

¶1 In this domestic relations case, appellant Andrew Goodstein appeals from the trial court’s ruling that a certain patent application was the sole and separate property of his former wife, appellee Shelley Goodstein. As he did below, Andrew contends on appeal that the parties’ Marital Settlement Agreement (MSA), incorporated in the decree of dissolution, entitled him to ownership of that patent application.¹ For the reasons stated below, we affirm the ruling.

BACKGROUND

¶2 “On appeal, we view the evidence in the light most favorable to the prevailing party” *Gerow v. Covill*, 192 Ariz. 9, ¶ 13, 960 P.2d 55, 59 (App. 1998). The parties were married in 1996. Before their marriage, they entered into a premarital agreement in which they agreed to “waive community property law in their marriage.”

¶3 After eight years of marriage, the parties separated and, following mediation, executed the MSA. That agreement disposed of most of the parties’ property, but did not specifically or expressly address the ownership of a patent application for “child/infant play and entertainment devices including electronic displays.” After an evidentiary hearing that solely addressed that issue, the trial court ruled “the patent application . . . at all times was and is the sole and separate property of . . . Shelley Goodstein.” This appeal followed.

¹Although the parties’ arguments alternately address ownership of a “patent” and a “patent application,” the record does not show that a patent has actually been issued on the application involved in this matter. But this distinction makes little difference to the question of ownership, and we refer to the patent application and all attendant rights as the “patent” as well. *Cf. Regents of Univ. of N.M. v. Knight*, 321 F.3d 1111, 1121 (Fed. Cir. 2003) (finding party “to be entitled to ownership of the . . . patents and applications”).

DISCUSSION

¶4 Andrew argues the “trial court committed reversible error in finding that the patent is [Shelley’s] sole and separate property” and that she had “not transfer[red] to [him] any interest that she may have had in the patent.” Although generally we will uphold a trial court’s ruling “if any evidence supports [it],” “[w]e are not bound . . . by the trial court’s decisions on questions of law.” *Gerow*, 192 Ariz. 9, ¶ 13, 960 P.2d at 59; *see also In re Marriage of Pownall*, 197 Ariz. 577, ¶ 7, 5 P.3d 911, 914 (App. 2000). We review de novo issues of contract interpretation, *Miller v. Hehlen*, 209 Ariz. 462, ¶ 5, 104 P.3d 193, 196 (App. 2005), and of “characterization of the [parties’] property.” *Pownall*, 197 Ariz. 577, ¶ 15, 5 P.3d at 915. Because ownership of the patent implicates such issues, our review is de novo.

¶5 We first note that federal courts have exclusive jurisdiction over questions of patent validity and infringement. *See* 28 U.S.C. § 1338(a). But “the question of who owns the patent rights and on what terms typically is a question exclusively for state courts.” *Jim Arnold Corp. v. Hydrotech Sys., Inc.*, 109 F.3d 1567, 1572 (Fed. Cir. 1997); *see also Univ. Patents, Inc. v. Kligman*, 762 F. Supp. 1212, 1219 n.8 (E.D. Pa. 1991) (“State law, rather than federal patent law, generally governs ownership rights in patentable inventions . . .”). Arizona courts, therefore, have jurisdiction to determine the ownership of the patent rights at issue here.

¶6 Andrew argues that, although “Shelley was listed on the application as the inventor,” he “paid for the patent application and the patent search prior to its submission.”

Therefore, he contends, “titling in her name . . . does not control ownership as between the two parties.” Rather, according to Andrew, the parties’ MSA, which was merged into the decree of dissolution, is the controlling document and “is enforceable as a judgment rather than a contract.” Citing *In re Marriage of Zale*, 193 Ariz. 246, 972 P.2d 230 (1999), he maintains the trial court was bound to consider the MSA’s “clear and unambiguous language” in determining ownership of the patent and could not consider parol evidence. But we need not reach the questions of whether the MSA should be viewed as a contract or a judgment or whether the trial court should have considered, or did consider, extrinsic evidence to determine the ownership of the patent. As both parties apparently agree, the plain language of their written agreements is sufficient to dispose of the question.

¶7 Before addressing the pertinent provisions of those agreements, however, we begin with the law of patent ownership. “At the heart of any ownership analysis lies the question of who first invented the subject matter at issue, because the patent right initially vests in the inventor who may then, barring any restrictions to the contrary, transfer that right to another” *Beech Aircraft Corp. v. EDO Corp.*, 990 F.2d 1237, 1248 (Fed. Cir. 1993); *see also Univ. Patents*, 762 F. Supp. at 1218-19 (“Inventorship provides the starting point for determining ownership of patent rights. The true and original inventor must be named in the application for a patent and, absent some effective transfer or obligation to assign the patent rights, the original inventor owns the right to obtain the patent.”). The patent application listed Shelley as the sole inventor. In addition, evidence presented at the

hearing reflected that Shelley had invented the subject matter of the patent application, and Andrew does not contend otherwise.²

¶8 Furthermore, an assignment of a patent must be in writing and “must be unambiguous and show a clear and unmistakable intent to part with the patent.” *Switzer v. Comm’r*, 226 F.2d 329, 330 (6th Cir. 1955); *see also Univ. Patents*, 762 F. Supp. at 1219. And, despite Andrew’s assertions that he intended to assign the patent to himself or one of his businesses, it is undisputed that Shelley never expressly assigned the patent in writing.³ Absent any valid assignment by her, the trial court reasonably concluded the patent application was Shelley’s “sole and separate property.”

¶9 Andrew argues, however, that “[t]he parties’ MSA has two provisions that clearly establish [his] ownership of the patent application.” Those provisions state:

The following property is awarded to Andrew:

²At a minimum, conflicting evidence on inventorship was presented, and we must defer to the trial court’s implicit finding that Shelley was the sole inventor. *See John C. Lincoln Hosp. & Health Corp. v. Maricopa County*, 208 Ariz. 532, ¶ 10, 96 P.3d 530, 535 (App. 2004). Although the extrinsic evidence presented at the hearing below supported the trial court’s ruling, as noted earlier, we neither consider that evidence indispensable to the ruling nor address whether the evidence was properly admitted.

³In a somewhat confusing argument about the parties’ intent relating to the MSA, Andrew appears to argue the MSA itself, or the parties’ premarital agreement, effectively assigned any rights in the patent to him. He maintains that, because he “intended to have the interest in the patent assigned,” and because Shelley “did not raise the issue of her sole ownership” before signing the MSA, it serves as an assignment. But, as noted above, an assignment of a patent “must be unambiguous and show a clear and unmistakable intent to part with the patent.” *Switzer v. Comm’r*, 226 F.2d 329, 330 (6th Cir. 1955); *see also Univ. Patents, Inc. v. Kligman*, 762 F. Supp. 1212, 1219 (E.D. Pa. 1991). The MSA does not even mention this patent, let alone clearly and unmistakably reflect that Shelley intended to assign or otherwise part with it.

. . . .

11. Any and all real estate Partnerships, corporations, companies, partnerships or LLCs and/or any other entities of any nature whatever, in which Andrew has an interest, including any cash or other assets therein, including, without limitation, . . . AAA Doodads LLC . . . and the proceeds from disposition of any assets therein, including without limitation, . . . all . . . intellectual property . . . or other benefits due Andrew in connection with these businesses.

. . . .

14. All property that Andrew had in his possession or under his control coming into the marriage or acquired during the marriage or after the date of this Agreement not specifically allocated to Shelley in this Agreement.

¶10 Andrew first maintains that the patent was “one of [his] business ventures” and, therefore, that “any interest that Shelley may have had in the patent application was awarded to [him] under the above provision of the MSA awarding him any and all intellectual property from his business dealings.” Andrew argues that “[t]he patent application was the result of a joint venture between the parties” and that “Shelley came upon her idea from the marketing research she was completing for . . . Andrew’s patent business.” But, as noted above, Shelley was the sole inventor listed on the patent application, and she never legally assigned the patent to Andrew’s business. Thus, the patent was the intellectual property of neither Andrew nor any business in which he had an interest. Accordingly, the intellectual property provision in paragraph 11 of the MSA does not apply.

¶11 Relying on paragraph 14 of the MSA, Andrew also contends that, “[e]ven if the patent application is not covered under the intellectual property provision of the MSA, [it] was not specifically awarded to Shelley, [and] hence Andrew is the owner of the patent application.” This argument likewise fails. Because the patent was in Shelley’s name and, therefore, her property absent a valid assignment, it was not property that Andrew “acquired during the marriage.” In short, we disagree with Andrew’s assertion that the parties’ MSA establishes his ownership of the patent or “effectuates an assignment to Andrew of any interest that Shelley may have had in the patent application.”

¶12 Andrew further argues the parties’ premarital agreement “clearly establishes that the parties intended that the party who pays for property acquired during the marriage owns the property.” According to him, because he paid for the patent application and patent search, he “is the owner of the patent application.” Andrew relies on the premarital agreement’s provision that, although the parties could acquire property as joint tenants or as community property, any such acquisition was to be “clearly indicate[d].” That provision further stated:

If there [wa]s no specific recital in any documents of title stating that the property [wa]s to be owned [jointly] . . . then the property [would] be the sole and separate property of the party who paid for the property or . . . be held as tenants in common of both parties in proportion to their respective contributions.

¶13 Under the terms of the premarital agreement, however, the parties “jointly waive[d] and release[d] . . . all community property law that would otherwise be applicable to them as a result of their marriage” and agreed that “all future accumulations of property

by either party shall be the sole and separate property of the party acquiring the property.” And, as Shelley points out, “[t]he patent was acquired by Shelley in her name only, not both names.” Thus, the clause relating to separate property controls here. And we find inapplicable the provision on which Andrew relies, which has nothing to do with patents, but rather, refers to “documents of title” and related questions of joint ownership. In sum, we agree with the trial court that the patent application at issue here “at all times was and is [Shelley’s] sole and separate property.”

DISPOSITION

¶14 The judgment of the trial court is affirmed. Shelley has requested an award of reasonable attorney fees on appeal pursuant to A.R.S. § 25-324. After considering the factors in that statute, her request is granted upon her compliance with Rule 21, Ariz. R. Civ. App. P., 17B A.R.S.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

PETER J. ECKERSTROM, Judge