

Who Owns The Technology Developed By Hi-Tech Employees In Israel?

Intellectual property, generally known simply as “IP”, is the lifeblood of many technology companies. The above is particularly true with regards to start-up companies, whose valuation during the early stages of the company’s growth is often based entirely on the value of its IP. However, the actual creators of IP are individuals, often employees and contractors, therefore it is vital that a tech company understand its position regarding ownership of IP and how to ensure that all IP created is owned solely by the company.

Patents Law

According to the Israeli Patents Law – 1967, in the event there is no agreement stipulating otherwise, the intellectual property rights to an invention that an employee developed during and as a result of his employment with a company is owned by the company. Furthermore, Section 134 of Israeli Patents Law provides that if there is no agreement determining that an employee is entitled to compensation for the creation of such intellectual property, the matter may be decided by the Special Committee for Compensations and Royalties.

In recent years, Israeli courts have issued various rulings regarding the interpretation of Section 134. The courts have held that an employee’s right to be compensated for the creation of such IP is personal and separate from the ownership rights of the IP itself. The courts have further held that this right can be waived by the employee.

In order to avoid misunderstandings, it is common practice in Israel for employees of Hi-Tech companies to sign an agreement which includes provisions that (i) their compensation package constitutes the full consideration to which they are entitled for the development of IP for the Company and (ii) they waive the right to demand additional compensation for such intellectual property. Such provisions are often part of their employment agreement. Other times such provisions are included in a supplemental Technology Assignment and Ownership Agreement which is entered into between the employee and the employer.



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This issue is important for each Israeli company engaging in the development of technology and intellectual property as well as its investors and potential acquirers, as it is in the interest of all parties concerned to reduce the company's exposure to potential lawsuits by existing or former R&D employees. Investors, as well as other companies negotiating in an M&A transaction, will meticulously check, as part of their due diligence process, that sufficient documentation is in place setting forth the full ownership of all IP with the Company, and not with its employees.

What precautions should a High Tech Company take to ensure the full ownership of IP created?

As described above, in order for a company to ensure ownership rights to the technology developed by an employee are owned by the company, the company should sign all employees on Intellectual Property Ownership and Assignment Agreement, or at the very least provisions of this nature should be included in the employment agreement. Such agreement should include the following:

Ownership: the employee and the Company agree that any invention that the employee makes during the period of his employment will be owed exclusively by the Company.

Disclosure: the employee shall undertake to disclose all information relating to any invention made during the period of his employment and to deliver any documents or materials relating to the invention to the Company.

Registration: the employee shall undertake to assist the Company in registering the rights to the technology developed.

Confidentiality: the employee shall undertake to keep all information regarding the technology confidential. If an agreement is not agreed on with the employee, then the protection provided to the Company is only as set forth in the Patent Law, which imposes on the Company the obligation to prove that the invention was made on a work-made-for-hire basis.

Joint Ventures with Universities

In Israel, joint ventures between universities and commercial entities are a very popular trend and are especially common in the Bio-Tech field. Cooperation between universities and commercial entities are structured in several different ways: some are R&D projects funded mostly by the commercial entity, some are governed through a license agreement which assigns the commercialization or the distribution rights of intellectual property developed by the university over to commercial entities. Each academic institution has set up a technology transfer company in order to manage the commercialization of IP developed by such institutes. These companies provide infrastructure and applied research facility



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support, they assist in business development, patenting, legal issues, strategic alliance development and identification of investors, establishment of start-ups, administration and other areas associated with commercialization of technologies.

Founders and IP Ownership

Many Start-Up companies begin as innovative ideas cooked up in mom's kitchen. It is often only after a period of time has passed and such idea has been developed further that the founders decide to incorporate their venture into a company. At such point, even if the founders do not hire additional staff, they themselves become employees of the newly founded company. As a result of such, it is imperative to assign the IP created by the venture to the company. At that point, the technology is no longer owned by the founders, but their company. This may be difficult for founders to digest, however in the long run the proper assignment to, and full ownership by, the company owned by the founders, will enable the IP to be fully developed, hopefully into a meaningful (and lucrative!) product.

This document provides a general summary and is for information purposes only. It is not intended to be comprehensive nor does it constitute legal advice. If you are interested in obtaining further information please contact our office at:

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