

Who owns IP in Research and Development?

1. Applicable laws

The following acts govern the country-specific legal protection granted to creative and innovative works in Belgium:

- Patent Act of 28 March 1984
- Copyright Act of 30 June 1994
- Software Protection Act of 30 June 1994
- Benelux Intellectual Property Convention of 25 February 2005
- Act of 31 August 1998 on the legal protection of databases
- Act of 20 May 1975 on the legal protection of plant breeds
- Act of 14 June 1991 on Trade Practices
- Act of 3 July 1978 concerning Employment Agreements

In respect to the allocation of intellectual property rights, the following regional legislation is relevant as well:

- Decree of 12 June 1991 on Universities in the Flemish Community

2. Allocation of intellectual property rights

Under Belgian law, the allocation of intellectual property rights in the employer-employee relationship is dealt with as follows:

EMPLOYEES	
<i>Type of intellectual property right</i>	<i>Entitlement</i>
Patents / SPC's	<p>The Patent Act does not provide guidance in respect to entitlement to inventions in the employee-employer relationship. In the absence of (strongly preferred) contractual arrangements, a distinction is made between (i) service inventions, (ii) dependent inventions and (iii) free or independent inventions.</p> <p>Service inventions are those the employee has invented or developed in the course of his contractual duties or pursuant to a specific assignment of the employer. The rights to these inventions are generally considered to vest in the employer.</p> <p>Dependent inventions are those which are somehow connected to the employment. Said connection may consist of a (substantial) active or passive input by the employer, but it will equally be established where the employee has made use of company resources or know-how. The entitlement to these inventions gives</p>

	<p>rise to much debate.</p> <p>Free or independent inventions are those which do not fall in either of the aforementioned categories, <i>i.e.</i> those where the inventor's capacity of employee has in no way affected the inventive process. The rights to these inventions are vested in the employee.</p>
Copyrights	<p>Transfer of copyrights to works created by the employee in the framework of his employment requires explicit and unambiguous contractual arrangements in that respect. (Article 3 §3 Copyright Act). Moral rights, such as the right to maintain the integrity of the works, cannot be transferred, licensed or assigned according to Belgian law. (Article 1§2 Copyright Act)</p>
Copyrights on software	<p>Copyrights to software created by the employee during the exercise of his tasks or in accordance with the employer's instructions are, by presumption of law and absent contractual provisions to the contrary, acquired by the employer. (Article 3 Software Protection Act)</p> <p>Rights to manuals for software do, however, not fall within the scope of the Software Protection Act. Transfer thereof must be expressly covenanted in the employment agreement.</p>
Design rights	<p>Pursuant to Article 3.8 of the Benelux Intellectual Property Convention, the employer is entitled to designs created by his employees where the design was conceived in the performance of the employee's tasks.</p>
<i>Sui generis</i> database rights	<p>Article 2 of the Act on the legal protection of databases grants rights to the person or entity that takes the initiative to develop the database and bears the costs made to that end.</p>
Plant breeders rights	<p>Article 26 of the Act on the legal protection of plant breeds provides that the employer is entitled to the rights to a plant breed developed in an employment relationship.</p>

In universities in the Flemish Community (thus including Dutch-language universities in the Brussels area), the Decree on Universities in the Flemish Community applies. Article 168 of that Decree provides that exploitation rights to inventions resulting from research activities performed by paid staff vest in the university. Inventions are broadly defined to include patentable inventions, plant breeds, models and designs, computer programs, databases and semiconductor topographies insofar these can be commercially exploited. Copyrights are not covered by the Decree.

3. Contractual arrangements

In employment agreements, as in any contractual relationship concerning innovative and creative activities, it is much advisable to precisely covenant who is entitled to the intellectual property rights to the results of these activities. Sound contractual arrangements in that regard ensure –to a maximum extent- the avoidance of litigation which may hamper the commercial exploitation of inventions and other research results. This is the more so when one takes into account that the Belgian legislator has not provided any legal mechanism concerning the entitlement to inventions in the Patent Act.

* *
*