

Summary of LOWI opinion 2017-12

Keywords: invention, scientific contribution, patent application, academic freedom

Relevant provisions: Elaboration 1.4 Netherlands Code of Conduct for Academic Practice

Petition

According to the Petitioner, his manager is wrongly named as an inventor on a patent application and the management of the research institute (hereinafter: “the management”) does not permit the Petitioner to publish about the invention. The Petitioner therefore requested the Board to lift the publication ban, to remove the name of the manager from the patent application, and to grant the inventors non-exclusive licences to the patents.

Opinion of Confidential Counsellor and decision by the Board

Because a conflict is involved that is difficult to resolve, with commercial differences about licences and intellectual property rights seeming to be inextricably intertwined with potential issues of research integrity, the Confidential Counsellor could not determine whether the management had violated research integrity. The Confidential Counsellor recommended that the Board request that the management make a business proposal and rule the complaint unfounded. The Board resolved to adopt the Confidential Counsellor’s conclusions.

The Petitioner’s most relevant objections are as follows:

- The Board wrongly stated that this was only a business dispute. The management is preventing publications about the invention and blocking further scientific research by the Petitioner.
- The name of the manager is wrongly stated on the patent application .

The most relevant considerations in the LOWI’s opinion:

- In departure from the VSNU’s Model Complaints Procedure, the Petitioner’s complaint was not dealt with by a CWI but by a Confidential Counsellor. Calling in a CWI is not only a procedural formality but contributes substantially to reducing the vulnerability of the content of an opinion on the complex and controversial subject of research integrity. The LOWI has learned, and approves, that the Regulations of the institution will be adapted to bring them in line with the VSNU’s Model Complaints Procedure. The procedure followed complies with the applicable Regulations of the institution, so that there is no reason to declare the Petition well-founded.
- In the opinion of the LOWI, the mention of the manager as an inventor on the patent application is inappropriate. It is customary for only persons who have actually made a scientific or technological contribution to be designated as inventors. The behaviour concerned is not a violation of the principles of research integrity, however, because the Netherlands Code of Conduct for Academic Practice does not apply here. Filing a patent application is an extension of scientific research, but drafting and formulating such an application is not in itself scientific research.
- The LOWI is of the opinion that the Petitioner could reasonably deduce a publication ban from the management’s attitude, and considers it plausible that the Petitioner’s academic

freedom has indeed been curtailed as a result of this. This could have resulted in a violation of research integrity, but during the hearing the management distanced itself from a possible publication ban and stated that it had no objection to the continuation of research by the Petitioner. In the opinion of the LOWI, there are therefore no longer any grounds to assume a violation of research integrity.

LOWI ruling and opinion:

The LOWI considers the petition unfounded and has recommended that the Board adopt its proposed decision unamended as its final decision, referring to the considerations of the LOWI.

Final decision by the Board:

Taking into account the considerations of the LOWI, the Board has decided to adopt its preliminary decision as its final decision.