

## **Labourer's Intellectual Property Rights in the Iraqi Laws: An Analytical Comparative Study**

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**Abstract:** The term of intellectual property rights refers to the rights in copyright, designs, patents, circuit layouts, trademarks and plant breeder's rights. It also includes the doctrines of passing off and breach of confidence. The role of intellectual property rights is significant in the global economy; they are the only assets that some corporations possess. In the most cases, labourers create such inventions in the course of their work. Therefore, modern laws around the world state specific provisions for regulating the ownership of such rights when the work is made by an employee. The present research aims at analysing legal provisions of Iraqi law in the field and comparing them to those of the United States of America (USA) and the United Kingdom (UK). It focuses on four main intellectual creations: copyright, patents, designs and plant varieties. Finally, the study points out some suggestions and updates to be made in the relevant Iraqi laws.

**Keywords:** Intellectual Property Law, Intellectual Property Rights, Employee Creations, Intellectual Property Ownership, Copyright, Patent, Design, Plant Varieties

### **1. Introduction**

In Iraq, the ownership of intellectual creations, in the course of employment, has not been stated in a single instrument, i.e., no specific and separate law on the inventions made by employees has existed. It has been provided for in different laws and regulations, mainly Iraqi Civil Code, Iraq Copyright Law, Patents and Industrial Design Law and Iraqi law on Creators Incentives. Additionally, three international treaties relevant to industrial property namely WIPO Convention 1967, Paris Convention for the Protection of Industrial Property 1979 and Singapore Treaty on the Law of Trademarks 2006, which have been ratified by Iraq, are silent on the issues of ownership of employee's inventions.

Therefore, conducting a study in this area is significantly important since there are no enough studies to cover all the aspects of employee's intellectual rights in Iraq; the current related regulations do not include sufficient and effective provisions to clearly determine and protect such rights. Thus, the research can be the first in this area and the proposed recommendations can guide the Iraqi Legislator to introduce new provisions in the future to keep pace with international standards and the laws of developed countries.

This research aims to illustrate and analyse the legal provisions in Iraqi laws regarding determining the ownership of the intellectual property rights in the works created by labourers. The study is conducted in a comparative manner. It critically analyses the Iraqi law provisions in this regard compared to the laws of UA and UK. The discussion will be supported by related scholar arguments and court decisions. This paper does not discuss detailed provisions regarding the requirements of each intellectual property right. At the end, it will point out some suggestions and updates to be made in the relevant Iraqi laws to balance the conflicted interests of both parties in an employment relationship.

## **2. Overview of the subject**

Since there is no international harmonisation regarding regulating the ownership of intellectual works made by employees, the matter has been left to national laws to govern. In Iraq, there are two kinds of employees: public sector employees and employees in the private and mixed sectors. For the purpose of this research, public sector employees are excluded and the research focuses on the employees in private and mixed sector as determined by Iraqi Labour Law. According to this law, an employee (labourer) is someone (a natural person) who performs a physical or intellectual work under the supervision, guidance and control of another person (natural or legal), in return for a wage by virtue of an explicit or tacit agreement (Iraqi Labour Law No. 37 of 2015, article 1 (six)). The terms of employee and labourer are used in this research interchangeably.

On the one hand, under the provisions of labour law, the employer can claim the ownership of the works made by the labourers and the labourers gets compensations for their creation. The legal basis for the employer's ownership rights in such works comes from the employment contract. On the other hand and according to the basic principles in intellectual property law, the ownership of intellectual works vests with the original creator and the employer may only acquire right from such works (Janssens, 2013).

The two main legal systems of author's right in civil law and Anglo-American approach made a substantial different regarding the ownership of intellectual property rights between employees and employer. In the former, these rights shall only be vested in individual persons (natural persons) (Silva & Araujo, 2014; Wolk, 2008). This is known as the creator principle. According to this principle, the legal entities cannot be the first owner of copyrighted works (Benhamou & Rieder, 2015). Thus, the employer can obtain these rights only by assignment by law or an agreement. In the latter, the legal persons can also be the first owner of such rights. Therefore, the employer can initially be entitled to the ownership of intellectual works of the labourer (Silva & Araujo, 2014).

Litigations concerning the ownership of employee-generated intellectual property rights may arise between employees or former employees and employers. The possibility of raising such issues increases where the employer utilizes the employee-generated invention or work of authorship to gain income. The more profitable invention or work, the more likely there will be employees to claim they deserve a share of the profits (Maloney & McGoey II, 2007).

In many countries, the parties of an employment relationship can freely agree on determining the ownership of the inventions made in the course of employment. In most cases, the ownership is given to the employer without any compensation for the employee (Goddar, 2014). The provisions of such agreements regarding transferring the rights between an employee and the employer and the scope of such transfer are interpreted according to the general rules of contract law (i.e., subjective and objective interpretation) and specific interpretation of intellectual property law. Such interpretation is very

important in the field since it applies in all situations to employment contracts, agency contracts and contracts for work or service regardless of the type of the intellectual property rights. Additionally, through this interpretation, the scope of the transfer (licence or assignment) can be determined (Benhamou & Rieder, 2015).

Legal provisions in regards to the ownership of intellectual property rights in the course of employment are different from one jurisdiction to another. Although, these provisions tend to keep a balance between the interest of the employer in such rights and those of the employee, however, in the majority of jurisdictions, the law unduly favours the employer in claiming the ownership of such rights and having economic benefits from the works made by his/her employee, especially when the employee gets paid for this invention (Odugbemi, 2015).

There are two main rules which can be applied to examine the jurisdictions and reward system: the first one is contract rule, in which, the employer and the employee can determine, by an agreement, the owner of the invented works during the employment contract. This contract is usually signed before starting employment relationship between the parties (Merges, 1999). This rule is applied in section 11(3) of the UK Copyright, Designs and Patents Act 1988 (hereinafter, CDPA) and the USA (17 U.S. Code § 201) regarding the copyrightable works. However, in USA, there is an exception, in some states, such a contract is not valid when labourers make inventions which are not related to their employment and they don't depend on the facilities of the employer. This means that the contract rule cannot grant ownership for the employer in this case.

The second one is the default rule. According to this rule, the inventions belong to the labourers (Merges, 1999), i.e. these inventions cannot be contracted out, when there is not a contract to determine the owner or there is a contract but it is invalidated by law. This rule has been stated in sections 39-43 of the UK Patent Act 1977 (hereinafter, the UK Patent Act).

### **3. Intellectual Creations**

#### **3.1 Copyrighted works**

According to Iraqi law, copyright protection is for the original literary, artistic and scientific works, regardless of the type, method of expression, importance and purpose, as stated in Article 1(1) of Order No. 83 of (2004) Amendment to the Copyright Law (hereinafter, Amendment to the Copyright Law). The law further states that this protection shall include the works expressed in writing, sound recording, drawing, painting or movement (Amendment to the Copyright Law, article 2 (1)). As it can be seen from the article, the law requires two conditions to be met in the work to be protected. The work should be original and it shall be expressed, i.e., the law does not protect ideas even if they are original. Unless proven otherwise, the person, whose name is mentioned in the publication of the work or any other means, is considered as the author by virtue of law (Amendment to the Copyright Law, article 1 (2)).

Regarding the ownership of the copyrighted works, in most jurisdictions, the ownership of copyrighted works initially vests with the author (creator) of the work. However, there is a slight difference between national laws (Dutfield & Suthersanen, 2008). In the course of employment, both the default (legal) and contractual rules are applied. In Iraqi law, it is presumed that the author (creator) is entitled to be the owner (Amendment to the Copyright Law, article 10) (17 U.S.C. § 201) (CDPA, section 11 (1)). In USA and UK, there should be a distinction between ownership and authorship. In employment relationship,

when an employee retains the authorship of the works made in the course of employment, the ownership belongs to the employer (CDPA, section 11(2)) (17 U.S. Code §101). It is pointed out that when the work is made outside the scope of employment, it belongs to the employee, and the employer cannot claim any right in this regard (Odugbemi, 2015).

Notwithstanding, it is possible to reverse these rules. This means, on the one hand, the employer can claim ownership of the works made by his/her employee, even if it is made outside the course of employment, by virtue of an agreement. On the other hand, the ownership can be vested in the employee, even if it is made during the course of employment and if there is a contract in this regard. Generally, three different scenarios can be distinguished: First, if the work is made in the course of employment and there is a contract. Second, when there is no agreement and the work is made in the course of employment. Third, works made by employees but not related to their employment. In the first scenario, the employer becomes the owner of the work and in the two others it belongs to the employee.

In the USA, the transfer of labourers' inventions is not governed by a general federal rule; legal provisions are different between various states. However, the position is that, the ownership belongs to the employee, even if it is made during the course of employment, unless they agreed to give the ownership to the employer (Meier, Schubert & Jaenichen, 2005). Notwithstanding, if the employee is hired to create this work, the ownership of such a work belongs to the employer (17 U.S. Code § 101). Moreover, according to the doctrine of shop-right, the employer can enjoy an unexclusive right, royalty-free, to use the invention made by the employee without any remuneration to the inventor employee (Simmons, 2012; Bodie, 2011). This doctrine recognises when an employee invents an innovation during his employment using materials or facilities of the employer, the employer retains ownership of such inventions (Gupta, 2000; Fisk, 2009). However, the employer cannot transfer or assign this right to any third party. It is asserted that the shop-right doctrine in patent law is an equitable doctrine to the statutory doctrine of work made for hire in copyright law (Birnhack, 2009).

Iraqi law explains that if the work was made to the benefit of another person, the author possesses the ownership of the work unless they agreed otherwise (Amendment to the Copyright Law, article 10 (a) (Repeated) (CDPA, section 11 (2)). However, if the work is created during the labourer's work and it is connected to the employer's activities or business, or if the employer's information, experiences, instruments or articles are used by the employee in his attempt to create the work, the rights in the work shall be to the benefit of the employer, unless otherwise stipulated in a written agreement (Amendment to the Copyright Law, article 10 (b) (Repeated)). In addition, if the employee's creation is not related to the employer's business, and the employer's tools or information are not used in creating the work, the employee shall be considered as the beneficiary of the work unless a written agreement states contrary (Amendment to the Copyright Law, article 10 (c) (Repeated)).

In Kurdistan Region of Iraq, there is no clear provision regulating the ownership of the copyrighted works made during the course of employment. There is only one provision which explain the situation when the work is made by more than one person and there contribution cannot be separated, in doing their works, they are under the supervision of a legal or natural person, the right in this work belongs to the person who directs or supervises the work, unless there is an agreement to the contrary (Copyright

and Neighbouring Rights law in the Kurdistan Region- Iraq No 17 of 2012, article 19 (3)). So, the position of the law in Kurdistan Region is not clear whether the same provision can be applied or not to the cases when the employer directs the creation of a work by only one employee.

Additionally, the law was not successful in defining employees' creations and distinguishing it from collective works. The law defines collective works as the works made by more than one natural person directed by a legal or natural person (Copyright and Neighbouring Rights law in the Kurdistan Region- Iraq No 17 of 2012, article 1 (5)). That is the only definition of the works made by employees in the law. Further, in Article 20 (5), the law states similar provision, according to which the ownership of the works related to cinema, radio and TV, the law states similar provision, belongs to the person who manages, directs and provides financial support for the work, unless they agreed otherwise.

It can be seen that the Iraqi law gives primacy to the employer rather than to the employee with regard to intellectual property rights. This is because even if the work is made outside his/her employment, it belongs to the employer if it is related to the business activities of the employer or the employee uses the experiences or information of the employer in his/her endeavour to made such a work. In addition, the term of "in the course of employment" has not been properly illustrated in Iraqi law since an employee may create a work which is not contracted to do so.

It is argued that employment contract and job description contained in the contract, expressly or implied, can facilitate the application of the test of whether the work made by the employee is a part of his/her normal duties or it comes within the special duties that has been assigned to the employee, because they reveal the intentions of the parties. The employer is considered as the first owner of the copyright if the answer is positive (Torremans, 2013). Therefore, it is suggested that the employment agreement shall, at minimum, includes a provision, and according to which, the ownership of works made or developed by the employer shall belong to the employer whether at the residence of the employee or the employer's premises. Additionally, the agreement shall state that the employee shall sign any future document regarding transferring the title of works made by employees to the employer even in cases when the job description of the employee or his/her responsibilities are changed (Lesperance, 2013). It is stated that such agreements benefit the employer since they can prevent courts intervention to transfer the rights (Simmons, 2012).

In the UK, if an employee creates a literary, dramatic, musical or artistic work or a film in the course of employment, any copyright in the work belongs to his/her employer, as the first owner, unless otherwise agreed upon (CDPA, section 11(2)). It is stated that this provision creates a presumption that the copyright will be vested in the employer unless they agreed otherwise. This provision, on the one hand, assumes freedom of contract regarding the ownership of copyrighted works. On the other hand, it insists on the fact that the statutory presumption of employer ownership can be displaced only by an agreement (Pila, 2010). It is further cleared that three conditions shall be satisfied in order for an employer to be the copyright owner in the works made by employees: the author shall be an employee; the employee makes the work during the course of the employment; and finally the employer and the employee have not accord to the contrary (Colston, 1999).

The controversial point in this regard is when to consider the work was made during the course of employment (Cornish, Llewlyn, & Aplin, 2010). In some keystone cases, the courts determined what can be considered as created in the course of employment. For instance, in *Stephenson Jordan & Harrison Ltd v. MacDonald*, an employee was hired to give advice to the employer's clients. He began lecturing and, later, publishing them in a book. The court held that the employee owns copyright in the book as his normal duties do not include lecturing and his employer has not instructed him, neither to give the lectures nor to write the book. However, since the employee, in writing the book, had benefited from a report he had prepared for one of the employer's client, the employer shall be considered as the copyright owner of this part of the book. Regarding using the employer's facilities or assistance provided for the employee, such as secretarial help, which he had used for his project, the court held that the use of is not relevant to this copyright test (*Stephenson Jordan & Harrison Ltd v. MacDonald*, 1952).

In the case of *Noah v Shuba*, an epidemiologist consultant prepared a guide during his free times at weekends at home on hygiene in relation to skin-piercing activities. The court held that although the books preparation was part of his official duties and was his employer's publication, the work was not done in the course of employment as it was not requested by his employer (*Noah v Shuba*, 1991).

Another issue may arise is the work made by consultants and freelancers. They enter into a contract to do a certain work, but their works are not directly subject to the instructions of the employer (Gupta, 2000). For example, asking a management consultant to produce a management report to a company. His/her obligation is limited to submit a report on the required issue based on the standards and terms agreed upon in the contract. In doing his/her work, he or she will decide how to produce that report. Therefore, the consultants and the freelancers cannot be considered as employees and they retain the ownership right of works. However, it is possible to transfer the ownership of the work by a precise clause in their contract or by relying on the concept of the implied licence (Torremans, 2013).

In the US, the work of the independent contractors can also be considered as the work made for hire and the ownership of the works possesses by the person awarding them the contract by virtue of the contract (US Copyright Act, section 101 (b)). Thus, the work made for hire doctrine grants ownership for the employer whether the work made by a labourer or an independent contractor within or outside the scope of workplace (Birnhack, 2009). Thus, to determine whether the work is made for hire, there are two statutory criteria to be taken into consideration; employee and scope of employment (Burk, 2004). It is argued that even with the 'work made for hire' provision; the problem of overlapping ownership may occur (Silva & Araujo, 2014).

Further, even in the situations when the employer becomes the copyrighted owner of the works created by an employee, the employer is granted all of the rights related to the copyright ownership and to exclude others from using the work (Simmons, 2012). However, this entitlement includes only the financial rights of these works and the moral rights stay with the author all the times. In the UK, there are similar provisions that insist the employee retains the moral rights of the works made in the course of employment (CDPA, sections 2(2), 77 & 80). Though, there are a number of limitations on these moral rights and the employer has primacy and can control what happens to these rights (Bently & Sherman, 2008).

### 3.2 Patent

In Iraq, patents are governed by the Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law, No. 65 of 1970 Amended, (hereinafter, Iraqi Patent Law 1970 Amended). According to Article 1 (4) of the law, patent is defined as “any innovative idea, in any of the fields of technology, which relates to a product or a manufacturing process, or both, and practically solves a specific problem in any of those fields”.

It is not practicable for all the employers to fully determine what their employees may reach during their course of employment. In some circumstances, an employee may create a new invention even though his/her work is not related to research and development activities of the employer. It is essential for the employers to plan ahead the scope of the inventions that may be patentable as it does not include only the physical materials but also software, processes and business methods (Maloney & McGoey II, 2007).

As a general rule, the ownership of an invention vests with the inventor or its successor in title. Nevertheless, different national laws provide for different solutions in regard to the labourers' inventions. It is possible for an employer to retain the ownership of invented works by the employee whilst the employee grants right to claim compensations based on the benefit of the discovery to the business of the employer (Dutfield & Suthersanen, 2008).

Iraqi Civil Code 40 of 1951, in its Article 912 (1) states that when a labourer is able to discover an invention while in the service of the employer, the latter shall have no right to that invention even where the employee has invented the work on the occasion of the activities he/she had done while in the service of the employer. However, in two situations, the employer is entitled to the right in the invented work: firstly, when the inventions are discovered by the employee in the course of employment and the nature of the employee's work necessitates that the employee must devote all his/her efforts for discovering inventions. Secondly, if there is an agreement expressly stipulated that the employer shall be the owner of the rights in any work which is invented by the employee (Iraqi Civil Code, article 912 (2)). Notwithstanding, in these two situations, if the invention is of serious economic significance, the employee shall be given a specific compensation to be determined in conformity with the principles of equity. In addition, the assistance and installation of the employer used by the employee in creating the work is taken into consideration in determining the remuneration (Iraqi Civil Code, article 912 (3)).

Before the 2004 amendment, the Patent Law in Iraq described the right owner of a patent as the de facto holder of the patent or someone to whom the right is accrued (The Patent and Industrial Designs Laws and Regulations, No. 65 of 1970, articles 1 (6) & 8). According to the 2004 amendment, patentee is the person, whether legal or natural, to whom the patent right is secured (Iraqi Patent Law 1970 Amended, article 1(6)). Patent can be granted to several owners at the same time if it is the result of their combined work. In this scenario, all participants are considered as the equal owner of the patent unless they agreed otherwise. However, the Iraqi law took the ‘first-to- file principle’ for the patents invented by more than one person but their works were independent from each other, the one who applies earlier for the registration of the patent will be the patent owner (Iraqi Patent Law 1970 Amended, article 8). This approach has also been taken by the European Patent Convention in Article 60 (2). In terms of the

ownership of the employee inventions, the Convention allowed it to be regulated by the national law of the country of the employee's working place or the country of the employer's place of business (European Patent Convention in Article 60 (1)).

The employer is entitled to all the rights arising from the inventions during the implementation of a contract or in the course of employment provided that the employee gets specific compensation for the invention and the work is in the scope of the employment agreement. In this case, it is allowed to register the patent to the employer (contractor) provided that the name of the inventor is mentioned in the patent. However, if a specific compensation was not granted to the patentee, the patentee can seek a just compensation from the employer (Iraqi Patent Law 1970 Amended, article 9).

From this provision, one may state that it is applied when the invention is made as a result of implementing a labour contract and only during its period. Therefore, this provision is clearly does not apply for other contracts apart from employment contracts. Additionally, inventor employees get a percentage of the yearly benefits from the invention (Creators Incentives Law No. 1 of 1998, article 7). This remuneration does not prevent the labourer from getting any other compensation decided upon by other laws and regulations (Creators Incentives Law No. 1 of 1998, article 10). In any other situation apart from the ones mentioned in Article 9, and if the invention is in the area of the employee's work, the employer may choose between using the patent or selling it provided that a just compensation is paid to the patentee. The employer must inform the register in writing within 3 months after the decision to accept or refuse the patent (Iraqi Patent Law 1970 Amended, article 10).

If the application to register a patent from the patentee is presented within one year after leaving the work, it is considered as if presented during the course of employment. Consequently, all the rights stated in Articles 9 and 10 of Creators Incentives Law are granted to the patentee and the employer if the inventor employee has any contribution in reaching into the invention (Iraqi Patent Law 1970 Amended, article 11).

The presumptive rule is that the employee (individual inventor) retains the ownership of the inventions not the employer (3235 U.S. Code §§ 111, 115–118). It is claimed that the US law made it mandatory for the successful prosecution the name of the inventor shall be mentioned in the patent application (Maloney & McGoey II, 2007). In addition, the US laws lack any provision regarding the possibility of transferring the rights in inventions made by employees to the employer. The employee retains the ownership of the patents invented in the course of his/her employment, because the only the inventor, who invented the patent himself, can be entitled to the patent (35 U.S.Code § 102 (f) (Pre-AIA)).

It is pointed out that the US regime depends on the doctrines of common law and decedents in the case law. Accordingly, the employee shall be entitled to their patents (Odugbemi, 2015). It is pointed out that eight states limit the ability of the employee to contractually pre-assign the work-related inventions by statute, and in other states, courts have limited the scope of such assignment agreements on the basis of public policy and reasonableness standards (Lobel, 2009). For instance, in some states, it is not even possible to agree on the contrary, i.e. if the parties of the employment relationship agree to transfer the ownership of the patent to the employer, this agreement is void by virtue of public policy reasons if the



work is made outside the course of employment even if the employer had asked for such invention (California Labour Code, section 2870 (b)).

It is suggested that, in practice, in order for an employer to be the owner of the employee-generated patentable inventions, there must be a special signed contract between the parties of the employment relationship which is known as Invention Assignment Agreement (Maloney & McGoey II, 2007). This agreement is to assign all the work-related inventions to the employer even if it is filed after the employee leaves the employer (Lobel, 2009). However, if there is no written agreement, i.e. if they agreed orally, this agreement is to be interpreted to specify the scope and nature of assignment. In doing so, general rules of contract law and real intention of the involved parties (subjective interpretation) play a crucial role. When the real intention of the parties could not be determined, it shall be interpreted objectively, i.e., on the specific circumstances of the agreement and good faith. If the latter is not clear, it shall be interpreted based on the specific rules of interpretation of intellectual property law (Benhamou & Rieder, 2015). Moreover, if there is no such an agreement between them, the employer may be able to claim the ownership of the invention or to use the invention if it is proven that the employer hired the labourer to invent or the invention was developed on the employer's time and it was in the business scope of the employer (Maloney & McGoey II, 2007). It is pointed out that, in many instances, an implicit obligation of the employee to assign patent rights to the employer when he/she was hired for solving a problem such as engaging in a research, and that effort contributes in making the invention (Burk, 2004).

In the UK, under the Patents Act 1977, the ownership of an invention belongs to the employer if the invention was made by the employee in the course of his/her normal duties, or if the invention is specially allocated to the employee to create even if it is not within the employee's normal duties, or if it is reaching the invention is reasonably expectable form performing the employee's duties (UK Patents Act, section 39 (1) (a)). It is pointed out that the rationale behind this provision is that the employee is employed and paid to make this innovation and the employer retains the ownership right of the work as a reward of its foresight in hiring the employee (Torremans, 2013). It is argued that there is not sufficient guidance to determine by whose standards the expectation must be reasonable. It can be the employee, inventor, employer or outsider (Colston, 1999).

Besides, the employer is considered the owner of the inventions made by an employee if the employee had a special obligation to further the interests of the employer's undertaking (UK Patents Act, section 39 (1) (b)). The court went further regarding this provision and held that even if the invention is reasonably expected to result from carrying out the employee's duties, the ownership belongs to the employer (LIFFE Administration & Management v. Pavel Pinkava [2007] RPC 30 (CA)).

Apart from these circumstances, the employee retains the ownership of the inventions he/she makes (UK Patents Act, section 39 (2)). In addition, the Act provides for additional compensation to the employee to be decided by courts in situations when the employer becomes the owner of the invention and the he/she takes outstanding benefit from the invention, or when the employee assigns or licences the patent exclusively to the employer without getting an adequate benefit (UK Patents Act, section 40 (1) and 40 (2)). In determining whether a benefit is outstanding for the employer or not, the size and nature of the

employer's undertaking together with the nature of the employee's duties shall be taken into consideration (Meier, Schubert & Jaenichen, 2005). As it can be seen from the above discussion, the statutory presumption of innovation ownership is different from that of copyright ownership. It is argued that this distinction might be that inventors do not have the same moral or intellectual claim to their inventions as authors have to their copyrighted works since inventors have a different relationship to their creations than authors have to their works (Pila, 2010).

### 3.3 Design

Iraqi law defines design as a 'three-dimensional array of the elements constituting the circuit forming the integrated circuit or specifically prepared for manufacturing the integrated circuit' (Iraqi Patent Law 1970 Amended, chapter Threeter, article 1). In the UK, design is defined as the internal or external shape or configuration of an article (CDPA, section 213 (2)) other than surface decoration (CDPA, section 51 (3)).

In the USA, there is no uniform protection for designs. The appearance of a product is protectable by the provisions of several laws such as copyright, patent design, utility patents and trade dress. As a result, also, there is no uniform definition of a design. According to Section 171 of the US Patent Act Of 1952, a design patent shall be a design for an object of manufacturing (35 U.S. Code § 171). Regarding the ownership of the designs, the USA law contains no specific rules to regulate that issue. However, the provisions of patents can also be applied to designs (35 U.S. Code § 171 (B)).

In Iraqi law, the ownership of a design is granted to the creator of the design or to whom the right is accrued. When a combined effort leads to create the design, all the participants have equal shares of the design unless there is an agreement to the contrary. If more than one person creates a design independently, the right in the design is granted to the one who applies for registration earlier. When a labourer makes a design as part of his/her duties under the employment agreement, the ownership of the design belongs to the employer unless employment agreement stipulates otherwise (Iraqi Patent Law 1970 Amended, chapter Threeter, article 4).

In the UK, the creator of a design (author) is considered as the first owner of the registered design (Registered Designs Act 1949, section 2 (1)). This rule has two exceptions: first, if creating the design is allocated for money, the ownership of the registered design belongs to the person who commissions a design (Registered Designs Act 1949, section 2 (1) (A)). Second, if a labourer creates a design, his/her employer will be the first owner of the registered design provided that the design is created in the course of employment (Registered Designs Act 1949, section 2 (1) (B)). The law even provides for another detailed and specific rule for the situation of creating a design solely by a computer without human intervention. The ownership of such designs belongs to the person who makes necessary arrangements for the design creation (Registered Designs Act 1949, section 2 (4)). In that case, in the employment relationship, the employer is the person who makes the arrangements, and as a result, he/she is the owner of the design. However, the law permits licencing, assignment and transmission of design rights in the whole or in part (Registered Designs Act 1949, section 2 (2)). It is argued that the rationale behind allowing for the total transfer of a design right is because it is an economic right rather than a moral one (Wolk, 2008).

It can be said that both Iraqi and the UK law provide similar rules on the ownership of designs in employment relationships and commissioned works. Additionally, Iraqi law precisely states that this default rule can be altered by virtue of an agreement before creating the design but the UK law does not mention that. However, Iraqi law lacks any provision regarding computer-generated designs as provided for in the UK law.

### **3.4 Plant Varieties**

Iraqi law provides for separate provisions regarding the plant varieties protection in order to prevent overlapping protection as patents to prohibit double protection. Both the UK law and Iraqi law provide the same rule and identify that ‘any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met; can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes; distinguished from any other plant grouping by the expression of at least one of the said characteristics; and considered as a unit with regard to its suitability for being propagated unchanged’ (The UK Plant Varieties Act 1997, chapter 66, part I 1(3) (Iraqi Patent Law 1970 Amended, chapter *Threequarter*, article 1). It can be read from the provision that this the law widens the scope of protection as satisfying the conditions for the grant of a breeder’s right is not taking into consideration, i.e., it does not only include protectable varieties.

For the purpose of the legal protection, both the UK law and Iraqi law state that the person, who develops, discovers or breeds a new variety; or his/her successor is considered as the breeder (The UK Plant Varieties Act 1997, chapter 66, part I 4(3)) (Iraqi Patent Law 1970 Amended, chapter *Threequarter*, article 5). As a result, the right to register the plant variety is granted to the breeder or the transferee. If more than person jointly participates in educing the plant, they are all considered as the equal owner of the plant variety right unless they stated contrary in an agreement. In case of educing the plant by more than one person and their efforts are independent from each other; the variety right is granted to the person who files the registration application of the variety prior to others (The UK Plant Varieties Act 1997, chapter 66, part I 4(5)) (Iraqi Patent Law 1970 Amended, chapter *Threequarter*, article 5 (c)). If an employee educes a variety, as part of his/her undertakings according to the employment agreement, the employer shall be the owner of the variety right unless the agreement may provide otherwise (The UK Plant Varieties Act 1997, chapter 66, part I 4(4)) (Iraqi Patent Law 1970 Amended, chapter *Threequarter*, article 5 (d)). The Iraqi law does not mention the ownership of the varieties when it is educed by an employee outside his/her employment obligations. Therefore, the general provisions of Civil Code regarding labourers’ inventions shall be taken into consideration to determine their ownership. Also, the provision does not state any remuneration to be paid to the labourer in case of granting the ownership of the right to the employer.

In the USA, the law states that “whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of this title” (35 U.S. Code § 161). Notwithstanding, there is no rule specifically provided to regulate the ownership issue between employees and employers. Therefore, the

provisions of patents for invention shall be applied to determine the owner in employment relationships or commissioned works.

#### **4. Conclusion and Recommendations**

Nowadays, most of the intellectual creations are made by employees; regulating this area of law is very important to make a balance between conflicted interests of the employees and employers regarding the ownership of such creations. Employers usually assume that they are the owner of all intellectual property rights made by their employees since they pay their employees a salary. However, this assumption is not true for all the situations. National laws provide for different rules to determine the owner of each intellectual property. Some of the national laws give primacy to employees in their inventions and vice-versa. Therefore, in an employment relationship both parties shall be aware of the issue before entering into the relationship. One way to determine the owner of such rights is the presumption in law by which one of the parties becomes the owner, subject to the contrary agreement. Another way is to determine the owner by a written agreement. This agreement differs based on the type of intellectual property involved such Copyright Assignment, Work for Hire Agreement or Invention Assignment Agreement.

Even with these provisions in law, because recent developments in technology and production and changing the nature of employment relations, there are still mismatches between existing legal provisions and contemporary market realities. In Iraq, the recent developments in the related law do not solve this issue properly. Therefore, the current research proposes some recommendations for future amendments:

1. It is suggested that the Iraqi labour Law shall be amended to add a specific section to regulate this issue and provide separate provisions for each type of intellectual creations made by employees.
2. Iraqi law shall determine effective and just standards and principles to calculate the compensation to the employees for their inventions on the basis of international standards and principles in developed countries laws to encourage them to invent. It is also suggested that Iraqi law shall give primacy to employees more than to employers as it also leads to encourage them to invent.
3. The Iraqi legislator shall take modern technological enhancement, such as computer-generated inventions, into consideration as it can be seen in the UK law. Since the technological advancement made it possible to a computer to generate an innovation.

#### **Treaties and Legislations**

1. 17 U.S. Code
2. 35 U.S. Code
3. California Labour Code
4. Copyright and Neighbouring Rights law in the Kurdistan Region- Iraq No 17 of 2012.
5. Creators Incentives Law No. 1 of 1998 (Iraq)
6. Iraqi Civil Code No. 40 of 1951

7. Iraqi Labour Law No. 37 of 2015
8. Order No. 83 of (2004), Amendment to the Copyright Law (Iraq)
9. Paris Convention for the Protection of Industrial Property 1979
10. Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law, No. 65 of 1970 (Amended) (Iraq)
11. Registered Designs Act 1949 (UK)
12. Singapore Treaty on the Law of Trademarks 2006
13. The European Patent Convention 1973
14. The Patent and Industrial Designs Laws and Regulations, No. 65 of 1970 (Iraq)
15. The UK Copyright, Designs and Patents Act 1988
16. The UK Patent Act 1977
17. The UK Plant Varieties Act 1997
18. WIPO Convention 1967

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