



Working Questions Rio 2015

Explanatory Note

Inventorship of Multinational Inventions

In today's global economy, researchers often collaborate on multinational projects which can result in inventions with inventors from more than one country. However, the laws in the United States, Europe, Japan, China, and India, for example, vary on key points, such as:

- Security clearances and/or requirements for filing first in the country where the invention is made;
- Inventor remuneration; and
- The definition and application of the rules of inventorship.

This was discussed in an AIPPI workshop in Hyderabad in 2011. At this workshop it was noted that the issues are many and varied, and involve matters of patent law, employment/labor law, and national security, all of which can be difficult to manage across multiple jurisdictions. However, the analysis often starts with a determination of inventorship.

The purpose of this question would therefore be to survey various laws in key jurisdictions which are affected by or impact on a correct inventorship determination, and to propose best practices for countries seeking to foster research from a multinational perspective. Such best practices might include: a common understanding and definition of inventorship, including how inventions with inventive contributions from more than one country should be treated.

Before any of these issues can be resolved, the core issue revolves around how one determines inventorship. While the statutory provisions defining inventorship appear similar across many jurisdictions, the application of the provisions often differs.

Many patent practitioners would state that the inventor(s) are those who conceived of a substantial or complete part of the invention, how to make it and how to use it. But, in some countries, the inventors can also be anyone who made a "technical contribution" to the invention. This might include those who were carrying out the instructions of others. This has real significance in the case of multinational inventions, where ideas may come from one country, and the work is done in another.

This question aims to consider: how is inventorship determined across the world, what are the common factors, and is it possible to create a common global standard?

Questions to be addressed by the national groups include for example the following:

1. How is inventorship determined in your country?
2. If a person conceives of a complete idea which becomes a patentable invention, and directs the activity of another in proving the concept, but does no work himself or herself, who is named the inventor?
3. Can a patent be held invalid for improper inventorship?
4. Where is an invention deemed to be made?