

Resolution



Question Q183

Employers' rights to intellectual property

AIPPI

Considering:

- a) That the large majority of subject matter protected by intellectual property in today's world is created within the framework of an employment relationship.
- b) That the existence of considerable differences between national laws concerning employers' and employees' rights to intellectual property causes complications and problems for cross border R&D both within multinational enterprises and for cooperation between companies.
- c) That the ownership of the intellectual property rights should be governed by harmonised rules since it has an impact on their prosecution and their enforcement.

Further considering:

- d) That any proposal for harmonisation should take into accounts the essential differences existing between the legal systems concerning particularly initial ownership of intellectual property rights.
- e) That where the employee has the initial ownership, the employer should have a right to assignment of the creations made by the employee within the framework of the employment relationship.
- f) That the development of new creations may be favoured by legal rules or contractual stipulations which give an incentive to the employees to make such a creation.

And reminding:

- g) That a distinction may be made between the moral and the economic rights to intellectual property.
- h) That the principle of the freedom of contracts should apply as a starting point to the rules governing the attribution of intellectual property.
- i) That the conflict of interests between employer and employee regarding intellectual property should be resolved by predictable and transparent rules where the principle of freedom of contracts is limited by law.
- j) And that rules which would offer an incentive to the employees in order to encourage them to achieve new creations should consider both employers' and employees' economic interests and be simple, both when they apply to the evaluation of the eventual compensation and to the terms of limitation.

Adopts the following Resolution:

- 1) Employer should be granted ownership by contract or law of economic rights in the creations carried out by the employees within the framework of their employment relationship.

- 2) Courts and authorities which have jurisdiction in the field of intellectual property rights should also be competent to decide on all disputes between employers and employees, with respect to those rights.

In those disputes, although a conciliation phase may be desirable in certain circumstances, it should not be mandatory in every case.

- 3) When a claim of ownership is necessary, the term of limitation should be reasonably short to avoid uncertainty as for the ownership of rights and its financial consequences, if any, and the law should indicate clearly what the starting point of the term of limitation is.
- 4) Any compensation to the employee for the assignment of the rights for the creation to the employer should be clearly determinable and established in a simple way.
- 5) The harmonisation of the rules of ownership of intellectual property rights should be encouraged particularly at the regional level and the intergovernmental agreements regulating regional IPR should provide rules on the ownership of those rights.
- 6) The harmonization of the rules of ownership of intellectual property rights may be advanced by means of rules of presumption and by encouraging the adoption of model standard contract stipulations.
- 7) There should be clear rules for the assignment of the rights to the employers when such assignment is necessary.
- 8) Employers' rights to intellectual property should not restrict the employee's entitlement to the recognition of the creative achievement in an appropriate form.