

INTELLECTUAL PROPERTY IN SCIENCE



Akademisk avhandling

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av

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Abstract

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This thesis covers a number of central legal issues in relation to intellectual property in early stage research, with a focus of bioscience and biotechnology and from the perspective of Swedish research groups. Universities are in the middle of a transformation process where science is privatized and subject to a commercial logic. Research results are increasingly patented or covered by other intellectual property rights, as well as contractual claims. This process is not limited to commercialization activities but also extends to research programs. Thus, a number of legal questions arise, both in relation to the legal possibilities to make ownership claims and in relation to the legal possibilities to obtain access to research results. For example, which are the possibilities of patenting research results, where the distinction between discoveries and inventions in a legal sense is crucial? Furthermore, which are the possibilities to protect research results in the form of databases with database rights? Additionally, which are the consequences in relation to the legal possibilities to obtain access to research results covered by ownership claims: for example, through the experimental use exemption for patents versus exemptions for research results covered by copyright. Furthermore, this process is impacted by the principle of public access to official documents at Swedish universities. In this thesis, how legal constructions such as intellectual property rights influence and impact this transformation process is analyzed, which results in an increased transaction-based logic at universities, and which also has an effect on how research collaboration agreements are drafted, which also influences the claiming process. Primarily, an internal legal analysis is used as a method, but an external perspective is used to some extent too, particularly to make external reflections. An empirical case is analyzed in the main chapters of the thesis: Myriad Genetics. The thesis concludes that control by intellectual property rights claims is not *per se* decisive for the effects on access to research results; what matters is how such claims are used: statically, to block access, or dynamically, to enable access.

Keywords: patent, database, secrecy, research results, claiming, access, intellectual property right, intellectual property, experimental use, research exemption, discovery, invention, research collaboration, license