



JPM

JANKOVIĆ POPOVIĆ MITIĆ

**IZMENE ZAKONA O PATENTIMA – PRONALAZAK IZ
RADNOG ODNOSA
AMENDMENTS TO THE LAW ON PATENTS – INVEN-
TION FROM THE EMPLOYMENT RELATION**



IZMENE ZAKONA O PATENTIMA – PRONALAZAK IZ RADNOG ODNOSA /
AMENDMENTS TO THE LAW ON PATENTS – INVENTION FROM THE EMPLOYMENT RELATION

Publisher: JPM Janković Popović Mitić
NBGP Apartmani, Vladimira Popovića 6
www.jpm.rs

Autor: Olivera B-rkovic, Senior Associate

Design and prepress: JPM Janković Popović Mitić

Copyright: © JPM Janković Popović Mitić 2019. All rights reserved.

Disclaimer:

The sole purpose of this publication is to provide information about specific topics.
It makes no claims to completeness and does not constitute legal advice.
The information it contains is no substitute for specific legal advice.

If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at JPM Jankovic Popovic Mitic.

Dana 26. septembra 2019. godine, stupio je na snagu Zakon o izmenama i dopunama Zakona o patentima Republike Srbije.

Ove izmene Zakona o patentima u najvećem delu odnose se na pronalaskе iz radnog odnosa.

Pronalazak iz radnog odnosa:

Pronalaskom iz radnog odnosa, u skladu sa ovim izmenama, smatra se pronalazak koji je zaposleni stvorio obavljaјуći poslove utvrđene ugovorom o radu ili posebnim aktom poslodavca u vezi sa istraživanjem i razvojem, a što pre ovih izmena nije bilo precizirano i u obzir su pored ugovora o radu dolazili i drugi ugovori po kojima je jedno lice bilo angažovano.

Dodatno, pronalazak koji je stvoren korišćenjem resursa, znanja, obuke ili sredstava koje je obezbedio poslodavac smatra se pronalaskom iz radnog odnosa, bilo da je stvoren tokom trajanja radnog odnosa ili godinu dana nakon prestanka istog.

On 26th September 2019 the Law on Amendments to the Serbian Law on Patents came into force.

These Amendments to the Law on Patents are related mainly to the inventions made in the course of employment.

Invention from the employment relation:

Invention from the employment relation, in accordance with these amendments, is invention that an employee created performing work tasks determined under an employment agreement or by a separate act of the employer in regard to the research and development, which prior to these amendments was not specified and other agreements under which one person was engaged were also taken into consideration.

In addition, the invention created using resources, knowledge, training or resources provided by the employer is considered as invention from the employment relation, whether it is created during the employment relation or one year after termination of the same.

Zaštita pronalaska iz radnog odnosa koji je stvoren u roku od godinu dana nakon prestanka radnog odnosa:

Ovim izmenama Zakona o patentima omogućeno je poslodavcu da zaštiti pronalazak koji je stvoren u roku od godinu dana po prestanku radnog odnosa, što ranije nije bio slučaj.

Naknada zaposlenom u vezi sa pronalaskom iz radnog odnosa:

Kriterijumi za utvrđivanje visine naknade zaposlenom za pronalazak iz radnog odnosa, kao i način i vreme plaćanja iste najpre je ostavljeno poslodavcu i zaposlenom da utvrde (opštim aktom poslodavca, ugovorom o radu ili posebnim ugovorom koji poslodavac i pronalazač zaključe povodom konkretnog pronalaska).

U slučaju da poslodavac i zaposleni nisu odredili kriterijume jednim od pomenutih akata, ovim izmenama Zakona o patentima utvrđeno je šta se uzima u obzir prilikom određivanja naknade u svakom pojedinom slučaju:

1. ekonomski i drugi doprinosi koji proizlaze iz iskorišćavanja pronalaska od strane poslodavaca ili trećih lica, uz pristanak zaposlenog;
2. doprinos poslodavca u stvaranju pronalaska, naročito sredstva koja su stavljena na raspolaganje zaposlenom;
3. pojedinačni doprinos svakog pronalazača, u slučaju da je pronalazak stvoren od strane više zaposlenih.

Ekonomski efekti iskorišćavanja samog pronalaska više nisu jedini kriterijum za određivanje visine naknade zaposlenom, kako je to bilo pre izmena Zakona o patentima, već je to sada samo jedan od predviđenih kriterijuma.

U slučaju da i uz primenu zakonom određenih kriterijuma iz tačaka 1, 2 i 3, poslodavac ili zaposleni ne postignu saglasnost u vezi sa naknadom, nadležni sud će na zahtev jednog od njih da odluči o visini i načinu plaćanja naknade.

Protection of the invention from the employment relation created within one year after termination of the employment relation:

By these amendments of the Law on Patents, the employer is enabled to protect the invention that is created within one year after termination of the employment relation, which was not the case previously.

Compensation to the employee in regard to the invention from the employment relation:

The criteria for determining the amount of compensation to an employee for the invention from the employment relation, as well as the manner and time of the payment of the same, are first to be determined by the employer and employee (by a general act of an employer, employment agreement or by a separate agreement that employer and inventor execute in regard to the particular invention).

In the event that employer and employee have not established criteria by one of the mentioned acts, with these amendments to the Law on Patents it is determined what to take into consideration in each particular case during determination of the compensation:

1. economic and other contributions resulting from the exploitation of the invention by employers or third parties, with the consent of the employee;
2. contribution of the employer to the creation of the invention, in particular the funds that are made available to the employee;
3. individual contribution from each inventor, in the event that several employees created the invention.

The economic effects of exploiting the invention are no longer the only criteria for determining the amount of compensation to an employee, as it was prior to the amendments to the Law on Patents, now they are only one of the criteria.

In the event that, even with application of the criteria from the points 1, 2 and 3, employer or employee do not reach the agreement in regard to the compensation, as per request of an employer or an employee, the competent court shall decide on the amount and the manner of payment of the compensation.



Takođe, zaposleni više nema pravo na naknadu u slučajevima prenošenja prava ili ustupanja licence za iskorišćavanje pronalaska iz radnog odnosa na treće lice od strane poslodavca.

Postupanja zaposlenog i poslodavca u vezi sa pronalaskom iz radnog odnosa:

Sadržaj izveštaja, koji je zaposleni koji stvori pronalazak u radnom odnosu dužan odmah da podnese poslodavcu, sada je utvrđen Zakonom.

Poslodavcu je sada ostavljen rok od 6 meseci da obavesti zaposlenog o tome da li se pronalazak smatra pronalaskom iz radnog odnosa ili ne, računajući od dana prijema urednog izveštaja zaposlenog, odnosno od saznanja poslodavca za pronalazak, umesto 2 meseca koliko je bilo predviđeno pre izmena ovog Zakona.

Ukoliko poslodavac smatra da se radi o pronalasku iz radnog odnosa, u skladu sa izmenama Zakona o patentima ima razuman rok za podnošenje prijave za zaštitu pronalaska. Ranije je ovaj rok bio utvrđen i iznosio je 6 meseci.

Furthermore, the employee is no more entitled to the compensation in cases of the transfer of the right or assignment of a license for exploiting the invention from the employment relation to the third party by the employer.

Acting of an employee and an employer in regard to the invention from the employment relation:

The content of the report, which an employee who creates the invention from the employment relation is required to submit without delay to an employer, is now determined within the Law.

The employer is now allowed to notify the employee in a period of 6 (six) months, whether the invention is considered an invention from the employment relation or not, counting from the date of receipt of the employee's report or from the day of the employer's knowledge of the invention, instead of 2 (two) months period, which was prescribed before the amendments of this Law.

If the employer considers the invention as invention from the employment relation, in accordance with the amendments to the Law on Patents, he has a reasonable time to file an application for the protection of the invention. Previously, this deadline was set at 6 (six) months.



JPM

JANKOVIĆ POPOVIĆ MITIĆ

Vladimira Popovića 6 | NBGP Apartmani

11070 Beograd | Srbija | tel: +381 11 207 6850

fax: +381/11/207-6899

www.jpm.rs