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The starting point of the statute of limitation for the employee inventor's claim in French Law

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In a decision rendered on April 1, 2022, the Paris Court of Appeal ruled on the determination of the starting point of the statute of limitations for claiming additional remuneration related to mission inventions.

The case before the Paris Court of Appeals raised the issue of the statute of limitations with respect to 11 unexploited inventions made between 1999 and 2015 and with respect to exploited inventions resulting from a research partnership completed in 2014. The statute of limitations was deemed to have expired for both categories of inventions. On the one hand, with respect to unexploited inventions, in accordance with Article 2224 of the Civil Code, the starting point of the five-year statute of limitations was set at the latest patent filing date, i.e. 2007, because at that date the employee could not have been unaware of her right to additional remuneration. On the other hand, with regard to the exploited inventions, which were attached to the research partnership, in accordance with article L. 3245-1 of the French Labor Code, the starting point of the three-year statute of limitations was set at the date on which the claim was determinable, i.e. December 2014, the date on which the partnership ended.

It should be recalled that the issue of the starting point of the limitation period was reformed by the law of June 17, 2008, amending article 2224 of the Civil Code, to which the former article L. 3245-1 of the Labor Code referred. Prior to 2008, the limitation period could not begin to run unless the claim was determined and certain. Since then, the said period runs from the date on which the employee "knew or should have known" the facts allowing him to bring his action. As for the duration of the time limit, previously ten or thirty years, the same law of 2008 sets it at five years. This period was later reduced to three years for employee inventions with the law of June 14, 2013, thus amending Article L. 3245-1 of the Labor Code.

The judgment commented contains two lessons.

First, the Court applies the "floating" starting point provided for in Article 2224 of the Civil Code, and repeated in Article L. 3245-1 of the Labor Code, to the statute of limitations on an employee's compensation. This implies, in accordance with these texts, that the statute of limitations begins to run from the moment when the

employee “knew or should have known” the facts allowing him to exercise his right. However, the transitional provisions of the 2008 and 2013 laws provide that “the new provisions shall apply to statutes of limitation in force as of the date of their promulgation without the total duration of the statute of limitations exceeding the duration provided for by the former law”. Thus, with respect to unexploited inventions whose starting point was set at November 2007, the five-year statute of limitations of the law of June 17, 2008 applies. And, with regard to the partnership whose starting point was set at December 2014, it is the three-year statute of limitations resulting from the law of June 14, 2013 that applies.

Second, the Judges’ assessment differs depending on whether the inventions are unexploited or exploited. For unexploited inventions, the date of knowledge of the right to additional remuneration (date of filing of the patent) should be used. Thus, the Court reversed the decision of the first instance, which had held that the statute of limitations ran from the knowledge of an employee’s remuneration program in the company. In the case of exploited inventions, the date of determining the amount of the additional remuneration should be used. This in concreto assessment leads the Court in this case to retain the date of the end of the research partnership.

In the end, we will essentially retain from the commented decision that the “floating” starting point of the statute of limitations led the Court of Appeal to consider that the statute of limitations started to run as from the filing of the patent applications and not as from the moment when the additional remuneration program was brought to the employee’s knowledge. However, this position seems to be linked to the facts of the case (status of the employee in the company), so that it does not seem to us to call into question the usefulness of disseminating the additional remuneration program to the employees.

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