

National/Regional Group:

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Questions

I. Current law and practice

- 1) Please describe your Group's current law defining ownership of an invention made by an inventor employee and identify the statute, rule or other authority that establishes this law.

The new IP Law enacted on December 9, 2016 named "**CÓDIGO ORGÁNICO DE LA ECONOMÍA SOCIAL DE LOS CONOCIMIENTOS, CREATIVIDAD E INNOVACIÓN**" provides in **Art. 277**:

"...a patent developed in fulfillment of a contract belongs to the employer, unless otherwise agreed. However, at least 25% of the ownership of the patent corresponds to the inventors, so that the inventors will receive the royalties generated from the patent exploitation. The patent owners, by prior agreement, may license or transfer their rights.

When an employment contract does not require the employee to exercise an inventive activity, but the employee makes an invention using the employer's resources or confidential information, the employee shall be entitled to the ownership, but the employer shall have the right to a non-exclusive, non-transferable and free of royalties right to the patent.

When an employment contract does not require the employee to exercise an inventive activity and the invention is carried out without using the resources or confidential information of the employer, the employee shall be entitled to full ownership."

- 2) Does your Group's current law relating to ownership of an invention made by an inventor employee distinguish between types of employees, for instance between academic staff in universities and in for-profit organizations, or whether they are employed "to invent" (e.g., do research)?

A difference is made between an invention made by academic staff and employees in general.

- 3) If your Group's current law prescribes that employers own inventions made by inventor employees, does your law impose an obligation on employers to offer to employees the right to file a patent application, or entitlement to a patent application already filed, in the event the employer does not pursue patent protection?

There are no specific provisions on the matter.

- 4) Does your Group's current law provide in any statute or other regulation that an inventor employee is entitled to receive remuneration beyond their salary for an invention made by the inventor owner but owned by the employer? If yes, please briefly describe the entitlement.

Compensation is provided in the terms explained in question 1.

- 5) Under your Group's current law, is there any other basis, e.g. common law principles, upon which an inventor employee may claim a right to remuneration beyond their salary for an invention made by the inventor employee but owned by the employer? NO

If your answer to question 4) or 5) is 'yes', please answer remaining questions 6) to 8). If no, please go to question 9)

- 6) To what extent do the following factors determine whether an inventor employee is entitled to remuneration?
- a) Nature of employment duties;
 - b) Extent to which the invention is relevant to the business of the employer;
 - c) Use of employer time/facilities/resources in generating the invention; and
 - d) Terms of the employment agreement or collective agreement.
- 7) When does any right to remuneration arise? What stage(s) during the process for invention creation through to patenting, commercialisation or licensing trigger any right to remuneration?
- 8) Is the amount of remuneration codified or variable? If variable, how is it determined? For example, what circumstances affect the amount of remuneration? If the amount of remuneration is based on revenue related to the patent (e.g., licensing revenue), how is that amount determined? What impact, if any, does the number of co-inventors have on the amount of remuneration to which any one of the inventors is entitled?
- 9) Does contract law (e.g., company employee contracts requiring assignability of inventions to the company) affect any remuneration payable by an employer to an inventor employee?

The 25% compensation right is not affected by any assignment contract.

- 10) Does your Group's current law provide for any entitlement to additional remuneration after an employee inventor has already accepted remuneration for the invention? For example, this could arise where the patent value has increased after any initial remuneration entitlement has been paid, and the inventor employee seeks additional compensation for the increased value arising from the issuance of a patent or later commercialization.

Yes, please see question 1

- 11) If remuneration is based on the contribution each inventor made to the invention, how is that contribution determined and how is the remuneration then calculated?

There are no provisions on the matter.

- 12) Does any right to remuneration under your Group's current law apply to inventors located outside your jurisdiction if the employer is located in your jurisdiction?

Yes, there shall be no difference in the location of the employee

- 13) Does any right to remuneration under your Group's current law apply to inventors located in your jurisdiction if the employer is located in another jurisdiction?

No, the employee must be located locally in order to be affected by the Law.

- 14) If an employee inventor in your jurisdiction is a co-inventor with one or more inventors outside your jurisdiction, does the number of co-inventors or whether they are entitled to remuneration impact the inventor employee's entitlement to remuneration? All inventors shall divide the 25% right, regardless where they are located

Does it matter if the employer is in your jurisdiction or outside your jurisdiction? The employer must be in Ecuador in order to be affected.

II. Policy considerations and proposals for improvements of the current law

- 15) If your Group's current law provides inventor employees with a right to remuneration for their inventions:

- a) is the law sufficiently clear as to the circumstances under which the right to remuneration arises? No

- b) does the law provide sufficient guidance as to how the remuneration is to be determined? **No**
- c) are there aspects of your law that could be improved to address remuneration of inventor employees? **Regulations on the matter are required.**
- d) are there any proposed reforms of your law with respect to such remuneration? **The Government is working on regulations on the matter, but the law has created a lot of controversy.**

16) If your Group's current law does not presently provide inventor employees with a right to remuneration for their inventions:

- a) Should it do so?
- b) Are there any proposals to introduce such rights? If yes, please describe such proposals.

III. Proposals for harmonization

17) Is harmonization in this area desirable? **No, we believe the matter should be contractual and not regulated by Law, as in the practice these provisions do not help in obtaining foreign investment.**

If yes, please respond to the following questions without regard to your Group's current law.

Even if no, please address the following questions to the extent your Group considers your Group's current law could be improved.

18) Please propose a standard for remuneration for employee inventors that your Group considers would be an appropriate international standard, addressing both the circumstances that give rise to remuneration and to the basis for determining it.

19) Please provide a standard that your Group considers would be an appropriate international standard for handling issues where employee inventors are located in different countries and the countries have differing laws relating to the remuneration of inventor employees.