ARTICLE

LIMITATION PERIOD FOR EMPLOYEES' ADDITIONAL REMUNERATION: THE TREND IN CASE LAW IS CONFIRMED

Patent Law Intellectual Property, Media, and Art Law | 29/01/20 | Grégoire Desrousseaux Martin Brion

Decision of the TGI Paris, 3rd chamber, 1st section, of December 5, 2019, N° RG 16/16036

On December 5, 2019, the Paris court issued a ruling on the statute of limitations for an employee's claim for additional compensation for a mission invention.

This decision is a direct application of the new provisions of Article L.3245-1 of the Labor Code resulting from the 2013 law, taking up the provisions of Article 2224 of the Civil Code codified by the 2008 law. It confirms a jurisprudential trend started by a decision of March 23, 2018[1] , previously commented[2], holding that the starting point of the statute of limitations must be assessed in a concrete manner, and corresponds to the date when the employee knew or should have known the facts allowing him to exercise his right.

Even though no appeal or cassation decision has challenged the Court's 2018 position, such position is clearly confirmed by the decision commented on below.

The facts of the case are as follows: Mr. Denis T. was hired in June 1985 as an engineer, his employment contract includes an inventive mission. He is mentioned eight times as an inventor or co-inventor between 1990 and 2002. Following the termination of his employment contract in November 2013, he sued AVENTIS PHARMA and SANOFI CHIMIE (his employers) successively on September 30 and October 10, 2016, in order to obtain the payment of additional remuneration.

The judges first repeat word for word the motivation of the 2018 judgment, as a jurisprudential principle, stating that it

> *It is appropriate to look at the date on which the employee knew or should have known the facts allowi ng him to exercise his right to payment, without this starting point being conditional on the knowledge of all the elements necessary to determine the amount of his claim, since the employee's ability to exercise his right to additional remuneration cannot be confused with the employee's knowledge of the exact amount of the remuneration due to him.*

In order to determine the starting point of the statute of limitations, the Court relies on an extremely factual element: a June 2016 letter from the employee to his former employer, in which he acknowledges in writing that, during an interview on September 10, 2013, he has raised the issue of the additional compensation that would be due to him[3].

In doing so, the Court considers that the employee was aware of his right to additional compensation at least at the time he asserted it before the human resources manager. The statute of limitations had therefore expired 3 years after this interview, i.e. on September 10, 2016, pursuant to the provisions of Article L.3245-1 of the Labor Code.

Although the judgment could seem particularly severe from the employee's point of view, insofar as his right to bring an action was extinguished only a few days before the date of his summonses, it must be noted that it sets out a necessary framework, limiting the infinite postponement of the starting point of the statute of limitations for the action for payment of additional remuneration.

It also confirms that the fact that the employee has been made aware of his right to additional remuneration allows the limitation period to run without it being necessary to communicate to him the economic elements allowing the exact calculation of the additional remuneration. Contrary to previous case law, it is therefore not sufficient for the employee to argue that he or she did not have all the elements for calculating the exact amount of the additional compensation in order to defeat the statute of limitations[4].

The question for the employer is how to start the limitation period. The judgment seems to confirm that the employee is in a position to bring the action when he has knowledge of the additional remuneration system in force in the company.

This decision confirms that the limitation period runs from the moment the employee becomes aware of his right to additional remuneration, but does not provide any information on the second starting point of the limitation period provided for in Article L.3245-1 of the French Labor Code: the day the employee *should have known* the facts allowing him to exercise his right to additional remuneration.

Finally, we remain convinced that the disregard of the mandatory provisions of article L.611-7 of the Intellectual Property Code - the ignorance of the right to additional remuneration - should not, in law, be able to be invoked by the employee, and that the mere realization of the invention, which generates the right to additional remuneration, should start the limitation period.

[1] TGI Paris, 3rd chamber, 2nd section, of March 23, 2018, RG n°15/00961

[2]https://www.august-debouzy.com/fr/blog/1166-remuneration-supplementaire-des-inventions-de-mission-des-salaries-la-fin-de-limprescriptibilite

[3] The employee claimed a judgment in favor of a co-inventor who received additional compensation.

[4] Cass. com, February 22, 2005, pourvoi n°03-11027 and all successive decisions, such as Cass. com, June 12, 2012, pourvoir n°11-21990.