

For Immediate Release

## In Wake of Successful Amicus Brief, IP Advocate Hails Supreme Court Decision Upholding Faculty Inventors' Rights

***Landmark 7-2 Ruling in Stanford v. Roche Guarantees 'Seat at the Table' for Faculty and Student Inventors, Says IP Advocate's Kaswan***

ATLANTA (June 21, 2011) – IP Advocate ([www.ipadvocate.org](http://www.ipadvocate.org)), a non-profit organization that educates and empowers faculty researchers on patent rights and the process of commercialization, today hailed this month's Supreme Court decision in *Stanford v. Roche*, calling the landmark 7-2 ruling "an historic victory for faculty inventors, those touched by their work, and the overarching principle of inventor ownership."

The Supreme Court decision affirmed that universities do not automatically have the right to claim ownership of a faculty or student researcher's federally supported invention. As *The Washington Post* reported, "What was true in 1790, the Supreme Court ruled [on June 6], is true still: an inventor owns his invention. The Court said that the 1980 Bayh-Dole Act allocating patent rights involving federally funded research did not change that basic tenet."

Minneapolis attorney David P. Swenson, of the law firm Robins, Kaplan, Miller and Ciresi, filed an amicus brief in February 2011, for co-sponsors IP Advocate, the American Association of University Professors (AAUP) and the Institute of Electrical and Electronics Engineers (IEEE), on behalf of student and faculty inventors.

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"With this ruling, faculty inventors and students no longer can be told by university administrations that they signed away the rights to their life's work as a condition of federal funding," said Dr. Renee Kaswan, inventor of the multi-billion-dollar drug Restasis® and founder of IP-Advocate ([www.IPAdvocate.org](http://www.IPAdvocate.org)). "The court's landmark decision confirms that faculty and student inventors merit a seat at the table and that, from now on, their voice will be heard. This is all about striking a productive alliance between universities and faculty / student inventors whereby universities can genuinely enhance innovative research translation – and all ships rise together.

"Our global purpose is to create an environment in which thought leaders at universities will realize, for a multitude of reasons, that faculty discretion is a much superior system to compulsory assignment," Kaswan said. "Profit-sharing between faculty and universities will

continue -- and be more fruitful – with an approach that respects faculty inventor participation.”

“The ruling raises important issues in intellectual property rights, technology transfer, and the role of public and private funding in research,” said RKMC’s Swenson. “In today’s quest for innovation, pharmaceutical-based and other industrial-based research is increasingly reliant on partnerships among academia, the private sector, and government. The financial interests of the private sector and universities in intellectual property ownership are clear, but the challenge now is how to best marry those interests in a robust and equitable system of mutual benefit. The term ‘win-win’ should be more than lip service, but something that is put into practice in the design and implementation of research, technology transfer, and the rewards of eventual commercialization.”

Echoing Swenson, Kaswan called the ruling “good news for all concerned – faculty, students, the scientific, medical and academic communities... even university administrations.”

“In terms of asserting rights, the burden of proof has shifted from the employee to the employer,” she said. “As the Court noted, without an express effective contract, employers do not own their employees’ creative work.” Added Kaswan: “Even the two dissenting opinions in *Stanford v. Roche* acknowledge that the university’s job is to help the inventor and the public make the most of federal research dollars, rather than assume ownership and strategic decision authority are inherently vested in university administrators.”

According to Gerald Barnett, Director of the Research Technology Enterprise Initiative at the University of Washington, *Stanford v. Roche* affirms that universities “don’t have an inherent power granted by federal law to assume ownership of the ideas and inventions of faculty and students. “

“The main point for universities is that collaboration is good, open labs are good, faculty and student freedom to work on non-university stuff is good,” Barnett said. “Demands to control these activities present a huge risk to creativity. The administrators have no reason to control faculty -- or student or post doc -- research work or their intellectual property. If researchers decide to collaborate, regardless of whether it’s paid consulting or subcontracted sponsored research or informal communication, the distinctive virtue of university research is that it is the researchers’ prerogative to do so, without an administrator challenging their choice.

“A university should obtain title to faculty inventions because inventors decide this is what should happen, not because they are forced to assign,” Barnett added. “The university should respect this choice, negotiate the conditions on which the choice rests, and be accountable for performance when it makes such deals with inventors. Researchers who invent,

shape the future. Faculty entrepreneurship is a primary public asset in a society that supports research.”

“The knowledge that millions of patients have a better quality of life due to my creative work is extremely gratifying to me,” Kaswan said. “The desire and ability to make a qualitative difference in the world should never be wrested away from faculty and students... it’s the overarching motive for what academic scientists do... a core human value. Accordingly, we at IP Advocate are prepared to assist university administrators rediscover their own vital role and responsibility to promote public usage of federally funded subject inventions, following this landmark Supreme Court decision.”

#### **About IP Advocate**

IP Advocate ([www.IPAdvocate.org](http://www.IPAdvocate.org)) is a non-profit organization that educates and empowers faculty researchers on patent rights and the process of commercialization – helping inventors protect their rights during the complex process of moving their inventions from the lab to the public marketplace. IP Advocate is a robust resource of information and best practices related to the commercialization of intellectual property. IP Advocate was founded by Dr. Renee Kaswan, inventor of Restasis® and a former research professor at the University of Georgia; and is led by executive director Rhaz Zeisler, an internationally recognized interactive media brand strategist, and former Walt Disney producer and IBM creative executive. IP Advocate is a 501(c)(3) organization, based in Atlanta.

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