprises, individual private donations, or through a mixture of these sources. However, federal sources account for the largest portion of research funding. In 1980, for example, 88% of research funding at all universities came from the federal government.⁴⁵ These funds are distributed to researchers through the federal agencies, with almost 50% being channeled through the National Institute

of Health (NIH), and an additional 30% coming from the National Science Foundation (NSF) or the Department of Defense.⁴⁶ Other federal entities, such as the Department of Agriculture, the Department of Energy, and National Aeronautics and Space Administration (NASA) make up the balance of the funds. The amount of federal funds varies depending on the university and the field of research. The federal portion of a university's research funds varies from 54% to 93%.⁴⁷ The federal portions at research funds for a particular field varies from 40% medical engineering, life sciences, optical sciences) to over 75% (physical sciences).⁴⁸

The Bayh-Dole Act⁴⁹ provides for the disposition of ownership rights for a federally funded invention. The act is implemented in all agencies under Title 35 Part 401 of the Code of Federal Regulations (CFR). Under a presidential memorandum issued in 1983, individual agencies are required to adopt the 35 CFR regulations to the extent permitted by other laws.⁵⁰

Under the Bayh-Dole Act, a non-profit organization, such as a university,⁵¹ may elect to obtain title to an invention developed under a funding agreement with a federal agency.⁵² However, the rights obtained by the university are subject to the terms of the agency funding agreement, including those provisions specifically required under the Act. Some of the required provisions mandate that the university must disclose the invention to the agency within a reasonable time after the invention becomes known to those administering patent matters, elect to retain title within two years of the disclosure, file a patent application, prior to any statutory bar date, and grant a nonexclusive, nontransferable, irrevocable, royalty-free license to the federal agency.⁵³ If the university does not elect to take title or if the specific provisions of the funding agree-

³⁷ 201 F.2d 1008, 1012, 1013, 1015.

³⁸ 195 F.2d 1013, 1015.

³⁹ 195 F.2d 1013, 1015.

⁴⁰ 195 F.2d 1013, 1015.

⁴¹ 195 F.2d 1013, 1015.

⁴² 195 F.2d 1013, 1015.

⁴³ 195 F.2d 1013, 1015.

⁴⁴ 195 F.2d 1013, 1015.

⁴⁵ 195 F.2d 1013, 1015.

⁴⁶ 195 F.2d 1013, 1015.

⁴⁷ 195 F.2d 1013, 1015.

⁴⁸ 195 F.2d 1013, 1015.

⁴⁹ 195 F.2d 1013, 1015.

⁵⁰ 195 F.2d 1013, 1015.

⁵¹ 195 F.2d 1013, 1015.

³⁷ 201 F.2d 1008, 1012, 1013, 1015.

³⁸ 195 F.2d 1013, 1015.

³⁹ 195 F.2d 1013, 1015.

⁴⁰ 195 F.2d 1013, 1015.

⁴¹ 195 F.2d 1013, 1015.

⁴² 195 F.2d 1013, 1015.

⁴³ 195 F.2d 1013, 1015.

⁴⁴ 195 F.2d 1013, 1015.

⁴⁵ 195 F.2d 1013, 1015.

⁴⁶ 195 F.2d 1013, 1015.

⁴⁷ 195 F.2d 1013, 1015.

⁴⁸ 195 F.2d 1013, 1015.

⁴⁹ 195 F.2d 1013, 1015.

⁵⁰ 195 F.2d 1013, 1015.

⁵¹ 195 F.2d 1013, 1015.

⁵² 195 F.2d 1013, 1015.

⁵³ 195 F.2d 1013, 1015.

³⁷ 201 F.2d 1008, 1012, 1013, 1015.

³⁸ 195 F.2d 1013, 1015.

³⁹ 195 F.2d 1013, 1015.

⁴⁰ 195 F.2d 1013, 1015.

⁴¹ 195 F.2d 1013, 1015.

⁴² 195 F.2d 1013, 1015.

⁴³ 195 F.2d 1013, 1015.

⁴⁴ 195 F.2d 1013, 1015.

⁴⁵ 195 F.2d 1013, 1015.

⁴⁶ 195 F.2d 1013, 1015.

⁴⁷ 195 F.2d 1013, 1015.

⁴⁸ 195 F.2d 1013, 1015.

⁴⁹ 195 F.2d 1013, 1015.

⁵⁰ 195 F.2d 1013, 1015.

⁵¹ 195 F.2d 1013, 1015.

⁵² 195 F.2d 1013, 1015.

⁵³ 195 F.2d 1013, 1015.

ment are not met, then the government agency may assert ownership of the invention.⁴² The inventor may also petition the governmental agency for ownership rights if the university does not elect to retain title to the invention.⁴³

University Actions Regarding Patent Ownership

The patent policies of the 30 largest universities based on research expenditures were recently surveyed.⁴⁴ The approaches taken by universities may be generally classified by the degree of ownership rights which they assert over faculty inventions. A few universities do not assert any ownership rights, but rather, allow the faculty inventor to retain their ownership rights in any invention.⁴⁵ Other universities assert ownership only if the faculty have made significant use of university resources, such as work time, facilities, equipment, office personnel, and funds.⁴⁶ Most universities, however, claim ownership not only if the faculty has used university resources, but also if the invention results from the course of the faculty's employment, possibly including work done at home, at seminars or in the field.⁴⁷ Finally, some universities' policies assert ownership of patent rights from all faculty activities, regardless of whether the invention was developed with university facilities or resources, or outside the course of employment.⁴⁸

Distinctions Regarding Ownership

In light of the above discussion, it is apparent that practical and legal uncertainties exist in regards to the ownership rights for a university patent. When the federal statutory provisions of the Bayh-Dole Act are not

applicable, the inventor's claim to ownership rights may not be supported by common law principles. However, the common law analysis is not entirely clear.

Agreements exist under the common law to define a university's claim to patent ownership. The university professor is analogous in many ways to general research employees, and under *Dabner*, *Arts*, and *Taylor*⁴⁹ is not entitled to any ownership rights. In addition, the faculty inventor should be allowed to retain ownership to maintain the professor's incentive to perform applied research which results in useful applications for the public. The university also benefits by being more attractive to entrepreneurial faculty. This position is further supported by commentators⁵⁰ and by the patent policies of some of the major research universities.⁵¹

Despite the broad precedential application of the *Dabner* principle which allows an employee to retain ownership rights in an invention, a university may make a strong claim for ownership under any of the three exceptions to the general rule. First, as recognized in *First*⁵² a professor employed at a major research university is arguably hired to invent. Most professors are not hired on the basis of their teaching ability, but rather are the basis of their previous research and their potential to attract additional research money to the university. Further, although much of the research done at universities is basic research that is not directed to a particular application, research which results in a patent is generally applied research arguably directed to a particular invention.⁵³

Second, a trained professor is

arguably in a position of trust with the university, and as such, is bound to assign any inventions to the university. The trained professor is analogous to the corporation's president in *Great Lakes Foods*.⁵⁴ Since both are most closely associated with the employer than an employee at will. Hence, while an untrained professor, as an employee at will, may fall under the general *Dabner* rule, trained professors may arguably fall under the exceptions to that rule.

Third, almost all major research universities have published patent policies which are distributed to the research faculty and arguably operate as an implied contract in regards to ownership of any faculty inventions. As noted in *Klipman*,⁵⁵ implied contractual provisions traditionally arise over employment termination disputes. Although employees are not allowed to use handbooks or manuals to elaborate in order of patent ownership rights,⁵⁶ in the absence of an express contractual agreement, such manuals provide the basis for an ascertainable implied contract theory for obtaining ownership rights. Finally, although the university professor may not fit any individual *Dabner* exceptions completely, if the exceptions are considered collectively, the university has a legitimate legal basis for asserting its ownership rights to the university patent.

• Considerations •

Other considerations may also enter into the common law analysis. Although the above discussion has focused on faculty inventions, at times, such as students, salaried research assistants, or post doctorate fellows could also develop patentable inventions. The student is further harmed from the employer-employee relationship than a faculty member, and hence, under the

⁴² 35 U.S.C. § 202, 203, 204.

⁴³ 35 U.S.C. § 205(a).

⁴⁴ FR, Chou, *At the Crossroads*, *University*, 1980 *Case* for *College*, *Vol.* 1980 *Case* for *University* Law *Rev.* 205.

⁴⁵ *Georgetown*, *The University of Wisconsin*, *University of California*, *University of Michigan*, and *Harvard University*, 30 at 263.

⁴⁶ For example, *Stevens Institute of Technology*, 200; *Land International University*, 41 at 26, 27.

⁴⁷ For example, *Yale University*, 31 at 27, 28.

⁴⁸ For example, *University of California*, *Stevens* and *University of Pittsburgh*, 31 at 28.

⁴⁹ Each of these cases was discussed previously in the text contained with *First*, 27.

⁵⁰ See generally P.A. Chou, *Faculty-Owned Inventions: Who Owns the Rights?*, 1980 *Case* for *University* Law *Rev.* 205; *Ownership: A Primer for Your Strategic Decision Making*, *Professorship Association*, *University*, *Training* and *Development*, 31 *Col.* 1.

⁵¹ For example, *The University of Wisconsin*, *University*, *Stevens*, *University of Massachusetts*, *Harvard University*, *University* for *State* *College* of *Faculty*, *University*, 31.

⁵² 30 *Georgetown* note at *Page* 25.

⁵³ In some disciplines, such as interdisciplinary study, all of the university research is applied. R.S. Livingston, *Patentable Subject Matter*, 20 *Case* for *University* Law *Rev.* 1, 27 (Nov. 1985).

⁵⁴ 30 *Georgetown* note at *Page* 26.

⁵⁵ 30 *Georgetown* note at *Page* 26.

⁵⁶ *Lucas* and *Shelton*, *Contract Implied in Fact*, *University*, *Training* and *Development*, 31 *Col.* 1, 11 (1985).

common law principles of *Dabille*, should retain ownership in any invention in which the federal statutory provisions are not applicable. The salaried research assistant and post-graduate fellow, however, are hired specifically to invent, and usually do not have nonresearch duties. As such, any potential invention which they develop are, under *Standard Item*,²² likely to be owned by the university. The scenario becomes more complicated when a student, salaried research assistant and faculty are joint inventors.

A further complication exists when the research from which an invention was developed occurs at different universities due to the invention faculty member changing universities. If both universities assert ownership under common law principles, the unrelated ownership laws become legal uncertainty. However, the uncertainty is avoided if the inventor maintains the ownership rights as under *Dabille*. Since tenured professors change universities less frequently than untenured professors, distinguishing between tenured and untenured faculty in regards to application of *Dabille* will avoid the uncertainty.

In order to fully evaluate the degree of uncertainty arising from the common law ownership principles, one must look at the extent to which a particular university patent policy conflicts with these principles. Those policies which claim university ownership rights are generally inconsistent with the common law doctrine governing employment relationships under *Dabille*. However, the only two cases which have specifically addressed the issue, *Spill* and *Elgman*, are consistent with those patent policies in which the university retains ownership of the faculty invention.

Where the Bayh-Dole Act is applicable, the statutory provisions clearly provide for university ownership. However, the licensee must still investigate whether or not the Bayh-Dole Act actually applies in a particular invention. If the research

was entirely funded through federal funding, the Act clearly applies. However, if the funding is from mixed sources, the application of the act is less certain.²³ Furthermore, even if the statutory provisions apply, the ownership rests with the university only if it fully complied with the disclosure, election and other requirements of the Act. Hence, in addition to investigating funding, a potential licensee of a patent in which university ownership is based on the Bayh-Dole Act should also ensure that all of the statutory provisions of the Bayh-Dole Act have been met by the university.

In summary, a potential licensee of a university patent is well advised to investigate the sources of research funding from which the invention was developed, for non-federally funded research, review the patent policies of the particular university in light of the common law principles of ownership rights, and for federally funded research, investigate the extent to which the university complied with the statutory requirements for asserting ownership rights in the invention. Ultimately the licensee must account for any uncertainties regarding ownership within the license agreement, by representations, warranty or indemnification provisions, or in the agreed royalty structure.

APPROPRIATE LICENSEE

Determining who would be an appropriate licensee for a particular patented technology is affected by many considerations. The patent owner should evaluate the overall characteristics of a potential licensee, based on both reputation and verifiable facts. The licensee's potential performance capability, based on past performance records, financial strength, and the ability to supplement the patent with improvements or know-how should be considered by the grantor.²⁴ Other factors such as the licensee's reputation for maintaining the con-

fidentiality of any proprietary information, and the ability for ongoing communications are also important.

In addition to these criteria, parties involved with the licensing of university patents should be aware of restrictions that exist in regards to who can acquire the patent rights of inventions developed through federally funded research.²⁵ The Bayh-Dole Act, which provides for the university's ownership rights in inventions developed through federally funded research,²⁶ puts two specific constraints on licensing the university's patent rights.

First, a licensee who is granted the rights to use or sell the invention in the United States must agree that the invention will be manufactured substantially in the United States.²⁷ In individual cases, however, the parties may obtain a waiver of this provision from the Federal agency that provided the funding for the research, through which the invention was developed. To obtain a waiver, the parties must show either reasonable efforts were made to guard inventors in licensee which would manufacture substantially in the United States, and such efforts were unsuccessful, or domestic manufacture is not commercially feasible under the circumstances.²⁸ In addition, note that on its face, this provision of the Bayh-Dole Act does not apply if the licensee does not have any rights to source or sell the invention in the United States. Hence, the university could grant rights to a licensee who would manufacture the patented invention outside the United States if that licensee does not have rights to use or sell the invention in the United States.

The second constraint under the Bayh-Dole Act requires the university to license the patented invention to small business firms.²⁹ A small business firm is one that is independently owned and operated and which is not dominant in its

²² As noted previously, federal funding must be a significant portion of the research funds for the law discussed with *Standard Item*.

²³ *Id.*

²⁴ See for an excellent article, *How to Buy*, 14 *Int'l. Tech. & Bus. Dev. & Transfer* 20 (1987).

²⁵ See 35 C.F.R. 401.50 (1987) and 35 C.F.R. 401.51 (1987).

²⁶ *Id.*

²⁷ 35 C.F.R. 401.50(a)(2).

²⁸ *Id.*

²⁹ 35 C.F.R. 401.50(a)(3).

