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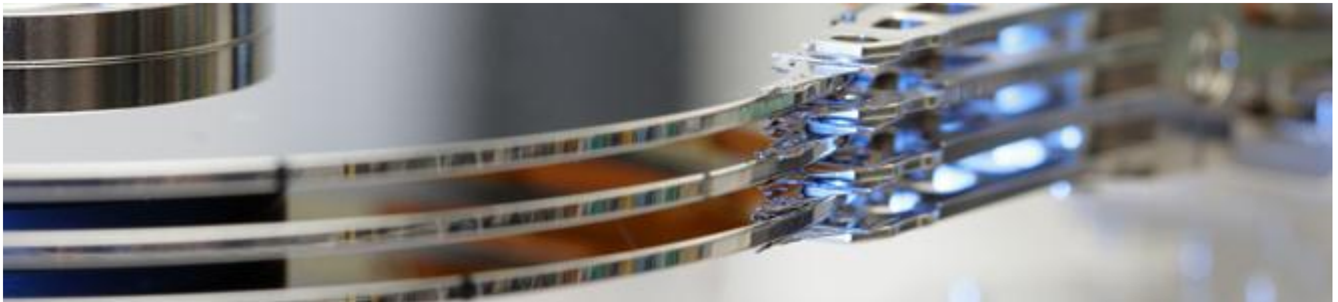

Long-awaited rules on employee inventor compensation in Russia

September 2014

After the old Soviet rules of calculation and payment of employee inventor compensation ceased to be applicable in Russia, this important legal issue both in the sphere of employment relations and inventorship remained insufficiently regulated for dozens of years.

The parties to these relations had to come to an agreement on the amount and methods of payment of inventor compensation. Failing to do that, the parties had to revert to a court of common jurisdiction, which did not have any legal instruments to determine compensation amounts in the absence of applicable rules or regulations. Over the decades, there have been many disputes in various regions of Russia. Due to the lack of applicable rules, the outcome of disputes was generally unpredictable, although the courts have traditionally been – and still are – mostly employee inventor oriented.

On 1 October 2014, the long-awaited new rules, which were adopted by the Russian Government in June 2014 (the "**Rules**"), will come into effect. They are aimed at curing this serious defect in the regulation of relationships between employed inventors and employers.

Outline of the Rules

The Rules are brief and straightforward from the legal standpoint. They provide for three different types of compensation, as summarised in the table below.

1. Lump sum payment for the creation of a patentable invention, industrial design and/or utility model ("**IP Object**")	• **30%** of the average monthly salary of an inventor • **20%** of the average monthly salary of an author of an industrial design or a utility model The sum is due for payment irrespective of whether the employer decides to patent the IP Object or not
2. Annual payments for use of the IP Object by the employer	**100%** of the average monthly salary of the inventor/author for every year of use
3. Payment(s) due when the IP Object is licensed or assigned by the employer	• **10%** of the revenues received by the employer from the licensee under the licence agreement or • **15%** of the revenues received by the employer from the assignee under the assignment agreement

In case of co-authorship, the payments made under licensing/assignment agreements (item 3 above) are to be shared equally among the co-authors, unless otherwise provided for in an agreement between the co-authors. On the other hand, lump sum payments for the fact of inventorship and annual payments for use (items 1 and 2 above) are to be calculated and paid to each and every co-inventor. This could give way to potential unfair play when initially establishing co-authorship and impose additional burdens on the employer.

Comments

The Rules are not mandatory. They apply unless otherwise provided by the parties in an employment or other agreement.

Not surprisingly, the new Rules remain employee inventor oriented. Also, certain aspects are still not regulated (such as the allocation of co-authorship lump sum and annual payments, or the apportionment of annual payments when an IP Object is used for less than a full calendar year). Employers are therefore encouraged to settle these issues by detailing them in agreements with their employees, rather than rely on the application of the Rules.

If you have any questions on the matters referred to in this Alert, please do not hesitate to contact CMS, Russia expert **Anton Bankovskiy** or your regular contact at CMS, Russia.

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