

**United Kingdom**  
Royaume-Uni  
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**Report Q.183**

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**Employer's Rights to Intellectual Property**

*1.1 The Groups are invited to present the legal framework governing relations between employers and employees in the field of intellectual property rights.*

*In particular, the Groups are invited to state whether these rules arise from provisions concerning labour law or whether these rules arise from provisions concerning intellectual property rights.*

*In addition, the Groups are invited to state whether these rules may be considered as being public policy rules (i.e. mandatory rules) or whether, on the contrary, they may be modified by contractual relations between employees and employers.*

The relevant legal framework is principally governed by statutory provisions. These provisions are set out in specific statutes which relate to and govern intellectual property rights; The Patents Act 1977, the Registered Designs Act 1949, The Community Design Regulation 2001, and the Copyright Designs & Patents Act 1988. The relevant sections are reproduced at Appendix 1. To some extent, these rules are mandatory, but in some cases they may be modified by specific contractual provisions between employees and employers (e.g. waiver of moral rights). Employment contracts ( whether formal and in writing or informal )are generally governed by the common law relating to contracts and commercial arrangements. It is rare for any statutory provisions relating to commercial transactions ( eg; The Unfair Contract Terms Act or The Sale of Good Act) or Labour Law to have any specific relevant to intellectual Property Disputes. However, disputes can arise and are generally dealt with in the commercial courts where intellectual property

has been used as an asset or other security in financial arrangements such as mortgages and debentures. Such disputes can give rise to issues of title in particular.

*1.2 The Groups are invited to specify for each of the intellectual property rights (patents, plant variety rights, copyright or authors' rights, patterns and models, and software rights it being recalled that trade marks and brand rights are expressly excluded from the scope of the study in question) what are the legal solutions concerning ownership of rights over intellectual creations;*

*Do these rights originally belong to the employer or the employee*

*If these rights belong to the employer from the outset, what are the conditions for this attribution?*

*And if these rights originally belong to the employee, does the employer have the right to have them transferred to it and under what conditions?*

*And the groups are also invited to specify as far as it concerns patents, if it is the employer who is the owner from the outset, of the intellectual property rights over invention made by their employees in the context of their employment contract and in the performance of their task.*

*The Groups are invited to give replies both with respect to moral rights and economic rights for each type of intellectual property rights.*

### *Patent Rights*

The rights between employer and employee are regulated by Section 39 of the Patent Act 1977. An employer has the right to an invention where:

*(i) it is made in the course of the employee's usual duties or duties specifically assigned to the employee, and in either case an invention might reasonably be expected from such work; or*

*(ii) the employee has an obligation to the employer to further its interests due to the nature of the employee's duties and responsibilities.*

In all other situations the employee has the right to the invention or creation. Under the Act an employee is a person working under a contract of employment (s130(1), PA1977).

If an employee was the actual deviser (or joint deviser) of an invention he has a right to be mentioned as the inventor (or joint inventor) in the patent granted. Where the employer has the right to the patent it must in its application for

registration identify the inventor and indicate under what right it (rather than the inventor) should be granted the patent.

Where an invention belongs to the employer the inventor may nevertheless have a statutory right to compensation under section 40 of the Patents Act 1977. This arises where:

- (i) the patent for the invention is of an outstanding benefit for the employer; and
- (ii) it is just in view of the size and nature of the employer's business that compensation should be awarded.

Although the employee may have a statutory right in practice it has proved very limited. The benefit to the employer must be a "more than significant" (*Messrs - Med's Patent* [1992] RPC 403).

#### *Copyright, Design Right, Registered Designs and Database Rights*

For each of these categories of intellectual property rights any creation made by the employee is automatically the property of the employer unless the contract provides otherwise (for Copyright – Copyright Designs and Patents Act 1988 ("CDPA") section 11 (2); for Design Right - CDPA 215 (3); for Registered Designs - section 2, Registered Designs Act 1949; and for Database Rights – Reg 14 (2) Copyright and Rights in Databases Regulations 1997 SI 1997/3032).

The terms of the employment contract can vary the general position. For instance, under statute an employee who produces a copyright work in his/her own time will own their own work. However, some contracts of employment vest in the employer all works produced by the employee during the term of the employment, whether or not they are written in the course of employment. Unlike patents, there is no public policy protection for the employee's creations.

#### *Moral Rights*

These are related to copyright and arise in favour of the creator of the work. There are three types of moral rights: right to be identified as author or director of the whole or a substantial part of the work ("paternity right"); right to object

to derogatory treatment of the whole or part of the work ("integrity right"); and right not to have the whole or part of a work falsely attributed to you ("false attribution"). Even if the employer automatically becomes the first owner of the copyright the moral rights remain with the creator and the contract cannot oblige the employee to assign them to the employer because they are non-assignable (s94, CDPA). The creator can waive their moral rights which must be evidenced in writing and signed. There are provisions that automatically release the employer from some of these moral rights (s79(3) and 82, CDPA) but an employer should obtain express waivers of these rights from the employees in their employment contracts.

### *Plant Variety Rights*

Plant Rights are regulated in the UK by the Plant Varieties and Seeds Act 1964. The 1964 Act provides for a full monopoly right. In contrast to the US and much of Europe it is not part of the patent system. The grant of rights is made by the Comptroller of the Plant Variety Rights Office.

Under s4(4) 1964 Act if a person breeds a variety or discovers and develops it in the course of employment then, subject to an agreement to the contrary, his employer or his employer's successor in title is the person entitled to the grant of the plant breeder's rights.

There is a parallel European wide system to protect such rights (Regulation 2100/94). This is an alternative to the UK legislation

*1.3 The Groups are also invited to provide information on procedures concerning potential disputes concerning the ownership of intellectual property rights over employees' creations. Are these disputes within the jurisdiction of labour courts or, on the contrary, are they within the jurisdiction of the courts which are usually competent for intellectual property disputes? Is there a prior conciliation stage and if so, does it take place before the same court as the one having jurisdiction over disputes concerning the ownership or conditions for use of intellectual property rights over creations made by employees? Does the termination of the employment contract have an influence on the action which an employer can bring to obtain the attribution of rights over an employees creation? Is there a limitation or statute – barring of the exercise of an action concerning the attribution of ownership rights over*

*an invention or creation made by an employee in the context of an employment contract?*

*Can the employee require the filing of a patent application in order to protect his invention or his other creations, registered patterns and models etc?*

Disputes concerning the ownership of intellectual property rights over employees' creations are within the jurisdiction of the same courts that are competent to deal with other intellectual property disputes. Disputes involving intellectual property are heard in the Patents Court, Patents County Court and in some instances, Chancery Division (High Court) and Chancery District Registry, Patent Office, and Trade Marks' office.

In addition to the jurisdiction of the courts, disputes relating to the ownership/right to patents can be referred to the Comptroller of the Patent Office. However, the vast majority of disputes concerning intellectual property rights over creations made by employees will be heard in the courts. Disputes of this nature would not be referred to Trade Marks Registry or other specific intellectual property groups/tribunals, such as the copyright tribunal.

Proceedings in the courts will follow Civil Procedure Rule ("CPR") 63 and Practice Direction 63 which set out specialist procedures for intellectual property rights. CPR 63 and PD 63 must be read in conjunction with the CPR generally. There are no specific prior conciliation stages for disputes of this nature, but the CPR aims to promote disputes being resolved at the earliest opportunity and, where possible to avoid the need for court proceedings. It is usual to allow at least one month's stay to allow mediation or Alternative Dispute Resolution.

An employment contract will usually dictate the intellectual property rights as between the employer and employee. The termination of the employment contract will not affect the employers' right to bring an action in the courts in relation to its rights/interests in the employees' creations made during the term of employment. The employer is unlikely to have any right/interest to the employees' creation/s made after the termination of employment contract.

Most disputes of this type will involve the breach of an employment contract. There is a six year limitation period from the date of breach of the contract in which to bring an action in the courts. Further, there is a two year limitation

period that applies specifically to patents. After expiry of this period it is not possible for the courts or Comptroller (Patent Office) to determine a dispute relating to the ownership of a patent.

An employee will often be employed under the terms of an employment contract. For a contract claim relating to employment the Employment Tribunal is the primary labour court. However, certain excluded claims cannot be referred to the Tribunal. In particular, any claim for the breach of a contractual term where the term relates to intellectual property (which is broadly defined to include copyright, rights of performance, moral rights, design rights, registered designs and patents) is an excluded claim under the Employment Tribunals Extension of Jurisdiction (Eng & Wales) Order 1994, SI 1994/1623, Art 5.

There is no specific prior conciliation stage for disputes between employers and employees relating to the ownership of intellectual rights, although the domestic courts actively encourage dispute resolution procedures and pre trial mediation.

For any court proceedings involving a dispute concerning intellectual property rights Civil Procedure Rule 63 and Practice Direction 63 will apply. They should be read in conjunction with the Civil Procedure Rules.

Although no pre-action protocol applies to disputes of this nature, one of the main aims of the CPR is to promote disputes being resolved at the earliest opportunity and this is reflected in a number of the Rules. Further, the CPR encourages the parties to apply for a stay in proceedings if they believe, with time, a mutual agreement could be reached or they want to proceed with a form of ADR. Therefore, the CPR has some elements of conciliation that would be relevant to a dispute of this nature.

*1.3.3 Does the termination of the employment contract have an influence on the action which an employer can bring to obtain the attribution of rights over an employee's creation?*

No, but this could depend largely upon the terms of the employment contract and any variation of those terms effected by any settlement/agreement reached upon termination of employment. If upon termination some form of

contract is entered into between the employer and employee which removes, retrospectively the employer's rights to the employee's creation/s this is likely to bind the employer (general freedom for parties to enter into a binding contract).

However, the courts have in some situations been willing to rule that an ex-employee must take action to protect their ex-employer's right to a creation/s made by the employee during the course of their employment (see *British Celanese Ltd v. Moncrieff*). Where the service contract specifies that all employees' creations become the exclusive property of the employer the courts have held the view that the employee effectively holds the creation on trust for the employer. As such the courts have been prepared to rule that the employee has a continuing obligation to the employer, irrespective of the termination of his service contract.

If no agreement has been made on the termination of the employment contract then it appears that the employer's right to bring an action to protect their right or interest in or over an employer's creation/s is unaffected. The employer could bring an action in the courts usually competent for intellectual property disputes.

*1.3.4 Is there a limitation or statute barring of the exercise of an action concerning the attribution of ownership rights over an invention or creation made by an employee in the context of an employment contract?*

Subject to the specific exception mentioned below, there are no limitation periods or statute-barring mandatory provisions which relate specifically to the exercise of an action concerning the attribution of ownership rights over an invention or creation made by an employee in the context of their employment contract. The same limitation period as applies to all basic contracts will apply to such an action. The limitation period is 6 years from the time that the contract was breached (Limitation Act 1980, s5). Accordingly, if an action is not brought within six years of the relevant breach it will be barred.

There is a two-year limitation period that applies specifically to patents and relates to disputes concerning the ownership of the patent. This limitation

period applies to all patents and is not exclusive to an invention made by an employee in the context of their employment contract. Basically, once a patent has been registered for two years or more, neither the court nor the comptroller can determine the issue of ownership to that patent if it is disputed unless it is shown that the proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him, that he was not entitled to the grant.

There are certain restrictions relating to the terms of an employment contract that would limit the period in which an employer could bring an action relating to ownership rights of intellectual property. In particular, it is unlikely that an employment contract could stipulate that the employer has a right or interest in any creation/s made by the employee after the end of the term of employment. For a patent, this would breach the statutory restriction that no agreement between an employee and his employer can diminish the employee's statutory rights in an invention (Patent Act 1977, s42). For other creations (and old patents) the courts are likely to view such terms as an unreasonable restraint of trade.

Employers seeking court protection should not delay in taking action against an employee that infringes its rights. Delay can bar the employer from successfully gaining an injunction over the employee using its intellectual rights.

#### *1.3.5 Can an employee require the filing of a patent in order to protect his invention or his creations (registered patterns and models, etc)?*

There is no specific statutory right for an employee to require their employer to make an application to protect his/her creation. It is highly unlikely therefore that the employee could pursue an action in the courts or Patent Office to force their employer to make such an application at its own expense.

However, the position could be affected by the terms of the employment contract (if any). If the employment contract expressly acknowledges that the employee is to keep his rights to a creation or that he has a share of these rights with the employer then, as a minimum, the employee is likely to be able to force their employer to undertake such action as is reasonably required from the employer to complete the registration of the creation. Unless the

contract specifies otherwise, it is probable that the employee will need to make the application to register the creation and that the expense of the registration process will fall on the employee.

The situation differs greatly if the creation has been registered and the employee has a proprietary right or interest in the creation but this has not been acknowledged in the registration granted. In this position the employee could protect his invention or other creation by requiring the registration to be amended to reflect his/her interest. The action could be taken to the court or the Patent Office.

Further, if an employee was the actual deviser (or joint deviser) of an invention they have a right to be mentioned as the inventor (or joint inventor) in any patent granted. They should also be mentioned, if possible, in any published application for the invention. The employer in its application to register the patent must identify the invention and indicate under what right it (rather than the inventor) should be granted the patent.

*1.4 The Groups are also invited to state whether there is a difference in status between employees in the private sector and researchers in Universities or research institute which receive public funding from the point of view of the employers' rights.*

There is no statutory distinction. In the eyes of the law there is no distinction. However, in practice, particularly given the common difference between the historical, ethical and perceived differences between people employed in research for academic purposes and the private or commercial sector, there is often a stark practical distinction between them.

We believe that all employees should, potentially be treated in the same way and there should be both international harmonisation and harmonisation within countries, irrespective of the employers' status or nature of their business. However, in the U.K. academics, researchers and research institutes are often treated differently from commercial employer/employees. This is particularly so because, due to contractual structures, and other working conditions, certain academic staff and other professionals engaged by the research institute or academic body, may not be considered as true "employees". In particular they may enjoy special status, and be considered self employed or to be sabbatical volunteers. Further they may be subject to

particular contractual provisions which they have entered into, for example to govern the right of publication of academic papers or data or results compiled by them during their engagement by the University or other academic body. Therefore, potentially all such persons should be treated in the same way, in practice, and to reflect the particular differences in practical working conditions and environments, there ought to be a degree of flexibility to specifically allow contractual provisions to be accommodating. In particular there may be special circumstances which include voluntary works, particularly in charitable organisations, and in organisations where the authors right to publish his works ought to be retained by him for the purposes of academic assessment by his peers. A further factor which has practical implications is the basis upon which many Universities, charities, or other academic or research bodies and institutes are funded. Such funding may not always follow a more usual route, and there may be contractual impact upon the retention or rights of intellectual property. This further supports the suggestion that there be an accommodation of flexible contractual provisions governing such relationships.

*1.5 An important question in practise is whether compensation is due to Employees in the return for the rights of Employers over the creations made by employees. The Groups are invited to specify whether their domestic laws provide employees with a right to compensation (financial or in nature) in return for the transfer of rights over their creation to their employees.*

An employee who creates a work attracting intellectual property rights other than a patentable invention, has no right to compensation other than that which is specified by way of contract.

An employee who creates a patentable invention can claim a financial reward or compensation from the employer in certain circumstances. Compensation for an employee invention is determined and calculated by reference to sections 40 and 41 of the UK Patents Act 1977, the aim being to secure for an employee a fair share of the benefit which the employer has received or expects to receive from the patent.

*How is this compensation calculated?*

There are two types of inventions at issue: those that are employer-owned from the outset (section 40(1)) and those that were originally employee-owned but have been either assigned or exclusively licensed to the employer (section 40(2)). In both cases the Court or Comptroller's power to make such an award is discretionary, so any inequitable behaviour on the part of the employee may prejudice his/her application.

#### Employer owned inventions

With respect to inventions that are employer-owned from the outset, the employee may be awarded compensation by the Court or the Comptroller if the employee has made an invention belonging to the employer for which a patent has been granted, and the patent is, having regard to the size and nature of the employer's undertaking, of outstanding benefit to the employer, and as a result it is just that the employee should be awarded compensation. The employee must show that the outstanding benefit has resulted from the patent rather than the invention itself.

While the measurable economic benefit of a patent is clearly recognisable where it is licensed and attracts royalties, patents are of benefit in other ways which are more difficult to measure e.g. as a deterrent to potential competitors. There is real difficulty in isolating the benefit to an employer from a patent as compared with the patented invention itself, and this distinction is one reason why no successful compensation applications have been made to date by employees in the UK (although claims may have been settled).

As the UK Patent Office has recently noted in a consultation on this subject, there is a serious question as to whether the test for compensation should be based on the outstanding benefit derived from an invention as opposed to a patent. This would probably include any benefit deriving from a patent which resulted from the invention, but could also include benefit derived from unpatented inventions – for example, inventions kept as trade secrets. Alternatively, the test for compensation could be based on outstanding benefit from a patented invention; that is, an invention would still need to be covered by a patent before compensation could be claimed, but the measure of outstanding benefit would be based on the benefit from the invention rather than just the patent.

In determining compensation, the Court or Comptroller will consider the nature of the employee's duties, remuneration and other advantages s/he has obtained from his or her employment or in relation to the invention. The Court or Comptroller will also consider the effort and skill devoted to making the invention by the employee as well as the contribution of any other person, including the employer.

Employee owned inventions which are assigned or licensed to the employer

An employee can also claim compensation in relation to an invention that is employee-owned from the outset, where a patent has been granted in relation to the invention and the employee has assigned or exclusively licensed his or her rights in the invention or resulting patent or patent application to the employer. In such circumstances, the employee may be awarded compensation by the Court or the Comptroller if the benefit derived by the employee from the assignment, licence or any related contract dealing with the employee's rights is inadequate in relation to the benefit derived by the employer from the patent, and it is just that the employee should be awarded compensation.

In these circumstances, the benefit to the employee is calculated on the basis of a comparison between the benefit derived by the employer from the patent, (as opposed to the invention) and the benefit the employee derives from the assignment, licence or related contract. An employee will be entitled to claim compensation regardless of anything in the assignment, licence or relevant contract which says otherwise. As with inventions which are owned by the employer from the outset, the extent of the employer's contribution and that of other employees and third parties will also be taken into account.

Note that in practice the position with respect to remuneration within the university sphere is rather different to that of employees under the 1977 Act, as a number of universities specifically provide for inventors to receive relatively generous shares of the net income produced from their inventions.

*What is the time limit for prescription or statute-barring of a claim for payment of this compensation?*

A compensation application can be made any time after the patent is granted, although an early application may mean there is insufficient evidence of the benefit of the patent to the employer to justify a grant. The time limit for an application is the later of one year after the patent has ceased to have effect or six months after refusal of any application for restoration.

If an employer dies before a compensation award is made, in assessing the benefit derived by the employer in respect of the patent, the Court or Comptroller will consider any benefit derived or expected to be derived from the patent by the employer's personal representatives or by any person in whom the patent was vested.

Where an employee dies before a compensation award is made in respect of a patented invention made by him, his personal representatives or their successors in title can exercise the employee's right to make or proceed with an application for compensation.

*1.6 The Groups are invited to state whether there is a significant level of dispute in their countries concerning the ownership and use of rights over intellectual relations made by employees, and to give a general opinion on the effectiveness and/or efficiency of the national system.*

We believe that our current national system is efficient, and allows for flexibility and choice in pursuit of disputes. However, on average there is a low level of such disputes in the U.K.

## *2. International Harmonisation*

*With regard to the possible harmonisation of the status of employers' rights over intellectual creations made by their employees.*

*2.1 Do the Groups think that such harmonisation is desirable on the intellectual level for each of the types of intellectual property rights?*

We do believe that harmonisation is desirable for each of the types of intellectual property rights. Generally, harmonisation could lead to standardisation of issues of relevant law for employees' of international companies. A further benefit would be the reciprocity for businesses with

cross border interests, or geographically widespread research and development locations.

*Do the Groups wish such harmonisation to be undertaken through labour law rules or through rules of intellectual property law?.*

We favour the intellectual property law route, which is augmented also by provisions of contract law. We do not favour labour law, as traditionally and generally labour law intends to protect employees' interests over those of employers which general provision is contrary to our preferred principle of the support for the proposition that intellectual property rights over creations are owned by the employer.

*2.2 The Groups should state whether as a general rule it is the employer who is to be the owner, from the outset of the intellectual property rights over creations made by employees in the context of their employment contract and in the performance of their tasks, or whether, on the contrary, it is the employee who must conserve his rights but with the possibility for the employer to have them attributed to it under certain conditions.*

We support the first proposition, namely that as a general rule, the employer is the first owner of intellectual property rights created by his employees, provided those employees have created the same in the course of their employment and undertaking their normal employee tasks.

There may of course be special circumstances or situations where there is a proper degree of flexibility, such as situations where it is unclear if an employee was acting outside his normal duties, or in connection with the undertaking of a special task in consideration for which the employee has been promised special recognition or reward.

*2.3 If the employer was to be considered as owner from the outset, do the Group think that the employee should receive a particular reward, in addition to his salary for his creations or do they think that such a reward is not justified, and if so does the Group consider that the adoption in principle of a reward could have an influence over the general system of intellectual property rights, and if so what would have influence be?*

We do not believe it appropriate for every employee/inventor to be entitled to a reward for his invention. Such schemes impose considerable administration as well as financial burdens on employers and identify only one group of employees whose contribution is beneficial to their employers, thus discriminating against the contributions of others which go un-rewarded. Many companies do of course have schemes for rewarding employees for useful suggestions including innovations and we think it entirely appropriate that such matters be for individual companies to decide whether they should be adopted. We doubt whether incentives to employees for innovation would have any significant effect on the number of worthwhile inventions created.

*2.4. The Groups should present their opinions on the organisation of disputes concerning the attribution of intellectual property rights over employees creations and concerning their use by employers. Should such dispute be governed by the courts which have jurisdiction in labour law matters or should these disputes be subject to those courts which judge intellectual property disputes?*

In our U.K. system such disputes are generally dealt with by Judges who are usually experienced in intellectual property matters. They may also be considered by suitably qualified non judicial tribunals, such as the patent office. We do not have a system, nor do we favour a system in which such matters are dealt with by the courts which have jurisdiction in which labour law matters. However, we do encourage the settlement of disputes by non litigation methods, such as mediation and ADR, particularly where such resolution can be reached at minimal cost and in a proportionate manner.

*2.5 The Groups should also give their opinion on the existence of differences, if any, between the status of private sector employees and researchers in universities and in research institutes which may be financed by public funds. Also are there any grounds for providing for a difference in treatment in the hypothesis of international harmonisation or on the contrary, should all employees and researchers be treated in the same way?*

We believe that all employees should, potentially be treated in the same way and there should be both international harmonisation and harmonisation within countries and irrespective of the employers' status or nature of their business. However, in the U.K. academics, researchers and research

institutes are often treated differently from commercial employers, particularly because certain academic staff and other professionals may not be considered as true “employees”. In particular they may enjoy special status, be considered self employed or be sabbatical volunteers. Further they may be subject to special contractual provisions which employer and employee have freely entered upon. Therefore, although potentially all such persons should be treated in the same way, in practice, there ought to be a degree of flexibility to allow specific contractual provisions to accommodate special circumstances which may include volunteer workers, particularly in charity circumstances or situations where rights to a publication, or other intellectual property right are consensually retained by the author or creator of that right.

## **Summary**

- a) International harmonisation is desirable, particularly for employers with international commercial presence.
- b) The personal rights of inventors and creators (e.g.; Moral Rights, Right of Attribution) should be retained as a general rule, whether or not the author, creator or inventor is employed.
- c) The property rights in Intellectual Property Assets should, generally be owned by the Employer where the Asset was created by an employee in the course of his employment.
- d) The law of contract should allow flexibility to ensure that particular relationships between certain employees and employers can be governed by consensual provisions which are agreed as most appropriate between them.
- e) Unless otherwise provided for by domestic statute or other mandatory laws, any agreement (formal or informal) between the parties should govern the issues of proprietorship and ancillary rights in and relating to any intellectual property created in the course of employment.

## **Zusammenfassung**

- f) Internationale Harmonisierung ist wünschenswert, insbesondere für Arbeitgeber mit einer internationalen gewerblichen Präsenz.
- g) Die persönlichen Rechte der Erfinder und Urheber (z.B. moralisches Recht, Recht auf Urheberbezeichnung) sollten grundsätzlich gewahrt

werden, unabhängig von der Tatsache, ob der Autor, Urheber oder Erfinder Dienstnehmer ist.

- h) Die Eigentumsrechte am Schutzgegenstand geistiges Eigentum sollten grundsätzlich bei dem Arbeitgeber liegen, bei dem das Werk von einem Arbeitnehmer im Rahmen des Dienstverhältnisses geschaffen wurde.
- i) Das Vertragsrecht sollte genügend Spielraum für eine gewisse Flexibilität bieten, die gewährleistet, dass besondere Beziehungen zwischen Arbeitnehmer und Arbeitgeber durch zusätzliche Bestimmungen geregelt werden können, auf die sich die betroffenen Parteien im jeweiligen Falle einigen.
- j) Soweit von einheimischem Recht oder sonstigen bindenden Gesetzen nicht anders vorgesehen, sollten alle von den betroffenen Parteien geschlossenen Vereinbarungen (förmlicher oder nicht förmlicher Art) für das im Rahmen des Dienstverhältnisses geschaffene geistige Eigentum die Frage des Schutzes dieses Eigentums und verwandter Rechte regeln.

## **Résumé**

- k) Une harmonisation Internationale est désirable, particulièrement pour les employeurs bénéficiant d'une présence commerciale internationale.
- l) Les droits personnels des inventeurs et des créateurs (c-à-d.; Droit Moral et Droit d'Attribution) devraient en général être préservés, que l'auteur, le créateur ou l'inventeur soit employé ou non.
- m) Le droit de propriété concernant les Avoirs de Propriété Intellectuelle devrait en général être détenu par l'Employeur, pourvu que l'Avoir ait été créé par un employé durant la période pendant laquelle il était au service dudit employeur.
- n) Le droit des obligations devrait permettre une certaine flexibilité, afin d'assurer que des relations particulières entre certains employés et employeurs, puissent être régies par des dispositions consensuelles prises de la manière la plus appropriée pour l'une et l'autre des parties et acceptées par chacune d'entre elles.
- o) A moins qu'il n'en soit prévu autrement aux termes d'une loi locale ou d'autres lois obligatoires, tout accord (formel ou informel) entre les parties, devrait régir les questions de droit de propriété et de droit accessoire en terme de, et relatifs à, toute propriété intellectuelle créée dans le cadre d'un emploi.