

## HIRED –TO- INVENT: A CRITICAL APPRAISAL OF EMPLOYEES’ INVENTION, LICENCES AND AGREEMENT

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### Abstract

Inventions are the result of methodological research. However, when an invention is made in the course of employment or in the execution of a contract, then the question as to who owns the invention arises. Thus, ownership of employee’s inventions brings to limelight the intersection of intellectual property rights and labour law. One question we commonly hear from inventors who are employees is whether they have ownership rights to a patentable idea they conceived while working for a company. The answer can be quite tricky and uncertain. It is on this premise that this paper aims to examine the general rule, in the absence of a written agreement to the contrary, whether an employer has a non-exclusive license to use an invention devised by an employee while working for the employer. The doctrinal method of legal research was employed. The paper finds that the more difficult situation arises when an employment contract is silent as to intellectual property rights. The paper further finds that under the “hired-to-invent” doctrine; if an employee is hired to invent something or solve a particular problem, the property of the invention related to this effort may belong to the employer. The paper concluded inter alia that there is usually absence of certainty and clear specification of the terms of ownership of intellectual property rights in an employment relationship in Nigeria. The paper recommended among others that certainty and clear specification of the terms of ownership of intellectual property rights in an employment relationship before any intellectual property is developed is paramount, otherwise, the question of who owns the rights to employee inventions becomes complicated.

**Keywords:** Invention, Employers Agreement, Licenses, Employer, Employee Invention, Nigeria

### 1.0 Introduction

Employment inventions is defined as any invention which is made wholly or partially by the employee at any time in the course of his employment with the company (whether or not during working hours or using company premises or resources, and whether or not recorded in material form).<sup>1</sup> It was further defined as a means any invention or part thereof conceived, developed, reduced to practice, completed or created which is: (i) conceived, developed, reduced to practice, completed, or created by employee (whether solely by employee or jointly with others) within the scope of employee’s employment with the company; on the company’s time; or with the aid, assistance, or use of any property, equipment, facilities, supplies, resources, personnel, or intellectual property of the Company; (ii) the result of any work, services, or duties performed or suggested by Employee for or on behalf of the Company; (iii) related to the industry or trade of the Company; or (iv) related to the current or demonstrably anticipated business, research, or development of the Company.<sup>2</sup>

A large number of patentable technical inventions are created under employment contracts and are designated as “employee inventions”, accordingly. Due to the close relation between the invention and the employing company of the inventor, the company has the right to claim the invention for itself. In contrast, the full rights to a “free invention” remain with the employee who may determine at his own discretion if and how the invention shall be used.<sup>3</sup>

The Law on Employees’ Inventions aims at balancing the interests of the employer and the employee when the latter developed a patentable invention within the boundaries of his employment contract. Thus, if the employer claims the invention for itself, the inventor has the right to

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<sup>1</sup>Employment Inventions Definition, Available at <https://www.lawinsider.com>. Accessed on 12<sup>th</sup> July, 2024.

<sup>2</sup>*Ibid*

<sup>3</sup>*Speck v. N.C. Dairy Foundation., Inc., 311 N.C. 679, 686 (1984)*

an appropriate amount of compensation. The amount itself is generally calculated based on the Guidelines for Determining Compensation for Employees' Inventions.<sup>4</sup>

In Germany, in case of a dispute between the employer and the employee inventor with regard to an employee's invention, for instance when determining the appropriate amount of compensation as mentioned above, the Board of Arbitration for Employees' Inventions at the Patent and Trademark Office can be called upon for mediation and settlement. In a lot of cases, a proceeding before the Board of Arbitration is a prerequisite for a following court proceeding.

## 2.0 Who Owns Employee Inventions? The Employer or the Employee

It is dangerous for an employer to assume that it owns an employee's inventions merely because its employee invented them. Similarly, employees should not assume that they own inventions merely because they invented them at home. Employee-inventors present unique problems for the employer, and the answer to who owns an invention may depend on the type of invention.<sup>5</sup> The rules for ownership of creations protected by a copyright differ from inventions protected by a patent.

These are some of the issues arising from the employee-employer relationship. It is estimated that 80% to 90% of patent inventions are the result of employee-inventors.<sup>6</sup> Almost all ownership disputes can be avoided if addressed in a written agreement at the outset. But if there is no written agreement, these rules generally apply:

1. The author of the work is usually the owner of the copyright, unless the work was prepared by an employee in the scope of his or her employment. If so, then the work is a "work for hire" and the employer is the owner.
2. If the author is an independent contractor, and not an employee, the work does not belong to the employer. It is often difficult to distinguish between an employee and independent contractor, so employers should seek legal advice in establishing this distinction.
3. The ownership of patents is different than ownership of copyrights. In the absence of a written agreement, an employee's patentable inventions may not belong to the employer, except in special circumstances. The employee - employer relationship does not necessarily entitle the employer to ownership of inventions made by the employee.
4. If the employee was hired for the specific purpose of inventing a defined product or process, the invention belongs to the employer.
5. General inventions made at the employer's expense but not at the employer's specification are often not the property of the employer.
6. Does this mean that the employee can then stop his employer from using the invention, which he made at the employer's expense? No. The employee may have the duty to license the invention at no cost to the employer. This is called the "shop right rule." A shop right is a nonexclusive license to use, manufacture and sell an invention without financial obligation to the inventor. However, the employee retains ownership of the patent. Inventions made on the employee's own time, but not at the employer's expense, can be the property of the employee, even if they relate to the employer's business.

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<sup>4</sup>Dulheuer M., "MD Legal Patent, Patent Law Firm Deutschland – Germany [<https://legal-patent.com/company-info/fields-of-law/employees-inventions/>] retrieved 7<sup>th</sup> February, 2024.

<sup>5</sup>*Banks v. Unisys Corp.*, 228 F.3d 1357, 1359 (Fed. Cir. 2000).

<sup>6</sup>M Schonfeld, "Who Owns Employee Inventions? The Employer or the Employee?" Edited and reviewed by Find Law Attorney Writers (March 26, 2008) reprinted from the winter 2004 Focus, Burns & Levinson LLP, [www.burnslev.com](http://www.burnslev.com) HQ 617.345.3000.

The absence of a written agreement causes these disputes to arise. Accordingly, it is advisable to follow these guidelines in order to avoid ownership disputes between employers, employees and independent contractors:

1. Consult your attorney. It is essential to obtain legal advice so that you can protect your intellectual property.
2. Always use written agreements which spell out the rights of employer, employee and independent contractors. Ensure that the agreements are valid under your state's law.
3. Employers should make sure that employees read and sign the written agreements, preferably before they commence their employment.
4. Employers should ensure that written employment agreements have confidentiality clauses and appropriate non-compete provisions.

### 3.0 Ownership of Inventions under Nigerian Patent Law

Under the World Intellectual Property Organization (WIPO), Article 13 defines patent as a document issued, upon application, by a government office (or a regional office acting for several countries), which describes an invention and creates a legal situation in which the patented invention can normally only be exploited (manufactured, used, sold, imported) with the authorization of the owner of the patent.<sup>7</sup> Patent is governed in Nigeria by the Patents and Designs Act,<sup>8</sup> and the regulations made thereunder. According to section 6(1) of the Act<sup>9</sup> “A patent confers on the patentee the right to preclude any other person from doing any of the following acts:

- a. Where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use; and
- b. Where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, any other acts mentioned in paragraph (a) of this subsection”.
- c.

A person upon whom a patent is issued is known as a patentee. Whilst it is straightforward in most cases as to who a patent is issued to, it is however not the case with the invention made in the course of employment. The crucial issue is whether the right of a patent is vested on the employee or the employer with respect to the invention made by an employee in the course of employment.<sup>10</sup>

At common law, an invention made by an employee in the course of employment was regarded as that of the employer.<sup>11</sup> Thus, an employee who is desirous of securing himself the right to a patent in respect of his invention had to ensure that a provision to that effect is made in his contract of employment. Under the present regime, however, the Act attempts to balance the various interests involved in the process of an invention in determining the person on whom the right to patent vests. Accordingly, section 2 (4) (a) of the Act<sup>12</sup> provides: “When an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is vested in the employer or, as the case may be, in the person who commissioned the work: Provided that, where the inventor is an employee, then –

(a) If

(i) His contract of employment does not require him to exercise any inventive activity but he has in making the invention used data or means that his employment has put at his disposal; or

<sup>7</sup>Intellectual Property Reading Material, WIPO Publication No. 476(E)

<sup>8</sup> Cap P2 LFN 2004. Hereinafter referred to as “the Act”.

<sup>9</sup> *Ibid*

<sup>10</sup>R Ibekwe “Legal View: Who owns Patent to an Invention, Employee or Employer?” (March 17, 2018)

<sup>11</sup>*United States v. Dubilier Condenser Corp.*, (1933) 289 U.S. 178, 187–88.

<sup>12</sup> *Op.cit*

(ii) The invention is of exceptional importance,  
He is entitled to fair remuneration taking into account his salary and the importance of the invention”.

As can be gleaned from the above provisions of the Act<sup>13</sup>, where an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is respectively vested in the employer or the person who commissioned the work.<sup>14</sup>The phrase “in the course of employment” was interpreted by the court in the case of *Patchet v. Sterling*<sup>15</sup>, to mean the use of the employer’s time and materials. It, therefore, follows that if an invention is made in the spare time of the employee (e.g. while on break or vacation) with his own materials, the right to a patent in such an invention would be vested in the said employee.

Nevertheless, where an invention is made by an employee in the course of employment, section 2(4)(a) of the Act<sup>16</sup> makes provisions for remuneration of the employee by the employer in certain cases. The first case is where the employee’s contract of employment does not require the employee to exercise any inventive activity but he has in making the invention used data or means that his employment has put at his disposal. The second case is where the invention is of exceptional importance.

This arises where the employee has done something extraordinary. For instance, an employee pharmacist who invents drugs for the cure of *Ebola* virus, cancer or *AIDS* would be deemed to have made an invention that is of exceptional importance. In the above two cases, the Act<sup>17</sup> provides that such an employee is entitled to fair remuneration taking into account the employee’s salary and the importance of the invention. The remuneration contemplated here is not modifiable by contract and may be enforced by civil proceedings as provided under section 2(4)(b) of the Act<sup>18</sup>. On the whole, while patent in respect of an invention made in the course of employment is vested in the employer, the employee should be compensated in deserving a case.

#### 4.0 Employees’ Inventions Invented Outside Work Hours

Section 39 of the Patents Act<sup>19</sup> provides that:

an invention made by an employee belongs to the employer if they are made ‘in the course of the normal duties of the employee or in the course of duties falling outside his normal duties, but specifically assigned to him, and the circumstances in either case were such that an invention might reasonably be expected to result from the carrying out of his duties.

But what if the invention was made by the employee in his own time at home and using his own equipment, in this case his computer? This was precisely what the court had to consider in *Prosyscor Ltd v Net sweeper Inc &Ors*<sup>20</sup>. The ex-employee, Mr. Kite, had been working remotely in the UK as a sales consultant and software developer for Canadian company, Netsweeper. The invention in question concerned a method of discriminating between requests to access a website. The dispute concerned the entitlement to an international patent application, and the national and regional

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<sup>13</sup> *Ibid*

<sup>14</sup> *Teets v. Chromalloy Gas Turbine Corp.*, 83 F.3d 403, 408 (Fed. Cir. 1996).

<sup>15</sup> [1955] AC 534

<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> 1977

<sup>20</sup> [2019] EWHC 1302 (IPEC).

applications derived from it. Mr. Kite had first come up with the idea for the software application, and then another of Net sweeper's employees had developed the invention to the point at which the international patent application was made.

#### 4.1 The Court's Decision

HHJ Hacon considered the law on entitlement to a patent under an international convention as stated in *BDI Holding GmbH v Argent Energy Ltd and another*.<sup>21</sup> This informs us that it is first necessary to identify the inventive concepts disclosed in the patent application through the eyes of the skilled person, and then decide who devised them. The judge found that the inventive concept of claim 1 of the patent application was devised by both the Mr. Kite and another inventor and that the other claim in issue was devised solely by the other inventor.

However, Mr. Kite's contribution was found to have been made as part of his duties as an employee. This was supported by the fact that he had posted his idea on an internal company website after commencement of his employment. This sharing of information by the employee with the employer will be a key fact to guide on how inventive work is assessed as being linked to employment or not. In particular, the judge noted how the Netsweeper intranet site where Mr. Kite had shared his ideas was known within the company as a useful tool for pooling ideas for development. Perhaps unsurprisingly, it is a seemingly high hurdle for employees to be able to lay claim to ownership of inventions conceived in the course of their normal duties but made at home and out of normal working hours. The judge stated that while the time and place of the devising of an inventive concept may be relevant to an assessment under Section 39, they are secondary considerations. The judge went on to say that in a case where there is doubt as to whether the acts were conducted in the course of normal duties, the fact that they were done at home and outside of normal hours may tip the assessment to a finding that the invention was not made in the course of normal duties.

However, where as in this case, the work leading to the invention was very much the sort of work the employee was paid to do, the fact that the work was done at home and out of hours was not relevant.<sup>22</sup> The judge emphasized that "acts of a nature such as to be within the normal course of an employee's duties do not cease to be so merely because the employee decides to carry out those normal duties at home and/or outside office hours and/or on his own equipment." The judge's ruling and common-sense approach to ownership of employee inventions should provide comfort to companies at a time when an increasing number of employees are working both flexibly and often remotely.

#### 5.0 Overview of Patent Licenses and Its Assignment

A patent is considered as the transferrable property that can be transferred from the original patentee to any other person by assignment of patent or operation of law. A patent can be licensed or can be assigned only by the owner of the patent. In the case of co-owners or joint-owners, a co-owner can assign or license the patent only upon the other owners' consent.<sup>23</sup> Section 68 of the Indian Patents Act<sup>24</sup> provides for the mortgage, license, or creation of any interest in the patent. A patent license can be an exclusive license or a nonexclusive license. Other forms of license agreements include oral licenses, label licenses, electronic licenses, implied licenses, compulsory licenses in foreign

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<sup>21</sup>[2019] EWHC 765 (IPEC)

<sup>22</sup>Pountney D & Tumbridge J. "Employees' Inventions – Who Owns Them When Invented Outside Work Hours", (2019) [<https://www.vennershopley.co.uk/insights-events/employees-inventions-who-owns-them-when-invented-outside-work-hours/>] Retrieved 7<sup>th</sup> February 2022.

<sup>23</sup>S. Bajpai, "Difference between Assignment of Patent and License" (2020) [<https://corpbiz.io/learning/patent-assignment-difference-between-assignment-of-patent-and-license>] Retrieved 7<sup>th</sup> February 2022.

<sup>24</sup> The Patent and Designs Act of India VI of 1970. Enacted the 21<sup>st</sup> year of the Republic of India.

countries, licenses which arise by the sale of a patented or unpatented article, or license by estoppel.<sup>25</sup> An exclusive license prevents the licensor from entering into a similar agreement with another party or asserting the right to use the patent on its own behalf unless the licensor has specifically reserved the right to do so. If the licensor retains the right to practice the licensed subject matter, such licenses are often referred to as a “sole license.”

The granting of an exclusive license may also involve certain other terms and conditions, such as the ability of the licensor to obtain a higher royalty than for a nonexclusive license. This recognizes the fact that, unless the licensor has obtained a sole license, the licensee will be the sole source of revenue under the patent. Typically, a best efforts clause is often found in exclusive license agreements so as to make certain that the licensee exercises its best efforts to commercialize the invention.

A non-exclusive license typically allows the licensee to practice the invention or authorize others to do on behalf of the licensee. It is normally not transferable by assignment to any other party. As a general rule, the nonexclusive licensee does not have the right to sue for infringement whereas if an exclusive license is granted to the licensee, this would typically be permitted, as provided for in the agreement. A label license is a license which can be granted under either patented or unpatented products. These label licenses typically require labeling of the patent number on patent products. For unpatented products used in a patented process, the label indicates that the process for use of the product as claimed in an identified patent. An oral license may be void or unenforceable if it violates the Statute of Fraud provisions of the jurisdiction in which the contract is made. Electronic licenses are a type of contract which appears on a computer screen and invites acceptance by clicking on the acceptance symbol on the computer screen.

Non-exclusive licenses may permit the licensor to grant further licenses and a non-exclusive license is normally considered as being a mere agreement by licensor not to sue the licensee for infringement in exchange for a lower royalty than would otherwise be obtainable under an exclusive license. Generally, the non-exclusive licensee does not have the right to sue for infringement and cannot assign its right to others without written permission from the licensor. A cross-license normally results where, for example, both parties of a prospective license agreement have patent rights which the other party wishes to acquire. Thus, each party may operate without being charged with infringement of the patent rights of the other. Depending upon the value of the patents rights involved, an agreement of this type may be concluded by exchange of a license and a cross-license may, if needed, be accompanied by payment of royalties. Cross-licenses frequently arise for the purpose of unblocking technology of each party so that each can produce the same without the threat of litigation.

### 5.1 Assignment

An assignment is as a transfer of the whole intellectual property owned by the assignor. The distinction between a license and an assignment is relevant to taxation and in for standing to sue for infringement. As a general rule, payments made for an assignment of a patent must be capitalized by the assignee and may be taxed as capital gains to the assignor. In contrast, royalties paid under a license are deductible business expenses of the licensee and comprise ordinary income for the licensor. Assignment of Patent would not be valid unless in writing and duly executed. An assignment of patent or share in a patent, mortgage, license, or the creation of any other interest in a patent must not be valid unless the same were in writing. The agreement between the parties concerned will reduce to the document’s form embodying all the terms and conditions governing their rights & obligations and duly executed.

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<sup>25</sup> See Note 24

### List of the Requirements

- a. The assignment, mortgage, or license must be reduced to writing in a document embodying all the terms and conditions governing the rights & obligations between the parties
- b. An application for registration of such a document must be filed in a prescribed manner in Form-16 within the prescribed time under section 68 of the Act<sup>26</sup>. The document, when gets registered, will have effect from the date of execution.

## 5.2 Forms of Transfer of Patent Rights

Patent Registration or Grant of the Patent confers to a patentee ‘the right to prevent others’ from making, exercising, using, or selling an invention without his permission. The methods in which a patentee can deal with the transfer of patent are as follows:

### 5.1.1. Assignment

The term ‘assignment of patent’ is not defined in the Patents and Designs Act<sup>27</sup>. An assignment is an act by which the patentee assigns whole or part of the patent rights to the assignee who acquires a right to prevent others from making, exercising, using, or vending the invention. There are three kinds of assignments.<sup>28</sup> They are as follows:-

### 5.1.2 Legal Assignment

An assignment or an agreement to assign for an existing patent is the legal assignment, where an assignee may enter his name as the patent owner. A patent that is created by the deed can only be assigned through a deed. A legal assignee entitled as a proprietor of the patent acquires all rights thereof.

### 5.1.3 Equitable Assignments

Section 24 of the Patent and Designs Act provides that “a person’s right in a patent application may be transferred, assigned by succession or held in joint ownership.” Any agreement that includes a letter in which the patentee agrees to give the certain defined share of a patent to another person is an equitable assignment of patent. However, in that case, an assignee cannot have his name entered in the register as a proprietor of the patent. But the assignee can give notice of his interest in the patent entered in a register.

### 5.1.4 Mortgages

A mortgage is an agreement where the patent rights are wholly or partly transferred to the assignee in return for the sum of money. Once an assignor repays the sum to an assignee, the patent rights are restored to the assignor and patentee. A person in whose favor the mortgage is made must not be entitled to have his name entered in the register as a proprietor, but he can get his name entered in the register as the mortgagee.

## 5.2 Licenses

The Patents Act allows the patentee to grant a license by way of an agreement under section 8(2) of the Act<sup>29</sup>. A patentee, by way of granting a license, may permit a licensee to make, use, or exercise the invention. The license granted is not valid unless it is in writing. A license is a contract signed by the licensor and the licensee in writing. The terms agreed upon by them include the payment of

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<sup>26</sup> *Ibid*

<sup>27</sup> Patent and Designs Act 2004

<sup>28</sup> Section 24 of the Act

<sup>29</sup> Patent and Designs Act of 2004

royalties at a rate mentioned for all articles made under the patent. Licenses are of the following types:

### 5.2.1 Voluntary Licenses

It is a license given to any other person to make, use, and sell the patented article as agreed upon the terms of the license in writing. Section 23(1).<sup>30</sup> As it is a voluntary license, the Controller and Central government do not have any role to play. The agreement is mutually agreed upon the terms and conditions made by the licensor and licensee. In case of any disagreement, the licensor has the right to cancel the licensing agreement<sup>31</sup>.

### 5.2.2 Statutory Licenses

The central government grants statutory licenses by empowering the third party to make/use the patented article without the patent holder's consent in view of public interest. For an example of such statutory licenses which is a compulsory license. Compulsory licenses are defined as "authorizations permitting a third party to make, use, or sell a patented invention without the patent owner's consent."<sup>32</sup>

### 5.2.3 Exclusive Licenses and Limited Licenses

It depends upon a degree and extent of rights conferred on the licensee; a license can be an Exclusive or Limited License. An exclusive license excludes all the other persons, including the patentee, from the right to use the invention. Anyone or more rights of the patented invention can be conferred from the patentee's bundle of rights. The rights can be divided and assigned, restrained entirely, or in part. The limitation may arise in a limited license as to persons, time, manufacture, place, use, or sale.

### 5.2.4 Express and Implied Licenses

An express license is one where the permission to use a patent is given in express terms. This license will not be valid unless it is in writing in the document embodying upon terms and conditions. In case of implied license, though permission is not given in express terms, it is implied from the circumstances.<sup>33</sup> For instance, where a person buys a patented article, either within a jurisdiction or abroad either directly from a patentee or his licensees, there is an implied license in any way and to resell it.

## 5.3 Transmission of Patent by Operation of law

When the patentee dies, his interest in the patent passes to his legal representative. In case of the dissolution or winding up of a company or bankruptcy, the transmission of a patent by operation of law will occur.

## 5.4 Differences between Assignee and Licensee

In turn, an assignee can reassign his rights to third parties while the licensee cannot change a title and cannot reassign his rights to the third person. An assignee is assigned with all the patent owner's rights while the licensee cannot enjoy the rights. An assignee has the right to sue an infringer while a licensee is not empowered with the right to sue any party for the infringement of the patent in his name. In summary, a patent right may be transferred by assignment or license, an assignment comprises a transfer of the right to exclude others from making, using or selling, and a license

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<sup>30</sup> See Note 28

<sup>31</sup>Section 23 (2) (b) of the Act

<sup>32</sup> The Patent and Designs Act 2004. Section 11.

<sup>33</sup> Note 31



comprises a waiver of that right. The patent holder should select a particular form of a contract or license agreement as part of an overall patent licensing strategy.

### **6.0 Conclusion and Recommendations**

From the employer's perspective, the potential risks that may arise from improper handling of inventions and improvements made by employees include: Failure to obtain rights to an invention or the issuance of a patent, Loss of rights to an invention or the issuance of a patent, Exposure to claims for damages or unjust enrichment, Disputes concerning claims for additional compensation, Obtaining a license on terms that are less favorable than those that could have otherwise been obtained and Unreasonable compensation claims for relatively minor improvements

Consequently, from the perspective of an investor or purchaser, these risks may translate into:

- a. A lack of certainty of ownership of intellectual property of a target company
- b. Difficulty calculating potential exposure to third party claims for damages or additional compensation
- c. Unforeseeable potential exposure to litigation.

Hence, employers should institute policies to ensure the proper handling of employee invention matters, including compliance with the requirements of the law and the calculation of reasonable compensation. It is of equal importance to carefully consider provisions safeguarding the company's rights to inventions made by third parties in the course of certain agreements and to use caution in drafting and negotiating agreements in connection with inventions or improvements.

From the perspective of an investor or purchaser, employee inventions and related issues must be a focal point of due diligence concerning technology-dependent target companies. Both the due diligence process and the subsequent negotiation of the transactional documents, including the particular representations and warranties contained therein, should be individually tailored depending on the type of target company, its technology and the risks identified.

Moreover, the increased risk of successful compensation claims and the potential amount of compensation that may be awarded may adversely impact cost analyses conducted prior to engaging in research and development projects; collaboration projects and acquisitions and may discourage employees from working together effectively and sharing the results of research as "to some extent the fact that an employee makes an invention can be a consequence of his being assigned a routine task at the right time" and employees may not wish to prejudice any potential claim that they may have; and will not necessarily be defeated by paying employees the appropriate industry rates relevant to the nature of the work and the employees receiving other benefits or advantages as a result of the patent or invention or both as these factors affect the amount of compensation payable.