



Who has the right to apply for a patent/utility model?

Proceeding from the [Constitution of the Republic of Estonia](#) § 39, an author has inalienable rights to his or her creation. Therefore, the right to apply for a patent/utility model and become the proprietor of a patent shall belong to the author of the invention. In case of the death of the author, the right to apply for a patent shall be transferred to the inheritors or legal successor(s) of the inventor ([Patents Act § 12](#) Section 1).

On the other hand, most of the inventions for which a patent is applied for are created in scientific research establishments by employed scientists and engineers whose task is to find new technical solutions and, therefore, if an invention is created in the performance of contractual obligations or duties of employment, it is legitimately considered to belong partially or wholly to the employer. In many countries the right to apply for a patent and to become the proprietor of a patent is vested in the author or other person pursuant to the contract or employment contract.

In Estonia the author of the invention has the right to apply for a patent for the invention created in the performance of duties of employment until a separate act shall have been passed. Where the invention has been made in the performance of contractual obligations or duties of employment, the right to become the proprietor of a patent shall belong to the author or to another person pursuant to the contract or contract of employment ([PA § 12](#) Section 2). Therefore, if such contract has not been concluded, the right to apply for a patent shall belong to the author.

The data concerning the existence of such contract and its kind should be filed in the patent application, although the Patent Office shall not examine the correctness of the data at the receipt of the patent application.

If the patent belongs to the employer or to another person, the author has the right to receive fair proceeds from the profit received from the invention (sometimes from the non-use of the invention) ([PA § 13](#) Section 8).

Several applicants (joint applicants), e.g. the author and his or her employer, may file a patent application jointly. Joint applicants should agree upon the conditions of patent ownership and use of the invention before filing of a patent application.

If two or more persons apply for a patent regarding the same invention independently of each other and different natural persons are indicated as the author, the natural person who is indicated as the author in the patent application which has been filed earlier or which has an earlier date of priority is deemed to be the author ([PA § 12](#) Section 5).

Can a minor file an industrial property rights application with the Estonian Patent Office?

Due to the rising popularity of the Estonian Contest for Young Inventors, the Estonian Patent Office reminds the following.

According to Estonian legislation persons who have attained 18 years of age (adults) have full active legal capacity. A minor between 7 and 18 years of age has restricted active legal capacity and can enter into valid transactions only with the consent of his or her legal representative. Minors under 7 years of age are not entitled to sign due to their age.

In case the applicant of the registration application of an object of industrial property rights has restricted active legal capacity, we ask to include the written consent of his or her legal representative to the application. A parent who has the right of custody is the legal representative of a child. Parents who have joint custody have a joint right of representation. Also, please determine



how you would like to proceed with the following procedures at the patent office. There are two options.

1. The legal representative gives permission that the person with restricted active legal capacity makes further transactions concerning the application independently at the patent office.
2. The legal representative decides to represent the person with restricted active legal capacity. In that case, all transactions at the patent office will be made by the legal representative.

If the person with restricted active legal capacity files an application with the patent office without the written consent of his or her legal representative, the patent office issues a notification to the applicant, asking the legal representative to give his/her consent to the procedure. The patent office also asks to determine how they would like to proceed with the following procedures at the patent office. If the legal representative does not give his/her consent in two weeks from receiving the aforementioned proposal, the consent will be deemed as not given. In that case, the filed application is deemed void.

According to the legislation in force, the applicant is not obliged to inform the patent office of his/her age. But if it is clearly apparent to the patent office that the applicant has restricted active legal capacity, the patent office issues a notification to the applicant, asking the legal representative to give his/her consent to the procedure.

Was this information useful? * Yes

No

Please provide details:

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