

# Patents and Gender: The Exclusion of Women Inventors from Intellectual Property Rights: Property Law, Patents, Labour Law and the Feminist Discourse<sup>1</sup>

Shlomit Yanisky-Ravid<sup>2</sup>

This study examines one of the most significant phenomena of excluding women from their legal and economic rights: the exclusion of women inventors from intellectual property rights. This study reveals, for the first time, data indicating the **minuscule** percentage of women inventors in Europe, in the United States and in Israel - who have property rights over their inventions. The data collected and analyzed for this study shows that out of all patent owners, including firms, in Israel, between 2000-2005 **only 2%** were women<sup>3</sup>. Similar figures, although slightly higher, are found in other countries. That was just the first step of the legal pioneer discussion.

**The explanation for this evidence consists of both legal and social components.**

The goals of this study are to point out the low rate of women inventors, explain its origins and to suggest principles for a legal reform.

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<sup>1</sup> This is a summary of an article which will be published in the book "Studies in law, Gender and Feminism" Daphna Barak-Erez, Shlomit Yanisky-Ravid, Ifaat Biton, Dana Fugatch, Eds (to be published by Nevo – Hakiryia Haakademit). It is based on a part of my doctoral thesis on the subject of intellectual property rights in employee's inventions and creations, the Hebrew university, Advisor: Prof. Daphna Lewinson-Zamir, Committee members: Prof. Frances Radai, Dr. Guy Pesach.

<sup>2</sup> Law Faculty, Ono Academic College and Bar-Ilan University

<sup>3</sup> The percentage of women inventors out of patent owners, excluding firms, is 6%.

Property rights are subject to feminist criticism. On the one hand, patent law aims at assisting in the advancement of science, industry and technology, as a goal agreed upon by public opinion, the state, male and female inventors and by employers and by the employees. However, observing this rationale through feminist lenses reveals the severe phenomenon of the exclusion of women from the patent-field. Upon superficial observation, it would appear that the patent law seems objective and neutral. The reality, however, is different. The exclusion phenomenon in patent law is obtuse, and has not yet been explicitly discussed.

The study draws a two-stage model which illuminates the gender bias.

At the first stage I suggest reexamining the definition of “invention” in patent laws world-wide. In most countries the definition of “invention” is based on an industrial-technological test. This definition currently favors men. I claim that this definition does not reflect the contribution of women to human welfare. Therefore, the definition of “invention” does not adequately address equal treatment to feminine life experience.

In addition, the current Anglo-American patent law ignores the role of (women) assistants in the invention process, and thus erases their contribution.

At the second stage I suggest reconsidering the Anglo-American legal norm which grants the employer the patents rights to the employee’s inventions, known as “service invention”. This legal paradigm discriminates against women that work mainly as employees, in research and development teams. Even if women penetrate patent- rich fields, they do not gain ownership over their inventions.

In addition to the legal discourse, the study also discusses other explanations rooted in social science, regarding difficulties women face in the workplace. The study relates to horizontal and vertical segregation between men and women in the professions and in academic studies, women preferences, conflicts between motherhood and workplace and the biological differences between the genders.

The study suggests a basis for legal and social reform, the purpose of which is to promote the gender equality in the patent field. The suggested reform includes:

- Redefining “invention” in the Anglo – American legal system
- Reexamining the “service invention” legal norm
- Enhancing the moral rights of inventors, by noting the inventor's names in relevant publications ("droit moral").
- Affirmative action for women inventors
- Expanding the use of equality principle in the patent field.