

# MINDS AT WORK: EMPLOYED INVENTORS' IDEAS FOR A THERAPEUTIC PATENT SYSTEM

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## Abstract

Employed inventors generally reserve no intellectual property rights and very limited monetary rights for themselves when they assign their patents to their employers. Applying the theoretical framework known as Therapeutic Jurisprudence, this study contemplates the possibility of greater employee productivity through the satisfaction of their self-interest and thus, of national economic development by stimulating innovation. By conducting a qualitative analysis of the responses of ten inventors to a web-based, mostly open-ended questionnaire, we were able to explore therapeutic alternatives to this one-sided patent scheme. Results show that inventors desire monetary compensation based on employer's patent related revenue wish to reserve some rights that might be construed as moral rights for themselves, and find apologies and public admissions to be significant remedies in patent related conflicts. The results of this study are important to practitioners and legislators alike, as it recommends solutions on a private and public level.

## I. INTRODUCTION

At the time of writing, since the first application was filed in 1974, there have been 354 applications and 353 issued patents where the assignee's state is Puerto Rico.<sup>1</sup> Why would a country with nearly four million inhabitants have less

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<sup>1</sup> U.S.P.T.O. Patent Full-Text and Image Database, <http://patft.uspto.gov/netahtml/PTO/search-adv.htm> (April 22, 2013).

than 500 issued patents and patent applications, when states similar in size have at least thousands?<sup>2</sup>

Patents have regularly been used as indicators of innovation across scholarly literature.<sup>3</sup> Behind every patent are its inventors, the brains behind the product. Since the independent inventor is nowadays a rarity, most inventors currently fall within two categories of employees: the employee that was “hired to invent,” whose inventions resulting from his employment are assigned to the employer; or the employee that was not hired to invent, but uses his employer’s resources to do so, where the employer only has a “shop right” license and the invention remains assigned to the employee. Patent law requires the employee’s assignment to be made in writing, something that is extremely different from copyright law. In fact, some commentators consider that patent law should borrow from copyright law and adopt an “inventions made for hire” doctrine, which does not require a written assignment if an employment contract exists.<sup>4</sup>

What do inventors think of the existing legal landscape? Do they think it’s fair? What alternatives, if any, do they propose in lieu of full rights assignment in the case of being hired to invent? What remedies do they think are appropriate if infringement occurs? Do they consider apologies appropriate remedies? This article provides possible answers to these questions by examining a group of inventors’ perceptions and attitudes towards the U.S. patent system. Perhaps, through a more therapeutic approach to managing patent right assignment, employed inventors would be more satisfied in their workplaces, fostering innovation and economic development.

## II. LITERATURE REVIEW

The reviewed literature supports this hypothesis. One commentator notes: “granting employed inventors greater ownership rights in their inventions or alternatively, granting them additional compensation for valuable inventions

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<sup>2</sup> *Id.* (Five states with a population very close to Puerto Rico were examined: South Carolina, Louisiana, Kentucky, Oregon, and Oklahoma. The average of patents filed and awarded since 1976 between these states was 11, 713).

<sup>3</sup> See NINA TEICHERT, *INNOVATION IN GENERAL PURPOSE TECHNOLOGIES: HOW KNOWLEDGE GAINS WHEN IT IS SHARED* 69 (2012).

<sup>4</sup> See Joshua L. Simmons, *Inventions Made for Hire*, 2 N.Y.U. J. INTELL. PROP. & ENT. L. 1, 50 (2012).

belonging to their employer, is part of the solution to the United States' innovation problem."<sup>5</sup> In a similar vein, others suggest that:

[C]ourts should evaluate pre[-]invention agreements and shop right claims in light of an explicit public policy favoring innovation. When intellectual awareness of the massive significance of innovation in promoting economic growth leads most commentators to the same conclusion, courts can no longer avoid a reconsideration of their centuries old assumptions about the rights of employed inventors.<sup>6</sup>

The relationship between being a happy worker and a productive worker has been explored throughout the literature. According to the 70 year-old happy worker hypothesis, happy workers are more productive than their less happy counterparts. This conclusion has been debated and researched through a variety of methods. Most commonly, it is operationalized by posing the question, "how happy are you?" Moreover, Veenhoven's happiness study in the 80's defined happiness as "the degree to which an individual judges the overall quality of his life-as-a-whole favorably."<sup>7</sup> Indeed, many people agree with the adage that *a happy worker is a productive worker* possibly because employees' satisfaction tends to be higher when they are performing a task well versus when they perform it poorly. However, satisfaction does not necessarily predict productivity.<sup>8</sup>

Through a qualitative analysis of inventor's perceptions and attitudes and a thorough review of innovation scholarship, alternative remedies to statutory provisions, and relevant cases and statutes, this article argues that the current patent assignment scheme present in most employee agreements with employed inventors has anti-therapeutic effects and hinders the progress of science. The analysis was framed by the interdisciplinary lens known as Therapeutic Jurisprudence, where law is therapy and therapy can be achieved through law:

Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent. This approach suggests that the law itself can function as a therapist. Legal rules, legal procedures, and the roles of

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<sup>5</sup> Henrik D. Parker, *Reform for Rights of Employed Inventors*, 57 S. CAL. L. REV. 603, 605-06 (1983-1984).

<sup>6</sup> Mark B. Baker & Andre J. Brunel, *Restructuring the Judicial Evaluation of Employed Inventor's Rights*, 35 ST. LOUIS U. L.J. 399, 432 (1990-1991).

<sup>7</sup> RUUT VEENHOVEN, *CONDITIONS OF HAPPINESS*, 22 (Springer, 1984).

<sup>8</sup> Cynthia D. Fisher, *Why Do Lay People Believe that Satisfaction and Performance are Correlated? Possible Sources of a Commonsense Theory*. 24 J. ORG'L BEHAV. 753, 773 (2003).

legal actors, principally lawyers and judges, may be viewed as social forces that can produce therapeutic and anti-therapeutic consequences. The prescriptive focus of therapeutic jurisprudence is that, within important limits set by principles of justice, the law ought to be designed to serve more effectively as a therapeutic agent.<sup>9</sup>

Innovation scholarship suggests that inventors are different from the general population. Independent inventors are more optimistic, overconfident, risk seeking, and have higher levels of self-efficacy than other people.<sup>10</sup> Inventors may also have different motivations than the rest of us as to why they work (or in their case, invent). In a survey of 710 inventors, the number one reason that was stated as a motive for inventing was a "love of inventing".<sup>11</sup> This was followed by other incentives, such as "desire to improve," "desire to achieve," and "prestige"; financial gain only accounted for 24% of the responses.<sup>12</sup> Indeed, the reviewed literature supports the view that inventors are strongly motivated by non-financial benefits.<sup>13</sup>

It seems then that if an inventor's motivations are not monetary, then the remedy sought in infringement cases might not have to be exclusively monetary. Furthermore, in *eBay Inc. v. MercExchange, L.L.C.*,<sup>14</sup> the U.S. Supreme Court ruled that injunctive relief is not automatic for the prevailing intellectual property owner under current law.<sup>15</sup> This decision further suggests that traditional remedies such as injunctive relief and monetary damages might not entirely meet an inventor's needs. A combination of these and other remedies, remedies that allow inventors to heal the personal wound caused by having a third party reap the benefits of their inventions, would be more appropriate.

An infringer is defined generally as, "whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent

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<sup>9</sup> David B. Wexler, *Therapeutic Jurisprudence and the Criminal Courts*, 35 WM. & MARY L. REV. 279, 280 (1993).

<sup>10</sup> Thomas Åstebro, Scott A. Jeffrey, & Gordon K. Adomdza, *Inventor Perseverance after Being Told to Quit: The Role of Cognitive Biases*, J. BEHAV. DEC. MAK'G 253, 266 (2007).

<sup>11</sup> Joseph Rossman, *The Motives of Inventors*, 45 Q. J. ECON. 522, 522 (1931).

<sup>12</sup> *Id.*

<sup>13</sup> Åstebro et al., *supra* note 10, at 254.

<sup>14</sup> *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

<sup>15</sup> Xuan-Thao Nguyen, *Apologies as Intellectual Property Remedies: Lessons from China*, 44 CONN. L. REV. 883, 913 (2012).

therefor, infringes the patent.”<sup>16</sup> This definition does not include wrongfully claiming an invention as yours. A wrongful claim can damage the rightful inventor’s reputation. In these situations, a public or private apology may provide inventors with the recognition they crave.<sup>17</sup> Acknowledgment as creator could be crucial to some inventors.<sup>18</sup> This “personality interest” or concern that the inventors have for their creative or scientific expression, their personal intention, and the *sourcehood* of their creation, is protected in American patent law by “requiring that the named inventor(s) on a patent application- and any patent issued- be natural persons who actually invented the invention.”<sup>19</sup>

A number of jurisdictions across the globe have already integrated alternative remedies in patent infringement cases. For example, in China and Japan, an apology advertisement may be ordered in an attempt to recover the reputation of the patentee – a common remedy in copyright proceedings, but rare in patents.<sup>20</sup> It is interesting to note that Japanese culture takes apologies very seriously, yet courts there have been reluctant to order public apologies.<sup>21</sup> In France and Italy, the court may order that its decision be published in various journals.<sup>22</sup>

Most recently, a U.K. court ordered Apple to publish a notice on its website and in a newspaper stating that Samsung did not infringe their patent.<sup>23</sup> Samsung had sought a declaration from the court stating that its Galaxy tablet did not infringe Apple’s iPad patent. Apple counterclaimed for infringement. The result was not an apology per se, but it was a public admission that could help heal Samsung’s public image as a suspected infringer.<sup>24</sup> This suggests that corporations, like individuals,

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<sup>16</sup> Infringement of Patent, 35 U.S.C.A. § 271 (2013).

<sup>17</sup> Vivek Koppikar, *Using ADR Effectively in Patent Infringement Disputes*, 89 J. PAT. & TRADEMARK OFF. SOC’Y 158, 162 n.40 (2007) (Citing Danny Ciraco, *Forget The Mechanics and Bring In The Gardener*, 9 U. Balt. Intell. Prop. L. J., 47, 74 (2000), Koppikar interprets that “a major need for a small inventor or entity is simple recognition of their work and an apology provides this).

<sup>18</sup> Justin Hughes, *The Personality Interest of Artists and Inventors in Intellectual Property*, 16 CARDOZO ARTS & ENT. L.J. 81, 84 n.7 (1998).

<sup>19</sup> *Id.* at 165.

<sup>20</sup> DUNCAN BUCKNELL, *PHARMACEUTICAL, BIOTECHNOLOGY AND CHEMICAL INVENTIONS: WORLD PROTECTION AND EXPLOITATION* 1004 (1st ed. 2011).

<sup>21</sup> Scott K. Dinwiddie, *A Shifting Barrier? Difficulties Obtaining Patent Infringement Damages in Japan*, 70 WASH. L. REV. 833, 848 n.76 (1995).

<sup>22</sup> BUCKNELL, *supra* note 20, at 1004.

<sup>23</sup> Samsung Electronics (U.K.) Limited v. Apple Inc., [2012] E.W.C.A. (Civ) 1339 [84]-[85] (Eng.).

<sup>24</sup> The public notices read: On 9 July 2012 the High Court of Justice of England and Wales ruled that Samsung Electronics (U.K.) Limited’s Galaxy Tablet Computers, namely the Galaxy Tab 10.1, Tab 8.9 and Tab 7.7 do not infringe Apple’s Community registered design No.

may enjoy the therapeutic effects of others' acknowledgement of wrongdoing, even if such action is not regretful in character.

In the U.S., apology as a remedy is absent in patent law, nor is it present as a remedy in the federal statutes for copyrights, trademarks, and trade secrets. As Nguyen explains:

The absence of apology as a statutory remedy is consistent with the long-held suspicious view towards apologetic justice in U.S. law. This absence, however, should not hinder a desire for internal and external examination. Internally, any U.S. case law involving apologies in intellectual property might be examined, and, externally—that is, outside U.S. borders—Americans might endeavor to learn what others have done or are doing so as to fulfill our own goals of justice.<sup>25</sup>

A possible reason why apologies are so rare in the American legal system is perhaps due to lawyers not being trained to ask for them. In an adversarial system where everything, even suffering, has a price, future lawyers are trained to think that zealously defending their clients is accomplished by crushing the other party economically. The therapeutic-minded lawyer should be aware of her possible predisposition to favor monetary damages instead of an apology.<sup>26</sup> We must understand that even though "money is how defendants apologize, in the law, they [clients] may not feel satisfied, vindicated, or fulfilled by this outcome."<sup>27</sup>

Some scholars claim that "the only place in which it is more difficult to obtain an effective apology than in the international political arena is the American legal system."<sup>28</sup> Yet, settling intellectual property disputes with apologies is not

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0000181607-0001. A copy of the full judgment of the High Court is available from [www.bailii.org/ew/cases/EWHC/Patents/2012/1882.html](http://www.bailii.org/ew/cases/EWHC/Patents/2012/1882.html). That Judgment has effect throughout the European Union and was upheld by the Court of Appeal of England and Wales on 18 October 2012. A copy of the Court of Appeal's judgment is available from [www.bailii.org/ew/cases/EWCA/Civ/2012/1339.html](http://www.bailii.org/ew/cases/EWCA/Civ/2012/1339.html). There is no injunction in respect of the Community registered design in force anywhere in Europe. Victor H., Apple's 'apology' to Samsung leaves U.K. judge "at loss", PHONEARENA ([April 22, 2013](http://www.phonearena.com/news/Apples-apology-to-Samsung-leaves-U.K.-judge-at-loss_id36191)), [http://www.phonearena.com/news/Apples-apology-to-Samsung-leaves-U.K.-judge-at-loss\\_id36191](http://www.phonearena.com/news/Apples-apology-to-Samsung-leaves-U.K.-judge-at-loss_id36191).

<sup>25</sup>Nguyen, *supra* note 15, at 920.

<sup>26</sup> ALAN M. GOLDSTEIN, HANDBOOK OF PSYCHOLOGY: 11 FORENSIC PSYCHOLOGY 566, 567 (Irving B. Weiner ed., 1st ed. 2003).

<sup>27</sup> Susan Daicoff, *The Comprehensive Law Movement: An Emerging Approach to Legal Problems*, 49 SIS L. 109, 124 (2010).

<sup>28</sup> Bruce W. Neckers, *The Art of the Apology*, 81 MICH. B.J. 10, 10-11 (2002).

unheard of in the Federal Circuit.<sup>29</sup> However, at the time this paper was written, there were no federal or state patent related cases (i.e. infringement cases<sup>30</sup>, contractual disputes, torts) that involved any mention of a public apology as a possible remedy. As far as local law is concerned, apology in Puerto Rican courts has been noteworthy in ethical misconduct cases.<sup>31</sup>

Apology scholarship has suggested that a regretful acknowledgement of an offense may have therapeutic effects. Moreover, in the context of court-ordered apologies, these “could help heal the psychological wounds of victims, send desirable social messages, reinforce accepted norms, and restore social equilibrium.”<sup>32</sup> Research on alternative dispute resolution methods, particularly the so-called community conferences, which involve a facilitator, the victim, the offender, and their supporters, has shown that acknowledging shame is crucial for reconciliation and that the chance of healing depends on the genuineness of the apology.<sup>33</sup> It seems to be a general known fact that indeed “an acknowledgement of wrongdoing and a genuine apology can allow victims to heal.”<sup>34</sup>

Research shows that apologies may advance settlement negotiations, make proposed offers more acceptable, reduce plaintiff’s desire to sue, make the settlement process less antagonistic and tense, and enhance how jurors view the defendant.<sup>35</sup> An apology may also reduce damages, help heal the injury, and mitigate damages for intangible losses.<sup>36</sup>

### III. METHOD AND SAMPLE

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<sup>29</sup> See *Scandinavia Belting Co. v. Asbestos & Rubber Works of America, Inc.*, 257 F. 937 (2d Cir. 1919).

<sup>30</sup> Although U.S. Patent Law confers exclusive jurisdiction of patent infringement suits to the federal courts, other aspects of patent law are the proper jurisdiction of state courts.

<sup>31</sup> See *In re Eugenio Rivera Lozada*, 176 DPR 215, 230 (2009); *In re Díaz Ortiz*, 150 DPR 418, 427 (2000); *In re Arroyo Rivera*, 148 DPR 354 (1999) (The Puerto Rican Supreme Court found that factors such as reputation, prior history, whether this is their first offense, the acceptance of the wrongdoing, and their sincere remorse could be taken into account when determining the applicable disciplinary sanction for a lawyer who was charged with ethical misconduct.).

<sup>32</sup> Brent T. White, *Say You’re Sorry: Court-Ordered Apologies as a Civil Rights Remedy*, 91 CORNELL L. REV. 1261, 1311 (2006).

<sup>33</sup> Thomas J. Scheff, *Community Conferences: Shame and Anger in Therapeutic Jurisprudence*, 67 REV. JUR. UPR 96, 101-07 (1998).

<sup>34</sup> Bruce J. Winick, *Therapeutic Jurisprudence and Victims of Crime* (2007), forthcoming, available at <http://ssrn.com/abstract=1102350>.

<sup>35</sup> EDIE GREENE & KIRK HEILBRUN, *WRIGHTSMAN’S PSYCHOLOGY AND THE LEGAL SYSTEM* 14 (7th ed. 2010) (internal citations omitted).

<sup>36</sup> Daniel W. Shuman, *The Role of Apology in Tort Law*, 80 JUDICATURE 180, 189 (2000).

There are many other factors to consider and like most social phenomena, exploring inventors' attitudes and perceptions towards their inventions is a complex and multifactorial endeavor. Therefore, this study limits its findings to the gathered data and does not seek to make statistical generalizations based on an unrepresentative sample of the population. Instead of asking participants how they felt, which is what traditionally would be asked in this sort of study, they were given a series of hypothetical scenarios and asked how they envisioned the outcome of the conflict in order to assess how they perceived the legal landscape at hand.

The sample was initially gathered from the U.S. Patent and Trademark Office's (U.S.P.T.O.) public patent database. The only search criterion was that the assignee's state must be Puerto Rico. Afterwards, each patent was examined and the inventors whose state was also Puerto Rico were selected and run through public search engines to gather the inventor's email. This method proved unfruitful save for one participant that was selected via this method. The other nine participants were also selected through the U.S.P.T.O.'s database, but their information was gathered -with the previous consent of the inventors- by a key informant in the corporation. None of the inventors were assigned their invention. Thus, the sampling method was one of convenience.

The questionnaire was completely in Spanish and was administered via an online webpage where the inventor's identity would remain anonymous (even to the administrator of the webpage), and confidential. Informed consent was achieved through email messages where the link to the questionnaire was provided. All participants were of legal age.

The responses were coded and analyzed; selected excerpts were later translated into English. As for socio-demographic composition, the sample consisted of one female, six males, and three unidentified participants. Participants' ages fell within the thirty-one to sixty range. As expected from such population, eight of them had post-graduate degrees and two of them had a bachelor's degree.

#### **IV. RESULTS**

The inventors were asked ten questions, including questions about their age, gender, and education. The questionnaire began with the question, "Why do you invent?" Consistent with Rossman's research, the leading reason the inventors mentioned was a personal one: they said, among other things, that inventing was "fun," that they enjoyed "exploring," that it was "challenging," and that it was an

“adrenaline rush”. These reasons<sup>37</sup> were followed by motives related to employment, altruistic reasons, money, and needs.<sup>38</sup>

Participants were then asked, “What is a patent?” The responses mentioned many rights that participants thought patents conferred. The most mentioned was protection, followed by ownership and a right of commercialization. This question was meant to be broad in order to explore the extent of participants’ understanding of the rights a patent confers to its holders. There were many misconceptions, such as the acquisition of a positive right: a patent in fact confers a *negative* right that excludes others from doing something. None of them mentioned that excluding others from offering to sell the invention was part of the bundle of rights conferred by patents. Only three participants mentioned rights other than commercialization; one mentioned the right to use, another other the right to make, and another the right to claim the invention as her own.

Furthermore, inventors were asked about their perception of *non-assertion of patent contract* provisions. They were asked if they thought it was fair that the invention is usually the sole property of the employer. Most of them said it was fair, but stated the inventor should have some rights related to the patent.<sup>39</sup> In the current legal system, the assignee is the person who has all the rights. Their answers were predominantly multipolar, filled with considerations from the point of view of both the employer and the employee. Those that thought it was fair (with exceptions) typically responded like participant Fleming<sup>40</sup>: “I think that it’s partially fair. Even though the company pays for the expenses of these [patents], the inventor could be rewarded in a better way. She could receive a percent of the revenues if it [the patent] is carried out.”

This desire for a share of the revenues was one of the major interests of inventors when they were asked about the rights that they thought an inventor should have over the invention, even though the invention was the legal property of another. This question referred to the case where the inventor is not the assignee of the invention— in this study, the case of all the participants. The results were notable: four inventors reported that a percent of the patent’s revenue should be shared with the inventor; two of them reported the desire to be awarded other rights; some wanted the same rights as the assignee, other forms of monetary compensation or no rights; and others abstained. Salk, another participant, was the sole proponent of those “other rights”: “Right to opine about to whom and under

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<sup>37</sup> Throughout this analysis, many responses don’t add up to ten items because many participants gave answers that fit into more than one category.

<sup>38</sup> Frequencies were three, four, one, and one mention respectively.

<sup>39</sup> In relation to this matter, six of them said it was fair, three said it was completely fair, and one abstained.

<sup>40</sup> All names are pseudonyms.

what conditions it [patent] should be licensed or sold to and a right to litigate the patent if she understands that the assignee is not making good use of it [patent].”

With regards to this point, a system of entitling the employed inventor to compensation based on the commercial success of the invention has already been codified in Germany, Italy, and France. In Germany, “[when] assessing compensation, due consideration shall in particular be given to the commercial applicability of the service invention, the duties and position of the employee in the enterprise, and the enterprise’s contribution to the invention.”<sup>41</sup> While in France and Italy, the “employed inventor is normally, eventually entitled to a ‘fair reward’, (*juste prix; equo premio*) . . . . This ‘fair reward’ is related to the economic value of the invention and to other relevant circumstances.”<sup>42</sup> A similar statutory provision could be integrated as an amendment to the U.S. Patent Act, which currently lacks a compensation right of that nature.

The next question refined these rights. The participant would imagine that they made an invention for their employer, who then used or sold the invention for a purpose inconsistent with the inventor’s ethics or morals. The questions were, “What solution do you propose for this conflict?” and “Would you like an apology from your employer?” Only two answers indicated an acceptance of the employer’s full rights and responsibilities, and the inventor’s inability to challenge them. There were four inventors that did not want an apology, three that did want apologies, and two that wanted public notices: one where the inventor’s name would be cleared publicly and another one with a public apology, and the remaining two wanted other unspecified legal remedies. Carver, a participant that was among those who wanted an apology, gave a suggestion in this category: a prophylactic measure where the inventors should “be part of the sales agreement or licensing from the start (with a voice and a vote regarding what goes on with the patent).” This desire to have some degree of control over the invention, even though it belongs to someone else, can be construed as a desire for a moral right. Moral rights are a creature of European civil law and are essentially absent in U.S. legislation, except when the Visual Artists Rights Act (VARA)<sup>43</sup> applies.<sup>44</sup>

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<sup>41</sup> Gesetz über Arbeitnehmererfindungen [ArbnErfG] [Law on Employees' Inventions], July 31, 2009, BGBl. III at 9 (Ger.), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=229680](http://www.wipo.int/wipolex/en/text.jsp?file_id=229680).

<sup>42</sup> RICCARDO DEL PUNTA, EMPLOYEE’S INVENTIONS AND THE EMPLOYMENT CONTRACT: A EUROPEAN UNION PERSPECTIVE, IN 11 BUSINESS INNOVATION AND THE LAW: PERSPECTIVES FROM INTELLECTUAL PROPERTY, LABOUR, COMPETITION AND CORPORATE LAW 188, 194 (Marilyn Pittard et al. eds., 1st ed. 2013).

<sup>43</sup> Rights of Certain Authors to Attribution and Integrity, 17 U.S.C.A. § 106A (2013).

Moreover, in order to assess the bundle of rights that inventors would want when detached from the legal confinement of an employer, they were told to imagine being an independent inventor whose patent was infringed. They were asked the same two questions stated above, applied to the infringer. Cash was king here, and the remedies they mentioned were surpassed by damages. This was followed by: apologies, a lack of desire of being apologized to, a desire for an admission from the infringing party, and an unspecified legal remedy. Participant Carver said: "As a remedy, the inventor should be compensated 100% because she is the owner of the idea. Yes; an apology should be part of the infraction's correction."

Finally, participants were asked to imagine that they invented something and that someone else has published himself or herself as the inventor of that object. Self-identification as the inventor, when in fact you are not, is not an ownership right that is contemplated in the U.S. Patent Act; that publication is done by the application of the patent itself. However, this premise was designed to explore the depth of the personal relationship that an inventor has with his or her invention. Inventors were asked the same two previous questions applied to the self-identifying inventor scenario. There were five mentions of a desire to be apologized to, four mentions of a desire of receiving some unspecified legal remedies, three statements desiring a public admission from the liar, two mentions of a desire of not being apologized to, and one mention of monetary damages. These results are consistent with Hughes' previously cited work. Carver's response embodied these results: "As a remedy, the inventor should be officially ratified as such and the one that seized the idea must indemnify the inventor and the state. Yes, an apology should be part of the infraction's correction."

## V. DISCUSSION

Our findings show that the reasons inventors invent are personal, but the rights they desire go beyond their personal needs and include pecuniary remedies. One of the major themes in the inventors' answers was the desire for more monetary compensation. The U.S. Patent Act should be amended in light of this and should oblige the employer to negotiate a reasonable compensation scheme with the employed inventor or soon to be employed inventor, based on the commercial success of the patent. American patent law has many lessons to learn from European law in this area. As participant Morse suggested:

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<sup>44</sup> See Author Moral Rights Act of Puerto Rico, 2012 PR Laws 55 (Moral rights are explicitly absent from federal legislation, but the Commonwealth of Puerto Rico recently enacted moral rights legislation).

It would be ideal if the inventor had some sort of recurrent compensation when and if the patent was being used as some kind of good or service. In my company, the incentives program for inventions only has a bonus component to it when the company decides that it wishes to submit a patent application.

Meanwhile, lawyers can certainly do their part and counsel their corporate clients about the anti-therapeutic effects of the current patent scheme. Stimulating economic growth by shaping agreements that consider how satisfying inventors' needs is essential to innovation; contract lawyers should consider it public policy. Adhesion contracts with assignment clauses like: "I hereby assign to the Company all my right, title, and interest in and to any and all Inventions (and all Proprietary Rights with respect thereto), whether or not patentable or registrable under copyright or similar statutes, that were made or conceived or reduced to practice or learned by me, either alone or jointly with others, during the period of my employment with the company"<sup>45</sup> completely fail these objectives.

The inventors' responses also shed light on therapeutic complements to monetary remedies, where apology and public admissions were shown to have significant support. By increasing their awareness of inventor's psychological desires, judges and arbitrators can come up with more well-rounded solutions to patent related conflicts, in addition to granting injunctions and damages.

Furthermore, if patent law aims to accept a works for hire doctrine, it seems prudent that patent rights should also have something similar to moral rights attached to them. If moral rights are conceived as a result of the personal relationship between creator and creation, then this is the next logical step. In this hypothetical new bundle of patent rights, some ethical issues that were discussed in the questionnaire, such as remedies for when the employer does something with the invention that the inventor thinks is unethical, could be addressed by giving the inventor the right to "prevent revision, alteration, or distortion of her work, regardless of who owns the work."<sup>46</sup>

## VI. CONCLUSION

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<sup>45</sup> VAN LINDBERG, *INTELLECTUAL PROPERTY AND OPEN SOURCE: A PRACTICAL GUIDE TO PROTECTING CODE 271* (Andy Oram ed., 1st ed. 2009).

<sup>46</sup> Betsy Rosenblatt, *Moral Rights*, *Berkman Center for Internet & Society* (April 22, 2013), <http://cyber.law.harvard.edu/property/library/moralprimer.html>.

Innovation is essential for economic development. Young economies with colonial baggage, most notably India in this century, have focused their developmental efforts in fostering a generation of technological capital. Research and development in these disarticulated economies<sup>47</sup> result in the export of intellectual wealth. Puerto Rico is not an exception; with less than 500 lifetime patents, there must be a lot of innovation that is not being commercialized.

The employed inventor has spoken: compensation based on employer's patent related revenue, reservation of some rights that might be construed as moral rights, and apologies and public admissions are therapeutic alternatives to our flawed patent system that forgets that without inventors, there are no inventions. Law reform is necessary and this multi-disciplinary process is nothing, if not challenging. As L. Michael Hager eloquently says:

If law reform is a prerequisite for development, a corollary is the need for lawyers to lead that reform. More than legal craftsmanship is required for effective lawmaking, for the paths of development law are largely uncharted. Moreover, tinkering with one part of the legal system demands comprehension of the whole. Lawyers, by training and instinct, consider the procedural implications of substantive changes. Legal policy making is a distinct art, notwithstanding its dependence upon economics, political science, and sociology in development matters.<sup>48</sup>

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<sup>47</sup> By disarticulation I mean a segmentation of a nation's economic sectors. In this sense, disarticulation occurs when production occurs domestically, but is consumed elsewhere. It is often related to economic stagnation and underdevelopment.

<sup>48</sup> L. Michael Hager, *The Role of Lawyers in Developing Countries*, 88 ABA J. 33, 36 (1972).