



Country Overview:

D E N M A R K

WHO OWNS IP IN RESEARCH & DEVELOPMENT?

- With special focus on university joint ventures -

1. Applicable Laws

a) In Denmark the law relating to the ownership of patents is governed by the Patent Act (*Patentloven*), the Act on Utility Patents (*Brugsmodelloven*) and the Act on Employees' Inventions (*Lov om arbejdstageres opfindelser*). Further, the Act on Inventions at Public Research Institutions (*Lov om opfindelser ved offentlige forskningsinstitutioner*) regulates the ownership of inventions of, among others, university employees as the Act on Employees' Inventions does not apply to university employees.

b) Creative works, including software, are governed by the Copyright Act (*Ophavsretsloven*) or the Design Act (*Designloven*).

2. Who owns IP in research & development?

a) According to Section 1 of the Patent Act, the inventor has the right to register ownership of the IP rights to his invention. As a general rule, this also applies in the event that employees generate inventions during or in connection with an employment relationship. Thus, under section 3 of the Act on Employees' Inventions an employee owns the right to patent any invention he makes during his employment. However, if the invention is created as part of and in the course of the employee's work, and the use of the invention falls within the scope of the employer's business, the employee must notify the employer of the invention. The same applies if the invention is the result of a specific task given by the employer to the employee.

Following notification from the employee, the employer then has four months during which it may decide to apply for a patent in whole or in part for the invention in the employer's name. Those parts of the invention that have not been claimed by the employer are free for the employee with the employee being entitled to apply for a patent in his own name.

The employer must compensate the employee for the creation of the invention. Under Section 8 of the Act on Employees' Inventions the compensation must be "reasonable" and take into account the nature of the invention and the efforts expended in order to make the invention. This, however, does not apply if the value of the invention does not exceed what the employee could reasonably be expected to perform during the course of his work.



Side 2

The parties are free to derogate from many of the above rules through an employment contract or other agreement, e.g. setting out that any invention created during the course of the employee's work will automatically be transferred to the employer. However, the rule requiring payment of reasonable compensation to the employee cannot be derogated.

With respect to university employees, the Act on Inventions at Public Research Institutions applies to any invention made by employees of public research institutions after 1 January 2000. According to the Act, research institutions (public universities, hospitals, etc.) have the right to have the IP rights to any invention made by their employees transferred to the institution. Transfer of the IP rights from an employee to the institution must follow the procedure set out in the Act. In short the employee must without undue delay report any invention to the institution. The institution then has two months (extendable by mutual agreement) to evaluate the invention. Before the end of the two months or any extended deadline the institution must notify the employee of its intention to claim the invention. If the institution wishes to claim the invention, the employee has a right to reasonable compensation.

In projects involving more than one research institution, the institutions must agree on the ownership of any invention or result beforehand. In collaborative R&D projects with private companies the research institution may transfer or license any IP rights to the private company prior to any results being generated or subsequently.

b) Danish law follows the continental approach as regards copyrightable works, in that the creator becomes the owner of the copyrighted work by way of creating the work. Thus the assumption is that an employee will become the copyright holder of works created during the course of his work.

There are, however, important derogations from this rule. According to practice established by the Danish Supreme Court, an employer will have the right to use works created by employees to the extent necessary for the employer's normal course of business. Thus, the employer will maintain a limited right to use the created work. The right extends beyond the period of employment. For example, a newspaper will have the right to use articles and other material written by journalists in order to print these in the newspaper and will maintain this right even if the journalist finds other employment.

As regards software, Section 59 the Copyright Act contains a specific derogation from the general principle of employee ownership. According to this provision, the employer will always be the sole holder of the copyright to software created by an employee (a programmer) during the course of his normal work or software created by request according to the employer's specifications.

3. From the point of view of the employer or principal which (contractual) precautions have to be taken?

a) Most of the employee's rights described above in 2. a) may be derogated from in the employment contract or other agreement. From the point of view of the employer it is, however, important to set up internal processes ensuring reporting and notification. Upon notification, the employer must decide whether it wants to claim the invention in full or in part or not at all and notify its intention to the employee within four months. The employer can then file a patent application for the invention.



Side 3

The same applies for research institutions, in that it is important for these to set up internal processes for ensuring that any inventions are reported to institute, that the patentability of the invention is appraised appropriately and that filing of patent applications is handled efficiently and consistently. Most Danish universities have consequently set up dedicated IP administration offices to ensure that IP rights are exploited more efficiently.

b) As regards copyrighted works, in an employment relationship the employer must essentially ensure that the rights are transferred to the broadest extent possible. However, this is limited to what is necessary for the employer's normal course of business.

With regards to software in particular, however, the employer automatically acquires the IP rights to the software in question. Specific precautions as to the ownership of software, other than ordinary employee oversight, will therefore normally not be necessary.

4. Current trends and particularities in university joint ventures?

There is a clear trend for an increase in the number of patents applied for by Danish universities. As mentioned above, most of the Danish universities have established dedicated IP administration offices, with the purpose of collecting and managing the universities' patent portfolios. These offices are also charged with providing guidance to institute employees and students involved in R&D projects and with negotiating agreements with other institutions or private companies.

In order to harmonise contracts between the public research institutes and private companies many institutes have prepared standard contracts based on model contracts. These model contracts were originally drafted by a committee of the Danish Agency for Science Technology and Innovation (*Forsknings- og Innovationsstyrelsen*) and published in the fall of 2008. The contracts are available in a Danish language version on the agency's homepage, www.fi.dk.