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Q244

Inventorship of multinational inventions

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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?

Under the Czech Patent Act, an inventor is the person who made the invention by its creative work. Therefore, it would have to be assessed to what degree were the contributions of persons A and B of creative intellectual nature in contrast to organizational activity or support in preparing drawings or calculations and the like.

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:

No, co-inventorship is not determined on claim by claim basis. The Czech Patent Act states that co-inventors have the right to patent in the scope in which they contributed to creating the invention. The shares of the co-inventors are to be determined by agreement of the co-inventors or upon failure to reach an agreement by court.

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?:
	<i>In practice, such correction is most often the registration of additional inventor. Such correction in the register of the Office requires consent of all existing registered inventors. There are no time limits for such change.</i>
	<i>If there is a dispute over the right to patent, it must be submitted to the court. The Office shall suspend examination proceedings on the patent application while the court litigation is pending.</i>

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?
	<i>If a court determines that another person is entitled to the patent other than the person stated in the application as filed, the Office shall record as the patent (application) owner such person as determined by the court.</i>

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.
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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:

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?
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In the view of the Group, the general definition is sufficient and there is no practical or empirical evidence in the Czech Republic that the definition would require amendment.

- 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?

Not applicable.

- 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?

Not applicable.

- 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.

Not applicable.

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.

The Group is of the opinion that the international definition should be based on the contribution to the inventive or creative essence of the invention.

- 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).

The Group holds the view that international standards should be liberal and that it should be possible to correct inventorship at any time provided that there is agreement of the inventors

- 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.

The Group thinks that first filing requirement is contrary to the reality of the 21st century as to multinational inventions and believes that the first filing requirement should be abandoned as an international 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.

The Group thinks that secrecy review requirements are contrary to the reality of the 21st century as to multinational inventions and believes that secrecy review requirements should be abandoned as an international standard.

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

The Group thinks that foreign filing license requirements are contrary to the reality of the 21st century as to multinational inventions and believes that foreign filing license requirements should be abandoned as an international 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.

See the above.

- 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.

No additional comments.

Summary

Under Czech law, an inventor is the person who made the invention by its creative work. In case of plurality of inventors, the shares of the co-inventors are to be determined by agreement of the co-inventors or upon failure to reach an agreement by court. For correction of inventors in the register, the Office requires consent of all existing registered inventors. If there is a dispute over the right to patent, it must be submitted to the court. The Czech National Group is of the view that national law requirement of first filing, secrecy review or foreign filing do not correspond to the social and economic reality of 21st century and as such should be abandoned.

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