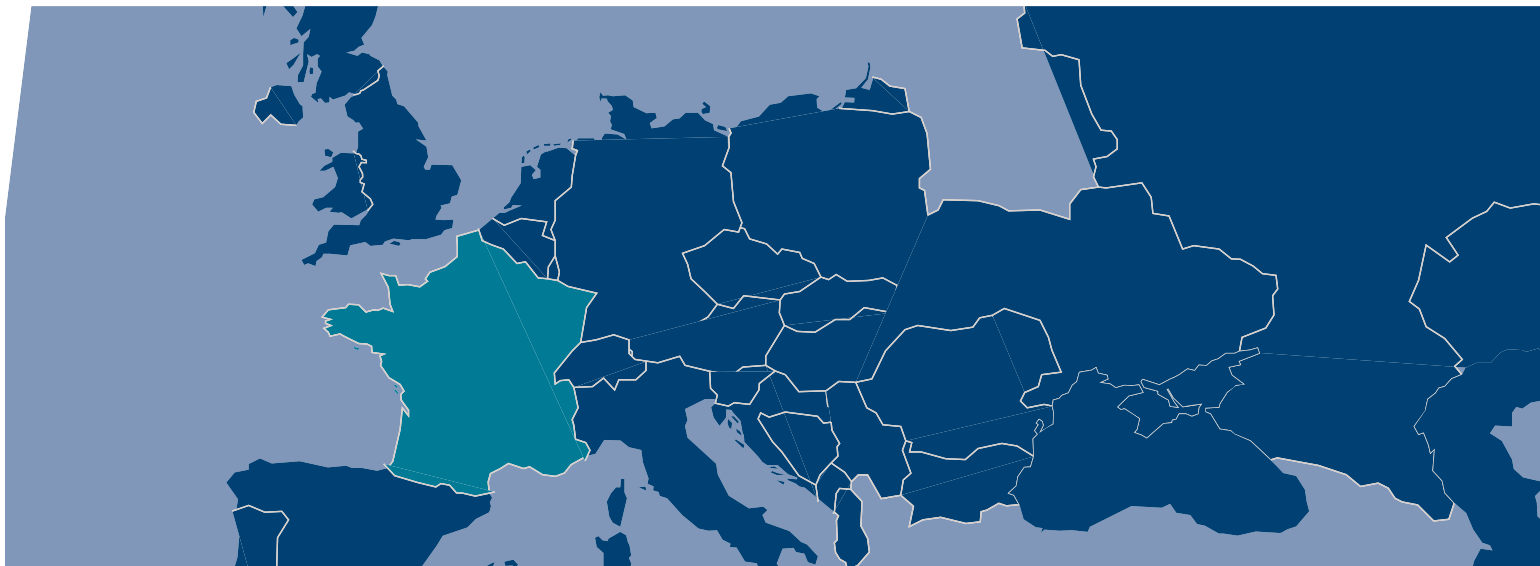




Compensation law in France

Solène Vilfeu, Associate in our French patent team, describes the position for employers in France.

Sources

Under French law, determination of employee inventor compensation raises numerous issues, considering the lack of legal provision in this area.

The provisions governing employee inventions are derived from the following three sources:

- statutory provisions, namely, in the French Intellectual Property Code (IPC) or in the Labour Law Code
- collective bargaining agreements (i.e. agreements governing all employees working in a particular industry)
- company agreements (i.e. agreements between the company and its unions applicable to all employees working in the company) or individual employment contracts.

French statutory provisions

The statutory provisions regarding employee inventions are contained primarily in one article, Article L. 611-7 of the IPC, which distinguishes three categories of employee inventions.

This provides that where an employee is expressly employed to invent, or appointed to a documented research project, the invention belongs to their employer. Such employees can claim 'additional remuneration', to be determined by the applicable collective agreements, company agreements and individual employment contracts.

In addition, the law provides that in many other cases where the employee makes an invention in the course of employment, although not within the scope of their normal and specific duties, the employer shall be entitled to an assignment or licence of the patent rights. In these cases, the employee is entitled to a fair price which, failing agreement between the parties, shall be stipulated by the joint conciliation board set up by Article L 615-21 or by the court; these shall take into consideration all relevant issues to enable calculation of the fair price as a function of both the initial contributions of employer and employee, and the industrial and commercial utility of the invention.

Other inventions belong to the employee and the employer has no rights in them unless expressly agreed.

Under French law, when an employee develops an invention, he or she must immediately declare it to their employer, and propose a classification of the invention between the above three categories. The employer has two months in which to dispute the employee's classification.

Calculation of additional remuneration

Since the statutory provisions do not specify the method for calculating such remuneration, this can present difficulties. Collective agreements and company agreements do not typically express any detailed provisions as to the calculation of such remuneration.

For example, Article 17 of the Chemical Industry collective agreement provides that the assessment of the additional remuneration must take into account (1) the general research framework of the inventor; (2) the original contribution of the inventor; (3) the difficulties in practical development of the invention; and (4) the economic value of the invention.

On the other hand, company agreements often provide for a bonus structure for patented inventions, irrespective of exploitation of the invention or other such matters. For example, a fixed bonus may simply be granted when the patent application is filed. However, some companies that particularly aim to encourage their researchers offer a bonus to reflect the value of the invention – such as an additional proportion of the employee's salary.

Where collective agreements, company agreements and individual employment contracts are silent on the details, French Courts have developed various criteria to calculate additional remuneration, such as:

- the four criteria of the Chemical Industry collective agreement
- the commercial success of the invention
- the period of exploitation of the invention
- the number of contributors to the product's success
- the amount of the employee's salary which can be multiplied by a suitable coefficient
- for public entities, specific rules applicable to civil servants, which provide that the additional remuneration consists in a bonus share in the revenues derived from the invention.

This last criterion is particularly favourable to the inventor because the bonus depends on the company's revenues derived from the invention without any limitation.

Actions for the payment of additional remuneration

Actions for the payment of additional remuneration are subject to a limitation period of five years. However, this starts running only after the employee gains knowledge of the exploitation of the invention by the employer.