Spain

Employee Invention Laws

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Does your country have specific laws governing employee inventions?

Yes, regulated under current patent law.

Primary Legislation/Law: Act 24/2015 on Patents (24 July 2015). Also known as: Spanish Patent Act (SPA).

What types of intellectual property are covered by your national employee invention laws?

Spanish Patent Act (SPA) applies same regulation to:

- Patents (Articles 15 et seq. SPA).
- Utility Models (Article 150 SPA).

Trade Secret Provisions: Non-patentable technical improvements obtained during R&D activities that provide employer advantages similar to patents/utility models entitle employee to reasonable compensation.

Limitation: Trade secret compensation provision not applicable to service provider.

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

Spanish Patent Act (SPA) applies to both private (Article 15.1 SPA) and public sector (Article 20 SPA).

Employee Definition:

- Officials and state workers
- Research personnel with special regime (Article 21 SPA)
- Service providers hired for research activities that explicitly or implicitly constitute contract subject matter (Article 15.1 SPA)

Extended Coverage includes:

- Owners or board members (if not already employees)
- External inventors

Research Personnel Definition: Reference to Article 13 of Act 14/2011 on Science, Technology and Innovation - those with required qualifications carrying out research activities as creative work to increase knowledge stock and create new applications.

Institutional Variations: Public institutions commonly have supplementary rules to general regulation.

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

1 **Temporal restrictions:** The SPA applies to inventions created during the course of the employment (private, public, including reasearch personnel) or services agreements. Additionally, inventions for which an application for a patent or utility model is filed within one (1) year of the termination of the employment or service relationship are presumed to have been made during the term of that relationship. However, the ex-employee or ex-service provider can rebut this presumption by providing evidence that the invention was developed independently.

2 **Territorial restrictions:** The SPA applies to inventions developed within Spanish territory and employment (private or public) or service relationships governed by Spanish law. For employees who work abroad or across multiple jurisdiction the applicable law would depend on the circumstances of the case and subject to general principles of EU private international law.

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

Yes, the SPA recognises five different inventions, that will be identified as Type I, Type II, Type III, Type IV and Type V as follows:

- **Type I (Inventions belonging to the employer):** According to Article 15 of the SPA, inventions created during employment (public/private) or service relationships belong to the employer if they are the result of research that is explicitly or implicitly part of the subject matter of the contract.
- **Type II (Inventions belonging to the employee or service provider):** According to Article 16 of the SPA, these are inventions made by the inventors outside of their work duties and without using resources provided by the employer.
- **Type III (Inventions assumable by the employer):** This regulation is only applicable to employment relationships (public/private). According to Article 17 of the SPA, if an invention is related to the employee's professional activity within the company and has been made using knowledge or resources provided by the company, the employer can assume ownership of the invention.
- **Type IV (Non-patentable technical improvements obtained by the employee):** These improvements can only be claimed by the employee (not the service provider) and they could be found during the development of Type I or III inventions according to Article 18.3 of the SPA.
- **Type V (Inventions made by research personnel):** According to Article 21 of the SPA, these inventions belong to the entities (such as public universities or public research centres) whose researchers develop them in the exercise of their duties.

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 process depends on the invention type:

- **Type I:** Ownership automatically transfers to the employer. The inventor must notify the employer within one month of completing the invention.
- **Type III:** Same notice period applies. The employer then has three months to assume ownership. If it does not respond within that time, its rights expire, and the employee may file the patent. If the employer claims ownership but does not file for protection within a reasonable, agreed period, the employee may file on its behalf.

- **Type V:** Research personnel must notify completion within three months or lose entitlement to remuneration. The research entity also has three months to claim ownership. If it does not, the same rules as for Type III apply.

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

Disputes under the SPA fall under the exclusive jurisdiction of designated Spanish Commercial Courts. Only the following commercial courts in Barcelona, Madrid, Valencia, Granada, A Coruña, Las Palmas, and Bilbao handle patent matters.

Parties may also opt for voluntary conciliation before the Spanish Patent and Trademark Office (Article 133 SPA) or choose arbitration or mediation as alternative dispute resolution methods (Article 136 SPA).

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

While there are no explicit regulatory requirements mandating the implementation of employee invention policies in Spain, the growing importance of intellectual property assets in the Spanish economy has driven increased adoption of formal employee invention policies. companies that do implement such policies must ensure compliance with the Patent and Employment Law's mandatory provisions.

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

Yes, but there are differences depending on the type of invention:

- **Type I**: In this case, the inventor will not be entitled to additional remuneration, except if the inventor’s personal contribution to the invention and its importance to the employer clearly exceed the explicit or implicit content of the inventor's contract.
- **Type III**: In this case, the employee (public/private) is entitled to a reasonable economic compensation.
- **Type IV**: The employee (public/private) is entitled to a reasonable compensation from the employer.
- **Type V**: The researcher always has the right to participate in the benefits obtained by the entities where they work when these entities exploit or license rights over the researcher's inventions, particularly when the patent/utility model is filed in the entity's name or when trade secrecy is decided. Alternatively, these entities may assign ownership of the inventions to the researcher while reserving a non-exclusive, non-transferable, free exploitation license or a share of the benefits.

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

The first step is to determine the invention’s value, considering:

a sales generated compared to previous years,

b net profits (economic benefit to the company), and

c the scope of exclusivity granted - e.g., market value of similar technologies, licensing potential, or strategic relevance to the company.

The criteria for assessing compensation vary by invention type:

- **Type I inventions:** require a proportionality analysis between the invention's value and the inventor's personal contribution. This includes whether the inventor's knowledge, time, and effort clearly exceeded contractual expectations. A disparity between the invention's value and the employee's normal remuneration is also a relevant factor.
- **Type III inventions:** are assessed based on the invention's value, company-provided knowledge or resources, and the inventor's individual contribution.
- **Type V inventions:** are subject to criteria set by the relevant university or government authority, which determines the amount and scope of remuneration for public research institutions.

Do your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

In general, the reasonable compensation consists of a lump sum.

However, Article 17.2 of the SPA for type III inventions recognises that royalties may also be set, either as an alternative or in combination, although royalties are not mandatory.

For its part, under Article 21.4 of the SPA, it is a statutory obligation to grant royalties to research personnel that develops type V inventions. However, the public institutions can grant additional types of remunerations.

What is the general level that is considered sufficient or customary in your jurisdiction as a mandatory compensation?

There are no details on the payable amounts or calculation methods provided in our SPA. As we have seen, the determination of the compensation depends on the circumstances of the case and, in particular, on the importance of the invention for the company concerned.

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