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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?

Our National law does not provide an express definition of inventor. Our Patent Law N° 1360/2000 "Patents of Invention", only establishes the rights to obtain the patent registration in our Country, in order to grant the right of use of the invention and the right to prohibit a third party to do so.

The right to obtain a patent registration in our country is granted to the inventor or his successors with possibility to transfer the same through assignment or succession. Also, describes different scenarios in which will be considered at the time to grant a patent registration, namely:

If the invention has been made by two or more people, the right to obtain the patent registration will be granted under the same conditions.

If the same invention has been made independently by different people, the patent registration rights will be granted to the person or his successor, who filed first the patent application or claims priority rights with the earliest date for that invention.

If the invention has been made under the compliance or execution of a work project or service contract or employment contract, the patent registration rights will be granted to the person contracting the work project or service, or the employer, as appropriate, unless otherwise provided

by contract.

If the an employee, which is not was not required, by contract, to make an inventive activity, makes an invention in the field of activities of his employer, or using data or means to which he had access by virtue of his employment, must communicate the invention to his employer. If the employer has interest in the invention, his must notify to the employee in a period of 30 days the acknowledgement of the invention in order to be considered his ownership on the rights to register the invention. The employee will have the right to an equitable compensation taking into account the estimated value of the invention. Such compensation is irrevocable.

Finally, in all cases the inventor will have the imprescriptible right to be known as the author of the invention and will be mentioned as such in the granted patent and all documents and official publications related to the same, unless expressly waives this right. However, it will be null and void any agreement, in which, the inventor resigns to his right to be mentioned, before the invention is made.

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?

yes

Please comment:

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

no

Please comment:

No. According to our National Patent Law, a patent application could be applied by a natural or legal person national or foreign.

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?:

Yes. According to our National Patent Law, the applicant can modify o correct his application, before its publication and any time of the proceedings, but this may not involve the change of object of the invention nor an extension of the disclosure contained in the initial application. If the modification or correction is been made after the substantive examination and affects some of the technical documents, an additional examination could be ordered

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?

When a patent or utility model application is has been applied or granted by a person not entitled to obtain, or in detriment of another person who is entitled to, the affected person can may claim his rights before the Judicial Authority competent in this matter requesting the transference of the pending application or granted patent or the recognition as the co applicant or co-owner of the invention. Also, he can sue for damages. The rights to filed this action will prescribe after 10 years from the dated in when the patent is granted or two years from the date that the invention had begun to be used in our Country, always taking into account the earliest expiration date. The action will not prescribe if the people who obtain the patent registration had applied in bad faith.

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:

It is not a requirement in our country

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:

No, it is not a requirement in our country.

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 our opinion, is not necessary to make any changes in this regard.

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?

In our opinion, is not necessary to make any changes in this regard

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?

In our opinion, is not necessary to make any changes in this regard

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.

Since our current national patent law makes no distinction with regard to nationality or domicile of the applicant, in our opinion, is not necessary to make any changes or improvements in this regard

III. Proposals for harmonisation

12) Is harmonisation in this area desirable?

yes

Please comment.:

In our opinion, it would be desirable to harmonize the laws and doctrine in this area in order to facilitate to the patent owner(s) with different nationalities the procedural steps to obtain a patent registration.

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.

In our opinion, the term "inventor" is the person who contributes any part of his ingenuity, skill, or technical knowledge towards the invention regardless his nationality or domicile.

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).

In our opinion, the applicant could be able to correct the stated inventorship of his patent application at any time of the proceeding of patent registration, as long as this error was unintentional, by submitting a writ requesting the correction along with supporting documents. If the error was intentional in detriment of the actual inventor, the same could sue for damages and request to the competent authority the transference of the pending application the recognition as the co applicant or co-owner of the invention

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.

In our opinion, this requirement for first filling must be required if the invention is intended to be used in the country in where the invention was made and regardless of the nationality or domicile of the inventor(s).

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 our opinion, this requirement should be should be entrusted to the Patent Office at the time of substantive examination in order to preserve the rights of the applicant, and if the patent application

that contains areas that are considered of national secret or affect national security, are rejected ex officio by the Patent Office

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

In our opinion, there are no specific proposals in this regard.

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.

In our opinion, there are no specific proposals in this regard

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.

In our opinion, there are no specific proposals in this regard

Summary

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