

Bird & Bird & Technology Transfer

Professor's privilege in Poland

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For some time now the Polish government has been undertaking intensive efforts to stimulate cooperation between business and public research organisations (PROs), such as universities, science and research institutes, boost technology transfer from PROs and improve conditions for industrial cooperation. As a part of these efforts a new law introducing changes to the rules of acquiring IPRs to the results of R&D obtained within PROs entered into force as of 1 October 2014.

Rationale for the change

Prior to 1 October 2014, IPRs to the results obtained within PROs by researchers – employees were conferred to PROs, and the researchers had no right to decide if the results (and the potential IPRs) will be transferred to business for further development and use.

The change was initiated by the National Centre for Research and Development (NCBR), a state agency granting financing for R&D, to enable researchers to commercialise the results of their work independently from PROs. The NCBR studies showed that the former rule and the fact that Polish PROs are not prepared for effective cooperation with business, were the greatest barriers for technology transfer. This was despite the high level of scientists and researchers working for PROs.

New mechanism

The new rules were inspired by the so-called professor's privilege principle. Since 1 October 2014, the researchers employed at universities and science institutes of the Polish Science Academy (in Polish: *instytuty naukowe*) may request that IPRs are transferred to them if the PRO has decided not to commercialise the research results and related know-how. This does not apply to PROs classified as research institutes (in Polish: *instytuty badawcze*).

Once the PRO is informed about the results of research conducted by its employees and related know-how it has three months to decide whether it wants to start the commercialisation process. If the decision is negative the PRO is required to make an offer for assignment of IPRs to the researcher(s) and sign an unconditional contract with the researcher(s), transferring the rights to research results and related know-how. The PRO is entitled to 25% of the researcher's revenue from the commercialization.

The new mechanism does not apply when the results and related know-how were developed:

- within a contract between the PRO and a third party, and the contract assigned them to the third party
- using financing that set the rules for their specific use.

Business opportunities

The new mechanism now allows companies to acquire IPRs (via ownership, licence) to new technologies directly from the researcher(s), without the PRO's intermediary or involvement. It also provides an easier pathway for structuring flexible business models to bring innovative technologies to the market and ensure that the new research capabilities are more business-oriented.

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