

WHO OWNS IP IN RESEARCH & DEVELOPMENT? - SWEDEN

Applicable Law

The Patent Act (1967:837)
Law of Rights to Employee's Inventions (1949:345)
The Copyright Act (1960:729)
The Design Act (1970:485)
Law of Integrated Circuit Board Design (1992:1685)
Law of Crop Design (1997:306)

Other sources

Above mentioned Laws are to some degree complemented by Collective Labour Agreements concerning certain areas of industry, such as The Inventors Agreement, or complemented by industry practice as for example in media and architecture.

The general rule

The general rule concerning IPR in R&D situations in Sweden is that only by an agreement can the IPR pass from the employee/inventor/researcher to the employer/principal/assigner.

Employees

1. Patent

- 1.1 The *Patent Act* states that it is the inventor that has the right to apply for a patent, i.e. is the owner of the invention. The inventor can succeed his right to apply for a patent, or at a later stage the patent, but retain the right to be recognised as the inventor in the patent registry.
- 1.2 According to the *Law of Rights to Employee's Inventions* (hereafter REI) an employee has the same right to inventions as other inventors, with a few exceptions. If the employee mainly work with R&D and the invention essentially is a product of that R&D or the invention is the solution to a specific assignment, the employer has the right to the invention if the employer so wishes. The employer must however always give reasonable compensation to the employee for an invention, unless otherwise agreed after the invention is achieved.
- 1.3 If the employee has created an invention in connection with work not related to R&D but it falls within the employer's area of business, the employer only has the right to utilise the invention in his business. The employer has to pay compensation for such utilisation, but the employee can not refuse the employers right to utilise. The employer also has the preferential right to acquire more rights

than just the right to utilise the invention, should the employee be inclined to sell or license.

- 1.4 An invention that falls within the employer's area of business but is the result of inventive work unrelated to the employment relationship, only gives the employer the preferential right to acquisition rights to the invention.
- 1.5 The rules of the REI can be *avoided* by contract. It can also be avoided if the employer has specifically informed the employee or if it is implicitly understood from the employment that employment related inventions belong to the employer. The employee will however always have right to reasonable compensation for an invention. Such compulsory compensation cannot be avoided by contract in advance, but it can be avoided by a contract agreed after the invention is achieved.
- 1.6 There is also an *important exception* to the REI and that is teachers employed in the education system fall outside the REI. Teachers involved in R&D (researchers, Ph.D.-students among others) therefore fall under the rules of the Patent Law, i.e. the inventors belong to the "teachers".

2. Copyright

- 2.1 According to the *Copyright Act* it is the creator of a work that owns the copyright. The creator can succeed all or some of his rights to the work, but retain the right to be recognised as the creator when the work is copied or made public. This *droit moral* also includes protection from "insulting" changes and publications. The *droit moral* can only be waived if specified to a specific nature and limited utilisation of the work.
- 2.2 An exception from this general rule are *computer programs* that an employee has created as part of his work or after instructions from his employer, which are owned by the employer unless there is a contract saying differently.
- 2.3 Another "rule of thumb" derived from a judgement by the Swedish Labour Court is that an employer is allowed to utilise works that are the result of the employee's duties, within the employer's area of business and in normal operation. The employer's right to utilise is limited to what could be foreseen at the time the work was created.
- 2.4 Important to remember when *drafting contracts* regulating how the employee's rights are passed to the employer is *the principle of specification*. This principle states that if the contract does not specifically regulate or is unclear concerning certain rights – such as the right to change, modify, license or transfer - it is presumed that the creator retains the rights, and that the employer is prohibited to take such actions.

3. Design: The *Design Act* follows the same pattern seen above. The designer has the right to apply for a registered design, i.e. is the owner of the design. The designer can succeed his right to apply for a design, or at a later stage the registered design, but retain the right to be recognised as the designer in the design registry.

3.1 The Design Act does not include any rules pertaining to employment relationships. However, according to the *EU Design Regulation* designs created as part of the employees work or after instructions from his employer are owned by the employer unless there is a contract stating the opposite. This rule is probably applicable for all designs, as the EU regulation normally supersede national legislation or in this case could fill out the lack of legislation.

4. Crop Design

4.1 *Law of Crop Design* states that the developer of the new crop is the owner of the right to apply for a registration.

5. Integrated Circuit Board Design

5.1 According to the *Law of Integrated Circuit Board Design*, designs created as part of the employees work are owned by the employer unless there is a contract stating the opposite, if the employer is a citizen or resident of - or has his business in - the European Economic Area.

Commissioned work

There is no special regulation for commissioned worked so the general rule applies, i.e. the person performing the commissioned work leading to an IPR is the owner of that right unless otherwise stated in the contract for the commissioned work.

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