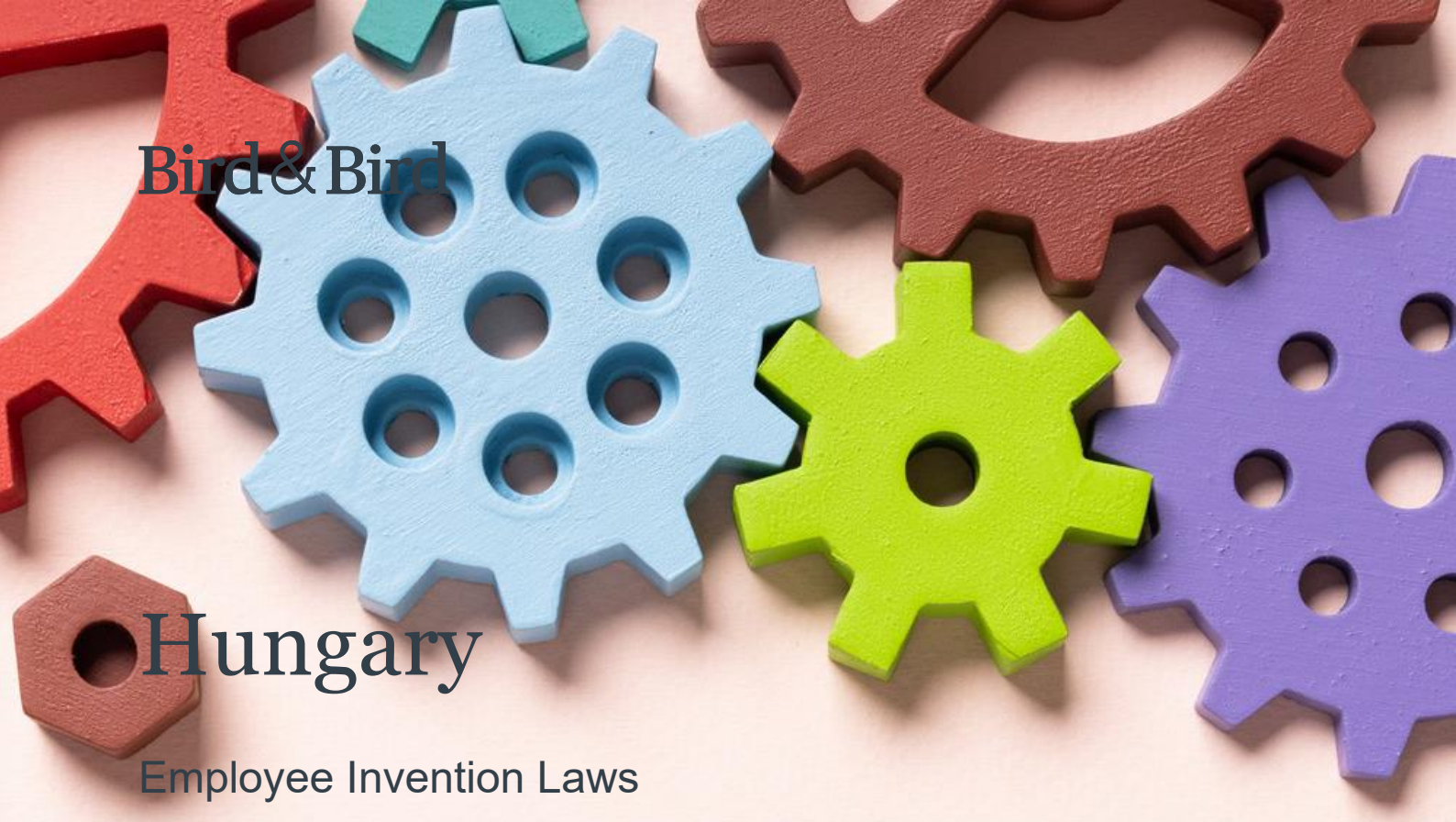

Bird & Bird

Hungary

Employee Invention Laws

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Hungary – Employee Invention Laws

Does your country have specific laws governing employee inventions?

Yes, regulated under patent legislation with extended coverage.

Primary Legislation/Law: Hungarian Patent Act

Extended Coverage: Hungarian Utility Model Act (UMA) applies Patent Act provisions to employee-created utility models

Scope: Comprehensive coverage of both patents and utility models under unified framework

What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

Hungarian Patent Act applies to inventions which are patentable in Hungary.

Coverage/Scope: Sections 9-10 of the Patent Act distinguish between:

- Service inventions
- Employee's inventions
- Limited to persons in service or employment relationships

Which categories of employees are covered by your national employee invention laws?

The Patent Act does not define employment relationship, which is a prerequisite for an employment invention.

Employment Definition: Hungarian Labor Code defines employment as work based on contract for personal performance under employer management and supervision for compensation.

Exclusions:

- Owners (unless also employees).
- Board members (unless also employees).
- Independent entrepreneurs on service contracts.

Extended Coverage (Section 17 Patent Act):

Provisions apply mutatis mutandis to:

- Government service relationships
- Public service relationships
- Civil service relationships
- Healthcare service relationships
- Public education employment relationships
- Tax and customs authority service relationships
- Law enforcement administrative staff relationships
- Army civilian personnel relationships
- National security services civilian staff
- National security service relationships

- Cooperative members in quasi-employment relationships

What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

The Patent Act provides that the invention has to be made during the employment relationship to fall under the scope of its application. There are no specific restrictions on the field of inventions.

Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

Yes. Hungary defines in two different categories:

Service Invention: Inventions created during job-related duties. Employer owns but must offer it back if not patented or protected as a trade secret.

Employee Invention: Developed independently but within employer's business. Employee owns; employer may request use rights.

What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

The patent for a service invention belongs to the employer as the inventor's legal successor.

The inventor must report the invention to the employer immediately after its creation. The employer then has 90 days to claim title; otherwise, the inventor retains ownership.

If the employer claims title, it must file a patent application within a reasonable time and act with due care. If it fails to do so or causes rejection, it must offer a free assignment of the patent claim back to the inventor.

For employee inventions (non-service), the inventor retains ownership. The employer may request non-exclusive use, but this right cannot be transferred, assigned, or licensed - except upon the employer's termination or restructuring. The employee controls disclosure, and the employer may only use the invention accordingly. If the employer does not declare use within 90 days, full rights remain with the employee.

How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

Generally, the Metropolitan Court of Budapest has exclusive jurisdiction over patent related disputes in Hungary. In such cases, a three-member judicial panel acts, where at least two of whom have a scientific university degree.

However, disputes in relation to royalties generated by service and employee inventions are exempt from the Metropolitan Court of Budapest exclusive jurisdiction. Such disputes are dealt by regional courts with single member judicial panels where the judge has no technical qualification.

In such disputes usually there is export evidencing, by means of an export report from the Body of Experts on Industrial Property, or individual experts.

There is no alternative or special dispute resolution mechanism for disputes arising from employees' inventions.

Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

Under the Hungarian Patent Act, employers must conclude invention fee agreements with employee inventors. These agreements are governed by civil law - not employment law. If no agreement is made, the employee may claim a proportionate royalty based on revenue generated by the invention.

Invention fee agreements allow employers to avoid paying such royalties by offering lump-sum payments tied to milestones (e.g., patent filing, publication, or grant), even before revenue is generated.

The Patent Act defines "utilisation" broadly - covering manufacturing, use, licensing, assignment, or even deliberately withholding use to maintain a competitive position.

Although not regulated, company IP policies often supplement national law and may include invention-related provisions. As these agreements are based on the Civil Code (not the Labour Code), they must comply with general terms and conditions requirements.

State-owned or municipal research facilities, including budgetary institutions, public-benefit nonprofits, and universities, must adopt IP management policies. Employers can issue such policies freely under their right to direct work under the Labor Code.

Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

If no invention fee agreement is in place - or if it follows the default rule of proportionate royalties based on revenue - the employer is not required to pay upfront compensation upon assignment of rights.

Once the invention begins generating revenue, the employee becomes entitled to a proportionate royalty.

In practice, employers often use invention fee agreements with advance lump-sum payments, typically tied to milestones such as patent filing, publication, or grant.

Compensation must always be in addition to the employee's salary. Invention fee payments are typically itemised separately on payslips, as they are subject to a different tax rate than regular salary.

What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

Inventors are entitled to remuneration for both direct and indirect exploitation of a service invention, or even if the invention is not exploited but retained to maintain a competitive position. The default method is a proportionate royalty based on revenue generated. Alternatively, the parties may agree in writing to a lump-sum invention fee, payable before revenue generation.

The royalty rate is not fixed by law; the starting point is typically the licence analogy. The amount may be adjusted using quantifiable factors, ideally documented in the invention royalty contract, supported by case law and guidance from the Body of Experts on Industrial Property.

Total Net Turnover: Royalty is based on total net turnover, which must be clearly defined. Typically, net turnover equals revenue minus VAT, and may be further reduced by direct costs related to registration or exploitation (e.g. duties). Only directly sale-related costs should be deducted - not general or recoverable expenses. In some cases, a revenue-sharing structure excludes income needed for return on investment or profitability, so only the invention's net benefit is used.

Coverage Ratio: While not defined in statute, case law recognises the coverage ratio as the share of net revenue attributable to the invention. It may be based on the invention's technical contribution and adjusted to reflect its economic significance. A 100% ratio may apply if no equivalent substitute exists.

Licence Fee: Licence fees are typically a percentage of net revenue. Rates are higher for exclusive than non-exclusive licences, and for patents compared to know-how. Public databases for similar industrial technologies often serve as benchmarks. Royalty rates for service inventions generally do not exceed 50%.

Inventor Contribution: The inventor's share is based on the level of employee and employer involvement. Relevant factors include:

i. whether the invention was within the employee's job scope,
ii. if it was later assigned by a superior; or
iii. if the employee independently identified and solved the problem.

Other considerations include the extent to which the employee relied on the employer's infrastructure versus independent effort, and whether their qualifications or job role created a reasonable expectation of inventiveness.

Bálint Halász

Partner

+3613018903
balint.halasz@twobirds.com

Patricia Beregszászi

Senior Associate

+3613018928
patricia.beregszaszi@twobirds.com

Máté Molnár

Trainee Associate

+3613018928
patricia.beregszaszi@twobirds.com

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai • Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • Lisbon • London • Lyon • Madrid • Milan • Munich • Paris • Prague • Riyadh • Rome • San Francisco • Shanghai • Shenzhen • Singapore • Stockholm • Sydney • Tokyo • Warsaw