Response of the Finnish Association of Judges to 4th study commission:

Fourth Study Commission
Public and Social Law
QUESTIONNAIRE 2012
Aspects of intellectual property and competition law in employment relationship

Introductory remarks: Statutory provisions on intellectual property and competition law are not bound to a certain form of relationship. Nevertheless in employment relationship on the one hand there are many rules to protect employees but on the other hand employment relationship bares certain risks for the employer. The purpose of this Questionnaire is to provide an overview on the provisions governing intellectual property and competition law in employment relationship in the legal systems of the participant countries.

Intellectual property:

1. *Who obtains intellectual property rights in case of an invention by an employee?*

Both the employee and the employer have certain rights to the invention. In Finland there are special acts which regulate this connection: Act on the Right in Employee Inventions 656/1967, Decree on the Right in Employee Inventions 527/1988, Act on the Rights in Inventions made at Higher Education Institutions 369/2006 and Copyright Act 404/1961.

This first Act apply correspondingly to persons employed in the public service but the Act is not applicable to a person who is in military service under the Conscription Act. (526/1988)

2. *If the employer obtains any rights: What connection between an invention and the employment relationship is necessary? What is the scope of the employer's rights (ownership of the patent, exclusive use, non-exclusive use...)?*

An employee has the same right in his inventions as other inventors.

If an invention has ensued from an employee's activity in the performance of his duties or essentially as a result of using his experiences gained in the enterprise or institution of his employer or in an enterprise or an institution belonging to the same consolidated corporation, the employer may acquire the right in the invention, in whole or in part, if the use of the invention falls within the field of activity of the employer's enterprise or of an enterprise belonging to the same consolidated corporation.

If an invention the use of which falls within the field of activity of the employer's enterprise or of an enterprise belonging to the same consolidated corporation but which has been conceived in connection with the employment other than those referred to in the first subsection, the employer is entitled to acquire the right to use the invention.

3. *Are there any boundaries to agreements between the parties of an employment contract on intellectual property rights (compulsory compensation, limitation of the rights that can be transferred).*

An employee has the same right in his inventions as other inventors, unless otherwise provided in legislation. An employee has the compulsory compensation.

The employer must provide the employee with information necessary for the determination of the compensation for the invention, specifically the information on the filing and grant of the patents for the invention, as well as on the production quantities and selling prices of the products conforming to the invention, or of the products manufactured by a process conforming to the invention. The employee must provide the employer with the necessary information on the invention and its utilisation.

4. *Are there different provisions applicable to employees who are hired as inventors?*

If the invention is the result of a task assigned to him more specifically, the employer may acquire the

right in the invention even if the use of the invention is not within the field of activity of the employer's enterprise or of an enterprise belonging to the same consolidated corporation.

Competition:

5. *Are there any statutory limitations to the employee's possibilities of additional activities*?

In Finland the Employment Contracts act 55/2001 applies to employment contracts. The Act has some statutory limitations.

6. *Are there any boundaries to agreements between the parties prohibiting certain activities of the employee while the employment relationship lasts?*

Employees are not allowed to do work for another party or engage in such activity that would, taking the nature of the work and the individual employee's position into account, cause manifest harm to their employer as a competing activity contrary to fair employment practices.

During the term of employment, employees shall not embark on any action to prepare for competing activities as cannot be deemed acceptable, taking into account what is stipulated in previous paragraph.

An employer which recruits a person whom it knows to be impeded from work on the basis of paragraph 1 is liable for any loss caused to the previous employer jointly with the employee.

7. *What other obligations does an employee have in order to protect the competitiveness of their employer (boundaries of secrecy)?*

During the term of employment, the employee may neither utilize nor divulge to third parties the employer's trade or business secrets. If the employee has obtained such information unlawfully, the prohibition continues after termination of the employment relationship.

Liability for any loss incurred by the employer is extended not only to the employee divulging confidential information but also to the recipient of this information, if the latter knew or should have known that the employee had acted unlawfully.

8. *Once the employment relationship has ended: Are there any remaining limitations of the employee's possibilities to compete with their former employer?*

For a particularly weighty reason related to the operations of the employer in the employment relationship, an agreement made at the beginning of or during the employment relationship (agreement of non-competition) may limit the employee's right to conclude an employment contract on work to begin after the employment relationship has ceased with an employer which engages in operations competing with the first-mentioned employer, and also the employee's right to engage in such operations on his or her own account.

In assessing the particular weight of the reason for instituting an agreement of non-competition, the criteria taken into account shall include the nature of the employer's operations and the need for protection related to keeping a business or trade secret or to special training given to the employee by the employer, as well as the employee's status and duties.

9. *Are there any boundaries to agreements on such limitations even after the employment relationship is terminated?*

In agreement of non-competition may restrict the employee's right to conclude a new employment contract or to engage in the trade concerned for a maximum of six months.

If the employee can be deemed to receive reasonable compensation for the restrictions imposed by the agreement of non-competition, a restriction period can be agreed on that extends over a maximum of one year. Instead of compensation for loss, the agreement may include a provision on contractual penalty, which shall not exceed the amount of pay received by the employee for the six months preceding the end of the employee's employment relationship.

An agreement of non-competition does not bind the employee if the employment relationship has been terminated for a reason deriving from the employer.

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