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Q244

Inventorship of multinational inventions

Responsible Reporters: by Sarah MATHESON, Reporter General John OSHA and Anne Marie VERSCHUUR, Deputy Reporters General Yusuke INUI, Ari LAAKKONEN and Ralph NACK Assistants to the Reporter General

National/Regional Group	Estonia
Contributors name(s)	Raul KARTUS and Prof. Ants KUKRUS
e-Mail contact	Raul.Kartus@epa.ee
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I. Current law and practice

1) Please describe your law defining inventorship and identify the statute, rule or other authority that establishes this law.

a) If person A, located outside your country, directs the efforts of person B, located in your country, for making an invention in your country, under what circumstances would person A and/or person B be considered an inventor under your law?

Estonian Patents Act § 13 Author of invention:

(1) The author of an invention (hereinafter author) is a natural person who has created an invention as a result of his or her inventing activities.

(2) If an invention is created as a result of the joint inventing activities of several natural persons, such persons are joint authors.

(3) In the case of joint inventorship, all rights arising from the inventorship are exercised by the authors jointly, including the right to apply for a patent and to become the proprietor of the patent, unless they have entered into a written agreement which prescribes otherwise.

Location of the person does not play any role in the identification of inventorship.

b) Does your law defining inventorship rely on or look to a particular part of the patent application? For example, is inventorship under your law determined on a claim by claim basis, determined based on the content of the drawings or the examples, or determined on some other, and if so, what basis?

no

Please comment:

The law defines that joint inventorship is determined by the joint inventing activities. The Estonian law defining inventorship does not look to any particular part of the patent application.

2) Does your law of inventorship depend on the citizenship of the inventor(s)?

no

Please comment:

3) Does your law of inventorship depend on where the invention was made (e.g. on the residency of the inventor(s))?

no

Please comment:

4) Can the inventorship of a patent application be corrected after the filing date in your country?

yes

If yes, what are the requirements and time limits for such correction?:

Inventorship in a patent application can be corrected at any time after the filing date of a patent application upon the request of the applicant or patent owner.

5) What are the possible consequences of an error in the stated inventorship on a patent application in your country? Can a patent issued from such an application be invalidated or rendered not enforceable on that basis? Does it matter whether the error was intentional or unintentional?

In accordance with the Estonian Patents Act any dispute concerning inventorship shall be resolved in court after the publication of a patent application. Any natural person who finds that he or she is the inventor may file an action with a court against the applicant or, after the grant of a patent, against the patent owner for recognition of his or her inventorship. Inventorship may also be contested by a successor of such person. If inventorship is recognised, the person may contest the applicant or patent owner in the course of the same case. If the action is satisfied in the case of a patent application, the person has the right to continue applying for the patent in his or her own name, revoke the patent application and file a new patent application with the same filing date, or revoke the patent application. In the case of a patent, the person has the right to register the patent unamended or subject to amendments in his or her own name, or revoke the patent.

In accordance with the Estonian Penal Code disclosure of an invention of another person in his or her own name is punishable by a pecuniary punishment or up to three years imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

6) Does your law require that an application for a patent claiming an invention made in your country, whether in only one technical area or in all technical areas, be filed first in your country?

no

If no please comment:

a) Is the law requiring first filing in your country limited to a specific area of technology or otherwise limited such that it does not apply to all inventions made in your country? If yes, please explain.

7)	Does your law require that a patent application claiming an invention made, at least in part, in your country undergo a secrecy review or similar process before it can be filed in another country?
	no
	If no please comment:
	Except invention under the agreement between certain states for the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made.

II. Policy considerations and proposals for improvements of the current law

8)	If your law defines inventorship, is this definition sufficient to provide patent applicants with clear guidance as to who should be named as the inventor(s) of a patent application? Are there aspects of this definition that could be improved?
	In case of dispute between persons inventive entity for a particular application is based on some contribution to at least one of the claims made by each of the named inventors.

9)	If you have laws requiring first filing of patent applications directed to inventions made in your country, are there aspects of these laws that could be improved to address multinational inventions?
	It could be stipulated that where the law requires first filing of patent applications directed to inventions made in particular country, the law of this particular country would apply also to inventorship.

10)	If you have laws requiring a secrecy review of patent applications directed to some or all types of inventions made in your country, are there aspects of these laws that could be improved to address multinational inventions?
	The same requirement as in the previous point (9).

11)	Are there other aspects of your law that could be improved to facilitate filing of patent applications having multinational inventorship? If yes, please explain.
	In case of applications without requiring first filing of patent applications in certain country or requiring a secrecy review, the law of the country of domicile of the inventor applies with respect to the inventorship.

III. Proposals for harmonisation

12)	Is harmonisation in this area desirable?
	yes
	Please comment.:

If yes, please respond to the following questions without regard to your national or regional laws. Even if no, please address the following questions to the extent you consider your national or regional laws could be improved.

13)	Please provide a definition of inventorship that you believe would be an appropriate international standard.
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The inventor is a natural person who has created an invention as a result of his or her inventing activities. If an invention is created as a result of the joint inventing activities of several natural persons, such persons are co-inventors.

- 14) Please propose a standard for correction of inventorship after a patent application is filed, together with any requirements necessary to invoke this standard (e.g. intentional versus unintentional error) and any timing requirements (e.g. during pendency of the application).

Inventorship can be corrected by the applicant in case of unintentional error at any time during pendency of the application. Intentional errors can be corrected by court decision at any time during the entire life of patent and thereafter.

- 15) If you believe such a requirement is appropriate, please propose an international standard for first filing requirements that would take into account multinational inventions.

There is no need for a standard.

- 16) If you believe such a requirement is appropriate, please propose an international standard for secrecy review requirements that would take into account multinational inventions.

In case of such inventions secrecy regulations of the particular country apply to all the inventors.

- 17) If you believe such a requirement is appropriate, please propose an international standard for obtaining a foreign filing license.

There is no need for a standard.

- 18) Please propose an international standard for an ability to cure or repair an inadvertent failure to comply with a first filing requirement or a security review requirement.

There is no need for a standard.

- 19) Please propose any other standards relating to multinational inventions (excluding those related to inventor remuneration or ownership of the invention) that you feel would be appropriate.

Summary

Inventor is a natural person who has created an invention as a result of his or her inventing activities. If an invention is created as a result of the joint inventing activities of several natural persons, such persons are co-inventors. Location of the person does not play any role in the identification of inventorship. Inventorship in a patent application can be corrected at any time after the filing date of a patent application upon the request of the applicant or patent owner. It should be punishable by a pecuniary punishment or imprisonment if the error in the stated inventorship on a patent application

was made intentionally. In case of dispute between persons inventive entity for a particular application is based on some contribution to at least one of the claims made by each of the named inventors. Where the law requires first filing of patent applications directed to inventions made in particular country or it requires a secrecy review, the law of this particular country would also apply to inventorship. There is no need for a standard for first filing requirements, for obtaining a foreign filing license and a security review requirements.

Please comment on any additional issues concerning the multinational inventions you consider relevant to this Working Question.

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