

Patent Ownership in R&D Partnerships: How Accessible are Co-developed Inventions?

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Due to the increased complexity of new technologies and rapid technological developments, organizations often cannot independently keep up with the technological progress and have to engage in open innovation activities through setting up R&D partnerships. In negotiating such R&D partnerships, the allocation of intellectual property (IP) ownership of jointly developed knowledge is a difficult task. Parties, depending on the chosen strategy, may safeguard generated inventions by means of patent protection. The allocation of patent ownership within such partnerships can be extremely problematic due to lack of regulation and harmonization of patent legislation. This entails the need to consult a considerable number of legal systems that may be involved in large-scale international partnerships.

While many legal patent systems suggest co-ownership as a default regime, in practice organizations often avoid it due to the complexity related to further joint exploitation. In particular, the principle of freedom of contract allows collaborating organizations to establish their own applicable rules (“contract-based regime”) governing the allocation of ownership and further exploitation of jointly developed inventions. This contract-based regime provides more flexibility, but also implies some transaction costs in designing a contract. Moreover, it is less transparent due to the confidential nature of contractual arrangements. This confidential nature may especially harm third parties’ interests since the identification of the actual owner(s) of a patent and the consent requirements related to joint exploitation are burdensome and limit effective partnering processes regarding the further exploitation of the patent.

Research objectives - In this paper I aim to review how companies allocate ownership of jointly developed inventions in practice. Furthermore, I aim to analyze whether the balance can be found between private interests of collaborating parties and public interests of the society, such as access to knowledge and its transparency.

Research questions (RQs) – In order to achieve my objectives, in this paper I ask the following RQs:

RQ1: How is patent ownership of jointly developed inventions allocated according to the legislator?

RQ2: How is patent ownership of jointly developed inventions allocated in practice?

RQ3: How the selected contract-based regime affects public interests of society? Can the balance be found between private interests of collaborating parties and public interests of the society?

Methodology – In order to answer **RQ1**, the default rules on allocation of patent ownership of jointly developed inventions are reviewed. The paper incorporates analysis of four

jurisdictions, the US, Belgium, France and Germany. Those jurisdictions were selected since their default rules vary and provide different perspective on existing default rules.

In order to answer **RQ2**, the contractual practices of allocation of patent ownership of jointly developed inventions are analyzed. The analysis is based on empirical data obtained through 55 semi-structured interviews conducted with representatives of various organizations, e.g. MNEs, SMEs and TTOs. Interviewed representatives work for organizations from various industry sectors and are based in different countries.

In order to answer **RQ3**, I review the preferred contract-based regimes of collaborating parties (identified based the acquired empirical data) and evaluate whether those practices are in line with public interests of society, such as knowledge transparency and its accessibility. Based on the outcomes of the evaluation, I conclude whether the balance between private interests of collaborating parties and public interests of the society can be found.