

IPR-13806 IPRs of outgoing supervisor in MSCA

helpline@iprhelpdesk.eu

Wed 3/21/2018 5:18 PM

To: Umut Özkirimli <umut.ozkirimli@cme.lu.se>;

Dear Umut,

Thank you for directing your query to the European IPR Helpdesk. This is a follow up on the email you sent us on Monday and the brief phone conversation we had earlier today.

We understand that you are the supervisor of a Marie Skłodowska Curie (MSC) fellow and may have to step down from your position in the near future.

Firstly we wish to highlight that the Intellectual Property regime in MSC actions is set out in the Grant Agreement and the Rules for Participation in H2020 projects. The Grant Agreement is signed by the beneficiary (the host institution) and the European Commission and therefore only assigns rights and obligations on these two parties. As supervisor you are not party to this agreement and are therefore not bound by it.

Article 26.1 of the Model Grant Agreement states that the results of the action shall be owned by the beneficiary who has created them. This means that the results of the actions carried out by the researcher with the input of his/her supervisor, is property of the host institution. As such, the Grant Agreement alone does not award you any intellectual property right over the results on the basis that you have contributed to the action as supervisor. However, if your employment contract with the university does state that you are to retain ownership of the IP rights over your contribution to research projects, such clause will be unaffected by the Grant Agreement. In this case Article 26.3 simply states that the host institution must ensure that all obligations under the Agreement regarding results are complied with.

There is the possibility that Grant Agreements in MSC actions include an obligation for the beneficiary regarding the 'background' brought to the action. Background is defined as any data, know-how or information – whatever its form or nature (tangible or intangible), including intellectual property rights that (a) is held by the beneficiary before its accession to the Agreement, and (b) is needed to implement the action. Therefore it is possible that Article 24 of the GA requires the beneficiary to identify and list the 'background' for the action. If some of the input listed as background is some of your own work over which you own the IP rights (such as previous research data for example), then the university must have obtained the required access right to it from you to be able to share it with the researcher. Such access right will have been ensured through contractual arrangements and their force shall not be annulled by the termination of your involvement in the action, unless specified in said contract. Note however that your initial idea for the research that will be carried out during the project cannot be considered as background and is not protected: there can be no intellectual property right over mere ideas.

Under Article 32.1.h of the Grant Agreement, the university must ensure that the researcher is provided with adequate supervision. Furthermore there can only be one supervisor per institution. The host institution would therefore need to appoint a new supervisor for this project, in agreement with the European Commission. Should the project be carried out with a new supervisor, we do not believe anything in the Grant Agreement explicitly prohibits that there be an acknowledgement of your contribution to this research project.

We hope that this information will be helpful to you. Do not hesitate to contact us in case you have any further questions.

We would finally like to highlight that the European IPR Helpdesk does not provide legally binding advice and no responsibility is accepted for the results of any actions made on the basis of this reply. Therefore, before taking specific action, please be informed that you should seek independent legal advice.

We wish you all the best,

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‘Background’ means any data, know-how or information — whatever its form or nature

(tangible or intangible), including any rights such as intellectual property rights — that:

- is held by beneficiaries before they accede to the GA
- is needed to implement the action or exploit the results