Deutsches
Patent- und Markenamt

Employee Inventions Act

Employee Inventions Act [*Gesetz über Arbeitnehmererfindungen*] (of 25 July 1957, as last amended by the Act of 24 June 1994, last amended by Art. 7 of the Act of 31 July 2009, (Federal Law Gazette[1]. I p. 2521))

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Chapter I

Application and Definition

Section 1 Application of the Act

This Act applies to inventions and to technical improvement proposals made by employees in private employment, by employees in public service, by civil servants and by members of the armed forces.

Section 2 Inventions

Inventions within the meaning of this Act are only those which may be the subject of a patent or of a utility model.

Section 3 Technical Improvement Proposals

Technical improvement proposals within the meaning of this Act are proposals for other technical innovations that may not be the subject of a patent or of a utility model.

Section 4 Service Inventions and Free Inventions

(1) Employee inventions within the meaning of this Act may be either tied or free.

(2) Tied inventions (service inventions) are those made during the term of employment which:

(i) either resulted from the employee's tasks in the private enterprise or in the public authority,
(ii) or are essentially based upon the experience or activities of the enterprise or public authority.

(3) Other inventions of an employee shall be free inventions. They shall however be subject to the limitations contained in Sections 18 and 19, below.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to inventions made by civil servants and members of the armed forces.

Chapter II

Inventions and Technical Improvement Proposals Made by Employees in Private Employment

1. Service Inventions

Section 5 Duty to Report

(1) Any employee making a service invention shall be under a duty to report the invention to his employer immediately in a special notice in text form indicating that said writing constitutes the report of an invention. Where two or more employees have contributed to making

the invention, a joint notice may be filed. The employer shall inform his employee without delay and in text form of the date the report was received.

(2) In the report, the employee must describe the technical problem, its solution and how he arrived at the service invention. Any existing notes necessary for an understanding of the invention shall be attached. The report shall include the service instructions and directions received by the employee, the experience and activities in the enterprise of which use was made, the employee's co-workers and the nature and extent of their contribution, and the report should underline the contribution which the employee making the report considers to be his own.

(3) A report which does not meet the requirements of subsection (2) shall be deemed to be in order unless the employer requests further particulars within two months, stating the points in the report which are to be supplemented. To the extent necessary, he must assist the employee in supplementing the invention report.

Section 6 Claiming a Service Invention

(1) An employer may claim a service invention by making a statement to the employee.

(2) The claiming of the invention shall be deemed to have been declared unless the employer expressly releases the service invention by making a statement in text form addressed to the employee, within four months after receipt of the due report (Section 5(2), first and third sentences).

Section 7 Effect of the Claim

(1) On claiming the invention, all property rights in the service invention shall pass to the employer.

(2) Dispositions of a service invention made by an employee before his employer has declared a claim, shall have no effect on his employer, insofar as the employer's rights are prejudiced.

Section 8 Service Inventions Becoming Free

A service invention shall become free where the employer releases it by making a statement in text form. The employee may dispose of a service invention that has become free and the restrictions in Sections 18 and 19 shall not apply.

Section 9 Compensation for a Claim

(1) The employee shall have a right to reasonable compensation as against his employer, as soon as the employer has made a claim to a service invention.

(2) In assessing compensation, due consideration shall in particular be given to the commercial applicability of the service invention, the duties and position of the employee in the enterprise, and the enterprise's contribution to the invention.

Section 10 (repealed)

Section 11 Guidelines for Compensation

After hearing leading organizations representing employers and employees (in accordance with Section 12 of the Act on Collective Bargaining Agreements [*Tarifvertragsgesetz*]), the Federal Minister of Labour shall issue guidelines for assessing compensation.

Section 12 Ascertaining or Fixing Compensation

(1) The nature and amount of compensation shall be established by agreement between the employer and the employee within a reasonable time after the claim to a service invention.

(2) Where two or more employees have contributed to a service invention, compensation shall be determined separately for each of them. The employer must notify the employees of the total amount of compensation awarded and of the share assigned to each inventor.

(3) Where no compensation agreement is concluded within a reasonable time after a claim to a service invention was made, the employer shall fix the amount of compensation by making a statement in text form, giving his reasons, addressed to the employee, and shall pay in accordance with his settlement. The compensation must be fixed not later than three months from the grant of the industrial property right.

(4) An employee who disagrees with the settlement may object thereto by making a statement in text form within two months. If he does not object, the settlement shall be binding upon both parties.

(5) Where two or more employees have contributed to the service invention, the settlement shall not bind any of them if one of them objects on the ground that his contribution to the service invention has been incorrectly determined. In this case, the employer may make a new compensation settlement for all parties.

(6) Both the employer and the employee may require the other to consent to a different compensation arrangement, if a substantial change has occurred in the circumstances essential to ascertaining or fixing the compensation. A refund of compensation payments already received may not be requested. Subsections (1) to (5) shall not be applicable.

Section 13 Application for Domestic Industrial Property Protection

(1) An employer shall be under a duty - and he shall be solely entitled - to apply for a domestic industrial property right for a service invention reported to him. Where the invention is capable of patent protection, he shall apply for a patent unless, on an evaluation of the industrial applicability of the service invention, protection as a utility model appears more appropriate. The application shall be filed without delay.

(2) The employer's obligation to file an application shall not arise:

(i) where the service invention has become free (Section 8);
(ii) where the employee has agreed that no application is to be filed;
(iii) where the conditions contained in Section 17 are met.

(3) Where, after making a claim to a service invention, an employer does not comply with his duty to apply for industrial property protection and also fails to do so within a reasonable additional period fixed by the employee, the employee may file an industrial property application for the service invention in the employer's name and at the employer's expense.

(4) Where a service invention has become free, only the employee shall be entitled to apply for industrial property protection therefor. Should his employer already have applied for industrial property protection for the service invention, his rights resulting from such application shall pass to the employee.

Section 14 Application for Industrial Property Protection Abroad

(1) After making a claim to a service invention, an employer shall also be entitled to apply for industrial property protection abroad.

(2) For foreign countries in which an employer does not desire to acquire industrial property rights, he shall release the service invention to the employee and shall, upon request, enable the employee to acquire such rights. The release must be effected in sufficient time for the employee to take advantage of the priority dates under international treaties in the field of industrial property.

(3) At the time of releasing a service invention under subsection (2), an employer may reserve for himself a non-exclusive right to use the service invention in the foreign countries concerned, against reasonable compensation, and may require the employee, also against reasonable compensation, to respect the employer’s obligations arising from contracts existing at the time of the invention's release, while the employee is exploiting the service invention released to him.

Section 15 Mutual Rights and Duties in Acquiring Industrial Property Protection

(1) Upon filing an industrial property application for a service invention, an employer must give his employee copies of the application documents. He must keep his employee informed of the progress of the application procedure and, if requested, must allow him to inspect the correspondence.

(2) If requested to do so, the employee must assist his employer in acquiring the industrial property rights and shall be obliged to make the necessary statements.

Section 16 Abandoning Industrial Property Applications or Granted Industrial Property Rights

(1) Where an employer, before fully meeting his employee’s demand for reasonable compensation, intends to stop prosecuting an industrial property application for a service invention, or to surrender an issued grant or registration, he must inform his employee accordingly and, at the employee’s request and expense, must assign the rights to him and turn

over to him any documents necessary to maintain the rights. (2) An employer shall be entitled to surrender an issued grant, if his employee does not request assignment thereof within three months from receipt of the communication made to the employee.

(3) At the time of making the communication provided for in subsection (1), the employer may reserve for himself, against payment of reasonable compensation, a non–exclusive right to use the service invention.

Section 17 Trade Secrets

(1) Where the legitimate interests of the enterprise require that a service invention reported to him should not be disclosed, the employer may refrain from applying for industrial property protection, provided that he acknowledges to his employee that the service invention is capable of protection.

(2) If an employer does not acknowledge that a service invention is capable of protection, he need not apply for industrial property protection if he requests the Arbitration Board (Section 29) to seek an agreement on the service invention's eligibility for protection.

(3) In fixing the compensation for an invention under subsection (1), account must also be taken of the economic disadvantages that result for the employee due to the fact that industrial property protection has not been accorded to the service invention.

2. Free Inventions

Section 18 Duty to Notify

(1) An employee who has made a free invention during the term of an employment contract shall notify his employer by making a statement in text form thereof without delay. He shall give the employer all the details - concerning the invention and, if necessary, concerning its realization - which the employer may need in order to judge whether it is in fact a free invention.

(2) Where the employer does not contest that the invention notified to him is a free invention, by making a statement in text form to the employee within three months of receipt of the notification, the invention may no longer be claimed as a service invention (Section 6).

(3) There shall be no obligation to notify the employer of a free invention if the invention is obviously not capable of being used in the employer's enterprise.

Section 19 Duty to Offer

(1) Before exploiting a free invention further during the term of his employment contract, an employee must offer his employer at least a non–exclusive right to use the invention on reasonable terms, if the invention falls within the range of the actual or planned activities of the employer's enterprise at the time the offer is made. Such offer may be submitted together with the notification required by Section 18.

(2) Where the employer does not accept the offer within three months, his prerogative shall lapse.

(3) Where the employer states within the time provided by subsection (2) that he intends to acquire the rights offered to him, but claims that the terms offered to him are not reasonable, the court shall determine the terms upon a declaratory action by the employer or employee.

(4) The employer or the employee may request a new determination of the terms, if the circumstances essential to the terms agreed or fixed have changed substantially.

3. Technical Improvement Proposals

Section 20

(1) For technical improvement proposals which afford the employer an advantaged position similar to that obtained from an industrial property right, an employee shall be entitled to reasonable compensation from his employer as soon as the latter exploits the proposal. Sections 9 and 12 shall apply *mutatis mutandis*.

(2) In all other cases, technical improvement proposals shall be regulated by collective agreements or single–plant bargaining.

4. Common Provisions

Section 21 (repealed)

Section 22 Mandatory Applicability (Unabdingbarkeit)

The provisions of this Act may not be modified by contract to the detriment of the employee. Agreements shall, however, be permissible concerning service inventions after they have been reported and concerning free inventions and technical improvement proposals (Section 20(1)) after their notification.

Section 23 Inequitable Agreements

(1) Agreements concerning service inventions, free inventions, or technical improvement proposals (Section 20(1)) permitted by this Act, shall be null and void to the extent that they are manifestly inequitable. This provision shall apply also to compensation settlements (Section 12(4)).

(2) The employer and employee may invoke the inequity of an agreement or compensation settlement only if they do so, by a statement in text form addressed to the other party, within six months following termination of the employment contract.

Section 24 Duty of Secrecy

(1) An employer must maintain secrecy concerning an employee's invention that has been reported or notified to him, as long as required by the legitimate interests of the employee.

(2) An employee must keep a service invention secret as long as it has not become free (Section 8).

(3) Other persons who have had knowledge of an invention on the basis of this Act may neither utilize their knowledge nor make it public.

Section 25 Duties Arising from Employment

Other duties arising for the employer and employee under their employment relationship shall not be affected by this Act unless the position is otherwise, due to the fact that an invention has become free (Section 8).

Section 26 Termination of Employment

The rights and duties arising from this Act shall not be affected by termination of the employment relationship.

Section 27 Insolvency Proceedings

Where, after a claim to the service invention has been made, insolvency proceedings are instituted regarding the employer's assets, the following shall be applicable:

(i) Where the insolvency administrator sells the service invention together with the business, the buyer shall incur the employer's obligation to pay compensation for the period starting with the opening of insolvency proceedings.

(ii) Where the insolvency administrator exploits the service invention in the enterprise of the debtor, he shall have to pay the employee appropriate compensation for the exploitation from the insolvency assets.

(iii) In all other cases, the insolvency administrator shall offer the service invention as well as industrial property right positions relating to it to the employee not later than one year after the opening of the insolvency proceedings; in other respects, Section 16 shall apply *mutatis mutandis*.

(iv) Where the employee does not accept the offer within two months after receipt of the offer, the insolvency administrator may sell the invention without the business or abandon the right. In the case of sale, the insolvency administrator may agree with the buyer that the buyer commits himself to paying the compensation pursuant to Section 9 to the employee. Where no such agreement is made, the insolvency administrator shall pay to the employee the compensation from the proceeds realised.

(v) In other respects, the employee shall be able to claim compensation pursuant to Sections 9 to 12 only as insolvency creditor.

5. Arbitration Proceedings

Section 28 Amicable Settlement

In all disputes between employer and employee arising as a result of this Act, petition may be made at any time to the Arbitration Board. The Arbitration Board shall seek an amicable settlement.

Section 29 Establishment of the Arbitration Board

(1) The Arbitration Board shall be established within the Patent Office.

(2) The Arbitration Board may meet outside its permanent seat.

Section 30 Membership of the Arbitration Board

(1) The Arbitration Board shall consist of one chairman or his alternate and two assessors (*Beisitzer*).

(2) The chairman and his alternate shall possess the qualifications required for judicial office under the German Judiciary Act [*Deutsches Richtergesetz*]. They shall be appointed by the Federal Minister of Justice for four years. Reappointment shall be allowed.

(3) The assessors shall possess special knowledge in the technical field to which the invention or technical improvement proposal applies. They shall be appointed by the President of the Patent Office, separately for each case, from among the staff members or assistant members (*Hilfsmitglieder*) of the Patent Office.

(4) At the request of a party, the Arbitration Board shall include two other assessors, one chosen from employers and the other from employees. They shall be appointed by the President of the Patent Office, separately for each case, from lists of proposed names. The lists may be put forward by the leading organizations referred to in Section 11 and also by trade unions and independent employees' associations formed for social and professional purposes which are not affiliated to any of the leading organizations, where the members of such unions or associations include a substantial number of employees from whom an inventive contribution may be expected due to the kind of work they are performing in the enterprise.

(5) The President of the Patent Office shall appoint an assessor under subsection (4) from the list of names put forward by the organization to which the party concerned belongs, where the party states, before the members of the Board are appointed, that he is a member of that organisation.

(6) The Arbitration Board shall be under the supervision of its chairman; the chairman shall be under the supervision of the President of the Patent Office. The members of the Arbitration Board shall not be bound by instructions.

Section 31 Appeals to the Arbitration Board

(1) Appeals to the Arbitration Board shall be made by petition in writing. The petition shall be lodged in duplicate. It shall contain a brief statement of the facts and the name and address of the other party.

(2) The chairman of the Arbitration Board shall transmit the petition to the other party, inviting him to comment in writing on the petition within a fixed period.

Section 32 Requests for Enlargement of the Arbitration Board

A request for the enlargement of the Arbitration Board shall be submitted by the party appealing to the Arbitration Board at the time of lodging the petition (Section 31(1)) and by the other party within two weeks from the transmittal of the petition to him (Section 31(2)).

Section 33 Proceedings Before the Arbitration Board

(1) Sections 41 to 48, 1042(1) and Section 1050 of the Code of Civil Procedure shall apply *mutatis mutandis* to proceedings before the Arbitration Board. Section 1042(2) of the Code of Civil Procedure shall apply *mutatis mutandis*, save that the Arbitration Board may not exclude patent attorneys (*Patentanwälte*), holders of a certificate of representation (*Erlaubnisscheininhaber*, Section 3 of the Second Act Amending the Industrial Property Provisions and Adding Provisions [*Zweites Gesetz zur Änderung und Überleitung von Vorschriften auf dem Gebiet des gewerblichen Rechtsschutzes*] thereto, of 2 July 1949), and representatives of associations within the meaning of Section 11 of the Act on Labour Courts [*Arbeitsgerichtsgesetz*].

(2) In all other cases, the Arbitration Board shall decide on its own procedure.

Section 34 Settlement Proposals of the Arbitration Board

(1) The Arbitration Board shall take its decisions by a majority vote. Section 196(2) of the German Judiciary Act shall be applicable.

(2) The Arbitration Board must provide the parties with a settlement proposal. The proposal shall be reasoned and signed by all the Board members. The proposal must also mention the possibility of objection and the consequences of failure to object within the period prescribed. The proposal shall be notified to the parties.

(3) A settlement proposal shall be deemed to be accepted and an agreement corresponding to its content shall be deemed to have been made, unless an objection in writing by one of the parties reaches the Arbitration Board within one month from the notification of the proposal.

(4) Where unavoidable circumstances have prevented one of the parties from lodging an objection within the period prescribed, he shall, upon petition, be reinstated. The petition must be filed in writing with the Arbitration Board within one month from the moment the impediment ceased to exist. The objection must also be lodged within that period. The petition for reinstatement must state the facts relied upon and the means of substantiating them. After

one year from the notification of the settlement proposal, reinstatement may no longer be requested and an objection may no longer be lodged.

(5) The Arbitration Board shall decide on the petition for reinstatement. An immediate appeal against the Board's decision may be lodged with the district court (*Landgericht)* having jurisdiction in the place of the petitioner's residence, in accordance with the Code of Civil Procedure.

Section 35 Termination of Arbitration Proceedings Without Result

(1) Proceedings before the Arbitration Board shall terminate without result:

(i) where the other party has not submitted his comments within the period provided in Section 31(2);
(ii) where the other party has refused to participate in the proceedings before the Arbitration Board;
(iii) where a written objection has reached the Arbitration Board within the period provided in Section 34(3).

(2) The chairman of the Arbitration Board shall inform the parties of the termination of the arbitration proceedings without result.

Section 36 Costs of Arbitration Proceedings

Proceedings before the Arbitration Board shall require no fees nor payment of costs.

6. Judicial Proceedings

Section 37 Requisites for Instituting Proceedings

(1) Any right or legal position that is governed by this Act may be pleaded in judicial proceedings only after proceedings have been held before the Arbitration Board.

(2) This prerequisite shall not be applicable:

(i) where the rights pleaded in the judicial proceedings are based upon an agreement (Section 12, 19, 22 or 34) or upon the allegation that the agreement is invalid;
(ii) where six months have passed since the appeal was lodged with the Arbitration Board;
(iii) where the employee has left the employer's enterprise;
(iv) where the parties have agreed to refrain from appealing to the Arbitration Board. Such agreement may only be made after the dispute (Section 28) has occurred. The agreement must be in writing.

(3) The fact that both parties have dealt with the substance of the case orally, without relying upon the absence of any appeal to the Arbitration Board, shall be equated with an agreement under subsection (2)(iv).

(4) The prior appeal to the Arbitration Board shall not be necessary in the case of an application for an attachment order or for a preliminary injunction.

(5) Judicial proceedings following an attachment order or a preliminary injunction shall be admissible, and the restriction in subsection (1) shall not apply, where a party has been given a time limit for instituting proceedings under Section 926 or 936 of the Code of Civil Procedure.

Section 38 Action for Reasonable Compensation

In a dispute as to the amount of compensation, an action may be brought for the payment of a reasonable amount to be fixed by the court.

Section 39 Jurisdiction

(1) For all the disputes concerning employee inventions, exclusive jurisdiction shall, irrespective of the value in dispute, rest with the courts having jurisdiction in patent litigation (Section 143 of the Patent Act). The provision governing procedure in patent litigation shall apply.
(2) Disputes relating solely to claims for the payment of ascertained or fixed compensation for an invention are exempted from the application of subsection (1).

Chapter III

Inventions and Technical Improvement Proposals Made by Employees in Public Service, Civil Servants and Members of the Armed Forces

Section 40 Employees in Public Service

Inventions and technical improvement proposals made by employees in enterprises and offices of the Federal Government and state governments of the German Länder, community authorities and other public corporations, corporate bodies and endowed institutions shall be governed by the provisions relating to employees in private employment – with the following provisos:

(i) instead of making a claim to the service invention, the employer may claim a reasonable share in the proceeds arising from the service invention if this has been agreed beforehand. The amount of the employer's share may be the subject of prior binding agreements. In the absence of agreement on the amount of the share, the amount shall be fixed by the employer. Section 12(3) to (6) shall apply *mutatis mutandis*;

(ii) the regulation of technical improvement proposals under Section 20(2) may also be made in a service agreement; clauses enabling a provision forming part of a service agreement to be replaced by decision of a higher authority (*Dienststelle*) or other office shall not be enforceable;

(iii) restrictions on the ways of exploiting a service invention may be imposed on an employee, in the public interest, under a general order issued by the competent supreme authority (*oberste Dienstbehörde*);

(iv) the Federal Government and the state governments of the German *Länder* shall also be entitled to put forward lists of names for the employer assessors (Section 30(4));

(v) to the extent that public authorities have set up their own arbitration boards to deal with disputes under this Act, Sections 29 to 32 shall not apply.

Section 41 Civil Servants and Members of the Armed Forces

The provisions relating to employees in public service shall apply mutatis mutandis to inventions and technical improvement proposals made by civil servants and members of the armed forces.

Section 42 Special Provisions for Inventions at Universities

The following special provisions shall be applicable to inventions by staff employed at a university:

(i) The inventor shall be entitled to disclose the service invention within the framework of his teaching or research activity if he has notified this fact to the employer in due time, as a rule, two months previously. Section 24(2) shall not be applicable in this respect.

(ii) Where the inventor refuses the disclosure of his service invention due to his freedom of teaching and research, he shall not be obliged to report the invention to the employer. Where the inventor wants to disclose his invention at a later date, he shall report the invention to the employer without delay.

(iii) In the case that the service invention is claimed, the inventor shall retain a non-exclusive right to use the service invention within the framework of his teaching and research activity.

(iv) Where the employer exploits the service invention, the amount of the remuneration shall be 30 per cent of the proceeds realised by the exploitation.

(v) Section 40(1) shall not be applicable.

Chapter IV

Transitional and Final Provisions

Section 43 Transitional Provision

(1) Section 42 in the version of this Act applicable on 7 February 2002 (Federal Law Gazette I, p 414) shall only apply to inventions made after 6 February 2002. In derogation of the first sentence, Section 42 of the Employee Inventions Act in the version applicable until 6 February 2002 shall continue to apply until 7 February 2003, in the cases in which professors, lecturers and research assistants at a university committed themselves by contract to the transfer of rights to the invention vis-à-vis third parties before 18 July 2001.

(2) The provisions of the Employee Inventions Act in the version applicable until 6 February 2002 shall apply to inventions made before 7 February 2002 by staff employed at a university. The right of professors, lecturers and research assistants at a university to offer their inventions made before 6 February 2002 to the employer shall remain unaffected.

(3) The provisions of this Act in the version applicable until 30 September 2009 shall continue to apply to inventions reported before 1 October 2009. The first sentence shall apply *mutatis mutandis* to technical improvement proposals.

Section 44 (repealed)

Section 45 Implementing Provisions

In consultation with the Federal Minister of Labour, the Federal Minister of Justice may issue the necessary regulations for the enlargement of the Arbitration Boards (Section 30(4) and (5)). In particular, he may specify:

(i) the personal qualifications needed by persons put forward as employer or employee assessors;
(ii) the mode of remuneration of the assessors appointed from the lists of proposed names.

Section 46 Provisions Repealed

Upon entry into force of this Act, the following provisions are repealed to the extent that they are still in force:

(i) the Regulations concerning the Treatment of Inventions by Workers [*Verordnung über die Behandlung von Erfindungen von Gefolgschaftsmitgliedern*], of 12 July 1942 (*Reichsgesetzblatt*, I, p. 466);
(ii) the Implementing Regulations to the Rules on Inventions of Workers [*Durchführungsverordnung zur Verordnung über die Behandlung von Erfindungen von Gefolgschaftsmitgliedern*], of 20 March 1943 (*Reichsgesetzblatt*, I, p. 257).

This Act shall enter into force on 1 October 1957.

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