

Rules for Remuneration

Aalborg University's Rules for Remuneration

Current rules for calculation of remuneration for patentable inventions at Aalborg University, effective for inventions reported after July 1, 2009

Under the Act on Inventions at Public Research Institutions, revenue from commercialization (commercial exploitation) of patentable inventions that are covered by the Act must be reasonably shared between the inventor and the university. This may involve the following three situations:

1. Distribution of remuneration according to §12, subsection 1 (when the university holds the rights)

Aalborg University acquires the rights to the invention and undertakes the commercial exploitation of the invention. In such cases, the inventor,* who has made the invention is entitled to reasonable remuneration under § 12, subsection 1 of the Act.

2. Distribution of remuneration according to §12, subsection 2 (when the inventor holds the rights)

The inventor obtains permission from the university to retain the rights and has the opportunity for commercial exploitation of the invention, for example in their own firm or through sale of the invention. If the right to an invention is commercially exploited by the inventor the university is entitled to reasonable remuneration under §12, subsection 2.

3. Distribution of remuneration according to §9 (cooperation agreements/contracts)

For externally funded projects (contracts) in which one or more external partners finance all or part of the research activity, it must be agreed in the contract how ownership of the project's results is handled, including the right to commercial exploitation of any inventions. If the commercial exploitation, whether it is by the external party or by the university, gives the university revenue, such revenue is distributed according to these same principles that are applicable in the above section 1. (Distribution of remuneration according to §12, subsection 1 (when the University holds the rights)).

Remuneration requirement

The remuneration requirement arises only in the event of commercial exploitation of an invention.

Commercial exploitation can occur, for example, by:

- Sale of licenses
- Sale of patents/patent applications
- Sale of the invention

The term "Transfer" means the same as sale.

The remuneration requirement occurs only if/when commercialization brings in net income.

Net income is calculated as follows:

Net income = revenue (payments from a third party) - minus direct defrayed costs

Definition of "reasonable remuneration"

The law is clear that the inventor/university has the right to "reasonable remuneration" from the party who is the rights holder (inventor or university) and who holds the rights to commercial exploitation. This means that financial compensation that reflects the invention's real market value must be paid. Remuneration must be calculated based on the revenue that the invention generates in connection with commercial exploitation throughout the invention's (can be the patent's) lifetime. "Reasonable remuneration" can therefore be defined as a predetermined percentage of the net income that the rights holder has remaining when the direct costs of patenting /sales activities, etc. are defrayed.

An employee's personal employment conditions, including salary or circumstances surrounding the genesis of the invention, are irrelevant in determining remuneration.

The revenue/expenditures that are taken into account in the calculation of remuneration cover revenue/expenditures concerning the invention from the reporting date for the invention (inventor's statement to the university on the invention) to the most recent of the following events: 1) the invention's /patent's expiration/termination, or 2) the agreed upon time period that the commercialization of the invention/the patent expires/terminates.

Direct defrayed costs

In the calculation of an invention's net income the direct defrayed costs are included.

Included in direct defrayed costs are (the list is not exhaustive):

- A) Cost of evaluation of the invention's patentability and commercial potential
- B) Cost of filing and processing of patent applications
- C) Cost of maintenance of the patent, infringement assessments, etc.
- D) Cost of defense (infringement proceedings)

E) Cost of preparation of presentation material (e.g., webpage, brochure, etc) for exploitation of the invention

F) Travel and accommodation expenses for the university's administrative employees, inventors and consultants to negotiate the exploitation of the patent or other forms of commercialization of the invention

G) Cost of technical assistance, including laboratory costs for further development of the invention

H) Cost of insurance and shipment of test materials, if necessary as part of patenting or discussions concerning exploitation

I) Costs to documentation, development and commercialization activities (e.g., "Proof of Concept") especially agreed upon with the inventor, that are funded by the university

J) Honoraria for external advisors

The following types of expenses are not included in the direct defrayed costs (subject however to section 1 above):

- Salary for the inventor or for employees at the university's or the inventor's business
- General operating costs (indirect costs/expenses) such as rent, cleaning, office supplies, equipment, education program activities, etc.
- Costs defrayed by a third party.

In calculating net income for the inventor's commercialization of the invention, there may be costs other than the above. This refers primarily to situations where an inventor establishes his/her own business. In such cases, the inventor and the university shall agree on how revenue and expenses are calculated and documented.

In cases where the inventor's commercialization consists of sale to a third party, the revenue will be the amount/value the inventor receives from the third party/other legal entity - in such cases the above types of expenses are still included in the calculation of net income (that form the basis for calculating "reasonable remuneration").

1. Distribution of remuneration according to §12, subsection 1 (when the university holds the rights)

Calculation of remuneration to the inventor

“Reasonable remuneration” to the inventor is calculated as follows:

Revenue

- direct defrayed costs

= **Net income**

- percentage to the university

= **Reasonable remuneration to the inventor**

Schedule 1

For an equitable distribution between the inventor/inventors, the environment where the invention has been made and the Technology Transfer Office, remuneration is calculated according to the following rules:

Net income for distribution:	Inventor	University
	1/3	2/3

The Rector stipulates further rules for the distribution of the revenue that accrues to the university.

In all cases a financial statement must be prepared for every invention as of December 31st for the year’s revenue, direct defrayed expenses and net income. Any losses from previous years are deducted from revenue before the new net income for distribution is calculated and the distribution is made. There will be opportunity for payments on account, when conditions warrant it.

Distribution of remuneration in the form of shares or share options

The university may receive revenue in the form of shares and share options by transferring rights (e.g., transfer of the rights to the invention as such, the rights to one or more patent applications or licenses to commercial exploitation) as defined under §14, subsection 1 of the Act. In addition hereto, it is possible that the university regularly receives revenue in the form of dividends.

In cases where Aalborg University receives shares or the like, the university and the inventor can agree that the inventor shall receive remuneration as a percentage of the shares received or the like instead of a cash settlement at the time the university realizes its shares. Such an agreement must take into account the agreement entered into with the company. It can be agreed with the inventor that the inventor can receive reasonable remuneration in the form of shares. In connection with such agreement with the university on remuneration in shares, it is recommended that the inventor consult their own lawyer or accountant for advice, including especially tax consequences. Revenue in the form of shares or the like does not alter the principles for calculation of net income (see Schedule 1) or distribution. When paying in share options, payment of reasonable remuneration to the inventor is deferred until the university realizes the share options.

2. Distribution of remuneration according to §12, subsection 2 (when the inventor holds the rights)

When the inventor is allowed to retain the rights to the invention and undertakes the commercial exploitation, the inventor must always cover their expenses for patenting, etc., before any remuneration is paid to the university cf. the above principles that are applicable to inventions that the university exploits commercially.

This means that all expenses that the inventor has defrayed for patenting, etc., are always covered in advance, before the university can receive "reasonable remuneration".

Calculation of reasonable remuneration for the university

Revenue

- direct defrayed external** costs

= **Net income**

-percentage to the inventor

= **Reasonable remuneration to the university**

Schedule 2

Net income for distribution	Inventor	University
	2/3	1/3

Schedule 3

Net income (only positive) is distributed as follows:

Net income for distribution	Inventor	University
By sale of patent rights	66%	34%
By sale of licenses	66%	34%

By establishment of a company, etc. See the following principles for the calculation of remuneration

The Rector stipulates further rules for the distribution of the revenue that accrues to the university.

Establishment of a company where the invention is transferred to the company.

If the inventor wishes to establish a business for commercial exploitation of the invention it can be very difficult to calculate revenue, direct defrayed costs and net income.

Upon negotiation between Aalborg University and the inventor, different models can be selected, building on the following principles:

1. Reasonable remuneration can be calculated as an owner's share in the company. The remuneration is normally set by the time of the company's formation as 34% of the proportion of shares or options that the inventor receives.

2. Alternatively, reasonable remuneration can be calculated as one third of the company's net income derived from the patent in the company and throughout the patent's duration (i.e., a maximum of 20 years).

The inventor must regularly inform the University on matters affecting the University's reasonable remuneration.

Students

Inventions generated by Master's students belong to the student(s). If an invention is generated by both students and employees at the university, it belongs, as a rule, to the student(s) and the employee(s) in joint ownership. If the university wants to acquire the rights to the employee's(s') invention, an agreement for voluntary transfer of the student's(s') ideal proportion of the invention to the university can be made. The student(s) will be remunerated for that transfer by being covered by the university remuneration rules under the same conditions as university employees.

General considerations in all cases

If special circumstances apply, the Rector can deviate from the specified standard distribution in individual cases.

* If there is more than one inventor, the term "inventor" in the present rules shall be read as "inventors"

** Upon agreement with the university, the inventor can include internal expenses according to the same principles that are stated in section 1 above.