

# PUBLIC RESEARCHERS TO ENJOY THE BENEFITS OF THEIR INVENTIONS - RCD ASESORES LEGALES Y TRIBUTARIOS

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New Spanish rules before Parliament will enable employees across all public research institutes to benefit financially from the success of their work

En el sector privado, la titularidad de los derechos de PI respecto a las creaciones de los empleados ha sido siempre un tema interno de la empresa, pero la situación dentro de las universidades e institutos de investigación públicos hasta ahora no ha sido tan clara, afirma Ignasi Costas, socio de RCD Asesores legales y tributarios en Barcelona.

In the private sector, the ownership and financial benefit of intellectual property (IP) created by employees has always remained with the company.

However the situation in universities and public research organisations is certainly more beneficial for the researchers, says Ignasi Costas, partner of RCD Legal and Tax Advisors.

“Spanish IP laws recognise that the ownership of inventions, and the rights to commercially exploit them, lie with the organisations that create them. But employees in universities and some public research organisations that played a role in the creation of new patents may often also share the financial benefits of their research.”

The current regulation is however limited because it does not expressly provide for all public research organisations, for example non-Government research centres, and in principle only applies to the exploitation of patents, he says.

A lack of a broad IP rule has generated interpreting difficulties for universities and public research centres as to whether this scheme could apply to creations such as software.

“Parliamentary reforms currently in debate may however clear up the issue once and for all, altering the regulatory framework and setting a general rule applicable to universities and all public institutes,” says Costas.

Among the proposed reforms of the Spanish Patent Law is an express provision enabling Autonomous Communities to establish participation schemes to share the financial benefits of patents in regional research centres, while amendments to the IP Law include the possibility for university researchers to share the benefit of a broader array of IP creation, including those within the Autonomous Communities' research institutions.

“Such amendments will fill the gaps in the existing regulation and allow comparable arrangements in terms of both inventions and creations (taking into account the growing importance of software), which will bring greater legal certainty and help to incentivise researchers even further.”