

CLOSEOUT FOR M97050018

OIG opened this case upon learning that [REDACTED] University (the University) was conducting an inquiry to assess possible misconduct in science by the subject, [REDACTED]. The inquiry was precipitated by a [REDACTED] court decision, in which the court found that the subject had misappropriated ideas constituting a legally protected trade secret from an industry colleague, Dr. [REDACTED] (the colleague).¹ The colleague, in collaboration with another scientist² (the collaborator), was apparently the first to conceive of an idea on how to use certain compounds.³ However, because they did not have experience in the synthesis of particular compounds, the colleague and her company retained the subject, who had related experience. Before the colleague provided information about this discovery, she required the subject to sign a confidentiality agreement, which he did on [REDACTED].⁴ The court found that the idea for these compounds was a legally protectable trade secret of the colleague and her company, which the subject misappropriated when in [REDACTED] he filed as sole inventor for his own patents on the compounds.⁵

The subject had proposed to do further research on the compounds in an NSF proposal,⁶ which was received by NSF [REDACTED] and awarded [REDACTED]. The NSF proposal was not mentioned in the court's opinion. The proposal did not acknowledge any contribution by the colleague, but it did cite three publications by the subject and his co-workers reporting synthesis of the compounds and experiments utilizing them.⁷ Two of these publications acknowledged the collaborator, thanking him "for his original suggestion concerning the possible use of [REDACTED] to trigger the detecting compound."⁸

¹ [REDACTED] Inc., and [REDACTED] v. [REDACTED] and [REDACTED] Inc., Opinion after [REDACTED]. In the [REDACTED] Court for [REDACTED] [REDACTED] [hereinafter [REDACTED] Court Opinion].

² [REDACTED]

³ [REDACTED] Court Opinion at [REDACTED]

⁴ [REDACTED] Court Opinion at [REDACTED]. At the time, the colleague's company was [REDACTED] Inc. *Id.* at [REDACTED]

⁵ [REDACTED] Court Opinion at [REDACTED]. The colleague left [REDACTED] Inc. and in [REDACTED] formed her own company, [REDACTED] to pursue the development of the compounds. *Id.* at [REDACTED]. The name of the company was later changed to [REDACTED]. *Id.* at [REDACTED]

⁶ [REDACTED]
Principal Investigator.

⁷ [REDACTED]

⁸ [REDACTED] The work reported in these publications was not supported by NSF.

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Although the collaborator originally worked with the colleague at her company, and was initially listed as a co-inventor on the colleague's patent application, the collaborator had by this time assigned his interest in the technology to the subject's University.⁹

In our experience it is extremely difficult to sort out the appropriate credit that should be given in situations of this sort, where ideas are jointly conceived, and collaborations have broken down and new alliances have formed. This is particularly true when, as in this case, the evaluation of the situation occurs long after the actions in question. In this case, although OIG learned of the allegations in 1997, the NSF proposal in question was submitted in [REDACTED]. Moreover, we recently learned that the University concluded its inquiry into the allegations against the subject, and determined that the subject had not committed misconduct in science. Since any finding of misconduct in relation to the NSF proposal would depend on a clear assessment that the subject made inappropriate use of the colleague's ideas, we believe that, in light of the University's conclusions, further inquiry into this case would not support a finding of misconduct. Nonetheless, we believe that it would have been a better practice for the subject to acknowledge the colleague for her contribution to the ideas underlying the subject's proposal.

Finally, we note that the adverse effects stemming from the subject's use of the colleague's ideas were rectified by the settlement of the court case, in which the subject assigned his interests in the patents relating to the idea to the colleague's company; and his subsequent agreement to a change to joint inventorship.¹⁰ NSF's interests, moreover, have not been at issue for some time, since the subject has not had NSF funding since the award expired in 1991, nor has he applied for new funding since submitting the proposal in 1987.

Accordingly, this case is closed and no further action will be taken.

[REDACTED]
[REDACTED] (with almost identical acknowledgement).
9 [REDACTED] Court Opinion at [REDACTED]
1 [REDACTED]
[REDACTED]