

EMPLOYING INVENTORS IN RUSSIA



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Russia has an impressive history of technological development and academic research in many fields of natural sciences. This know-how, accumulated over recent decades, is gradually finding its way to commercial products. As a new member of the World Trade Organization Russia is, more than ever before, looking like a country where foreign companies want to establish R&D centres to use the local technological expertise. In order to accomplish this objective it is essential to understand the judicial relationship between the employer and the inventor working as an employee under an employment contract.

In Russia, the right to receive a patent for an invention is transferred to the employer automatically through a formal procedure if the inventor works as an employee for the employer, unless otherwise stipulated in a contract between the two parties. In this procedure, the inventor should notify the employer in writing about the invention made in connection with the fulfilment of his labour duties. Correspondingly the employer should, within four months of notification, file a corresponding patent application or inform the employee-inventor about the employer's intention to preserve the information related to the invention in secrecy or to transfer the right to receive a patent to a third party.

If the inventor is a non-staff worker fulfilling a 'one-shot' job under an independent-work contract, the right to receive a patent for the invention belongs to the inventor. The employer nevertheless retains a right to use the invention throughout the life of the patent for the purpose for which the respective independent work contract was concluded, unless otherwise stipulated in a contract between the inventor and the employer. As an example, students, freelancers or administrators commonly belong to this group of people who are not employees but are hired to do a specific job under an independent work contract.

The law currently in force in Russia sets a limit to the minimum remuneration to which the inventor is entitled. The employer can agree with the employee-inventor on a fixed remuneration for the invention, but this agreement does not take away the right of the inventor to challenge, based on the minimum remuneration dictated by the provisions of the law, the remuneration which was previously agreed upon. Hence, if the inventor is able to prove that the awarded remuneration based on the agreement is less than that dictated by the law, the inventor may be awarded further remuneration; the contract or agreement cannot therefore supersede the law.

According to the former Soviet Patent Law, of which the relevant parts are still in force in Russia, remuneration to the employee-inventor shall not be less than 15 percent of the profit annually received by the patent holder from using the patent and not less than 20 percent of the income

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from selling a licence. If the usefulness of the invention does not consist of making profit, remuneration shall not be less than 2 percent of the net cost of the products or services falling within the invention. When a patent is issued each inventor is entitled to an incentive remuneration which shall be no less than his average monthly pay.

Judicial relations between the inventor and the employer are regulated by the law under which the employee is contracted. For example, if the inventor works for the employer in Russia under a contract with a foreign entity, this means that he has no employer in Russia because, to have an employer in Russia, the inventor should have an employment contract with the local Russian entity operating under local Russian law. In this case, since the inventor is not an employee in Russia, Russian regulations governing remuneration for the employee cannot be applied.

In view of this, the procedure for an employer to ensure that the rights to the invention are duly transferred from the employee to the employer seems clear and in line with that in many western European jurisdictions. However, legislation governing the remuneration to the employee in Russia is old and from an era with a completely different economic environment. If interpreted strictly, this law could seemingly lead to hefty compensation for the employee. It may be argued that such legislation will come under pressure in an attempt to create a friendly business environment in Russia, as more and more inventions are being made under an employment contract. ■

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