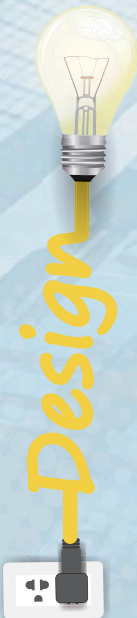


何為發明權 及其重要性?

What is Inventorship and its Importance?



何為發明權及其重要性?

發明人(inventorship)是獲得有效專利的重要一環。申請人在提交專利申請時應提供一份真實發明人名單，否則該專利申請很可能被視為存在缺陷。


在中國，根據專利法實施細則第13條，“發明人”一詞是指“對發明創造的實質性特點作出創造性貢獻的人”。在香港，“專利條例”第45(1)條規定任何發明的發明人或共同發明人均具有在就該項發明而批予的任何專利中被述為發明人的權利。在只有單一發明人的情況下，即發明人通過自己努力，不借他人幫助而獨立作出整個發明，較容易確定發明權。然而在現實中，發明往往是由多於一人的團隊創造的，這形成共同發明人 (joint inventorship)。這表示不管這些發明人是否身處同一地點工作，每個發明人都要對該發明作出了一定程度具創造性的貢獻。

發明權歸誰要按具體情況而定。基本上，凡對發明的創造性作出貢獻者可當作發明人。在美國，一般而言，至少貢獻一項專利權利要求者便成為發明人。雖然這個以權利要求為準的方法不是發明權的根本定義，有時亦未能作準，但仍可在決定誰為發明人時作為初步參考。

在某些情形下，申請人在申請專利時可能會將不合適的人錯誤登記為發明人。例如以下幾類人士經常被錯誤加到專利申請的發明人名單中：團隊主管、公司董事、投資者、技術人員或僅向真實發明人提供建議的人。此外，在公司裏僅僅定明研發方向的管理人員不算是發明人。單單協助完成常

規工作的研究技術員即使為該發明付出很多，也不算是發明人。

值得注意的是，專利發明權並不等於專利所有權。發明權在專利申請初就要釐清並確定下來，而專利所有權在提交專利申請後可隨時轉讓。從本質上說，作為發明人便擁有自身發明的所有權，不過也有例外情況：例如僱員基於僱傭關係創造的發明是屬於僱主的。同樣道理，僱員通過僱主提供的技術和其他形式的支援所創造的發明也是屬於僱主的。雖然如此，建議僱主在申請專利前達成相關協議或轉讓手續以確保能夠獲得該專利的所有權。錯誤填寫發明人或將發明人遺漏可能會帶來一些負面後果，甚至會使專利無效。

為了避免專利所有權的爭議，有關人士應在提交專利申請前花些時間分辨及確認真實發明人。



What is Inventorship and its Importance?

Inventorship is one of the key elements for a valid patent. A list of true inventors should be provided when filing a patent application. Otherwise, the patent application will likely be considered defective.

In China, the term “inventor” refers to “any person who makes creative contributions to the substantive features of an invention-creation” in accordance with Rule 13 of the Implementing Regulations of the Patent Law. In Hong Kong, Section 45(1) of the Patent Ordinance provides that the inventor or joint inventors of an invention shall have a right to be mentioned as such in any patent granted for the invention. Inventorship is rather easy to determine when it comes to a sole inventor who independently creates the whole invention by his own effort without the aid of others. However, in reality, the invention is very often made by a group of people who will form a joint inventorship. That means each of them has made certain contribution to the invention, they physically work at the same place or not.

The determination of inventorship may be “case-specific”. Basically, one can be considered as an inventor if he or she has made an effort on the inventive aspect of the invention. In the US, generally speaking, the inventor is someone who


contributes to at least one claim of the patent. Although the claim-based approach is not a fundamental definition of inventorship and does not stand on some occasions, it can still be used as a preliminary reference to decide whom the inventor is.

In some scenarios, applicants may improperly record wrong individuals as inventors in their patent applications. For instance, team supervisors, company directors, investors, technicians or those who merely give advice to the true inventors are often mistakenly added into the list of inventors to be recorded on a patent application. Furthermore, companies who merely provide directions of research and are not regarded as Research technicians assist in doing routine work are not either, even though they have put a amount of effort into the substantive invention.

It is worth noting that not equivalent to patent ship is to be determined very beginning of the while patent ownership any time after a patent essence, being the ownership of his exceptions. A that the invention the context of employment the employer. Same logic employee made the technical and other

patent inventorship is ownership. Inventor- and finalized at the patenting process, can be transferred at application is filed. In inventor confers to invention, but there are common exception is made by an employee in ment should belong to applies when the invention by receiving forms of assistance

from the employer. Nevertheless, it is recommended for the employer to arrange corresponding agreement or assignment to guarantee the ownership of the patent before any patent application. An incorrectly identified inventor or an omitted inventor may bring about some negative consequences and even invalidate the patent.

To avoid disputes arising from the ownership of a patent, concerned parties should take some time to identify and confirm the true inventors prior to filing of a patent application. 



WENPING & CO.
Units 1701-2 Tung Wai Comm. Bldg.
111 Gloucester Road
HONG KONG
Tel : (852) 2511 0788
Fax : (852) 2519 3316, (852) 2511 5166
E-mail : info@wenping.com.hk
Website: www.wenping.com.hk