

## **In Search of the Realm of Philosophy: Toward an Experimental Use Exception for Academic Researchers**

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In *Madey v. Duke University*, the Federal Circuit drew the distinction between activities that furthered a “legitimate business objective” of a patent infringer and those that were “for strictly philosophical inquiry” to deny the experimental use exception to Duke University. Since the *Madey* decision, most commentators have proclaimed the death of the experimental use exception for all academic research at universities. However, the *Madey* decision arises from the actions of an official university department rather than those of an individual academic researcher.

This paper explores the autonomy of the faculty researcher from her resident university and argues that *Madey* has left open the question of whether academic researchers can use the experimental use defense. Academic freedom of the faculty, the application of sovereign immunity, and the misalignment of interests of the university and its faculty under the Bayh-Dole Act illustrate the distinction between the university and its faculty. Once this distinction is elucidated, this paper further examines the nature and motivations of academic research to argue that faculty researchers are often eligible to take advantage of the experimental use exception as outlined in *Madey*. As philosophy historically has included scientific research, this paper analyzes the term “legitimate business objective” as used by the *Madey* court to determine that faculty often conduct research “for strictly philosophical inquiry.”

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