

# ARTICLE

## NEW BILL TO REFORM FRENCH LAW ON EMPLOYEE INVENTIONS

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At present, French law draws a distinction between three types of employee inventions: (i) **service inventions** (“**inventions de mission**”) which are inventions made by an employee during the course of an employment contract containing an inventive mission, or during the course of study or research that has been explicitly entrusted by the employer. These inventions belong directly to the employer which, in exchange, must pay “additional remuneration” to the employee; (ii) **inventions outside the scope of employment but assignable to the employer** (“**inventions hors mission attribuables**”) are inventions made by an employee either during the course of his/her duties or in the company’s field of business or with the company’s resources. These inventions belong to the employee, but they can be assigned to the employer if it pays the employee “fair compensation” reflecting the invention’s value; (iii) **inventions outside the scope of employment and non-assignable to the employer** (“**inventions hors mission non attribuables à l’employeur**”).

Although the law is clear and unequivocal in principle as to the obligation for employers to pay specific financial compensation to their inventor employees, a survey conducted by the Observatoire de la Propriété Intellectuelle (OPI) in 2008 revealed that over one third of French companies did not pay any bonus. The survey also showed that companies are generally not very generous when compensating their inventor employees (bonus of between 500 and 12,500 Euros).

In such an unfavourable context for innovation, and following the President of the Republic’s statements on April 7 and then June 22, 2009 that employees should be given more importance, Senator Yung submitted on June 4, 2010 a bill intended to “improve the recognition of inventor employees by creating a simple and legible system for companies and employees.”

The most significant change proposed is the grouping together of what are currently referred to as “service inventions” and “inventions assignable” into a single category which would be referred to simply as “service inventions” and which would automatically belong to the employer. A contrario, all other inventions would be inventions outside the scope of employment and non-assignable, and would thus belong to the inventor employee.

As regards remuneration, the senator proposes creating an “additional fair compensation” for patentable “service inventions”, based on a two-tier system:

-- **a fixed bonus**, the amount of which would be calculated in view of the economic interest of the invention, the employee’s duties in the company and the company’s role in the invention process. This bonus would be paid by no later than one year after receiving the invention declaration, even if the inventor has left the company.

-- **extra “additional” remuneration**, which would be paid if the invention is exploited and procures “substantial advantages for the company”. Such advantages would be assessed in an invention exploitation review carried out by the employer and submitted to the inventor (even if he/she has left the company) within between five and twenty years after receiving the invention declaration. This extra “additional” remuneration would be paid by no later than one year after receiving the exploitation review.

At this stage, the concepts set out in this bill seem to be too vague. For example, what exactly does “substantial advantages for the company” mean? Also, the time periods set out in this bill may seem inappropriate: will “additional” remuneration, which might be paid 20 years after the invention was made, really be an incentive? The bill will be reviewed by one of the Senate’s Committees in the next parliamentary session and will most likely be subject to various amendments.

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