

Law on Employee Inventions*

(of July 25, 1957, as last amended by the Law of June 24, 1994)

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CHAPTER I APPLICATION AND DEFINITION

Application of the Law

1.–

This Law 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.

Inventions

2.–

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

Technical Improvement Proposals

3.–

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

Service Inventions and Free Inventions

4.–

(1) Employee inventions within the meaning of this Law 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

Duty to Report

5.–

(1) Any employee making a service invention shall be under a duty to report the invention to his employer immediately in a special written notice 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 writing 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.

Claiming a Service Invention

6.–

(1) An employer may claim a service invention by means of an unlimited or a limited claim.

(2) Such claim shall be made in a written statement, addressed to the employee. It shall be made as soon as possible, and no later than four months from the receipt of a proper report (Section 5(2) and (3)).

Effect of the Claim

7.–

(1) On the receipt of a written declaration of an unlimited claim, all rights in the service invention shall pass to the employer.

(2) On the receipt of a written declaration of a limited claim, a non-exclusive right to use the service invention shall pass to the employer. Should an employer's right of use unreasonably impede an employee's further exploitation of his invention, the employee may request that, within a period of two months, his employer either make an unlimited claim to the service invention or release it to the employee.

(3) 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 concerned.

Service Inventions Becoming Free

8.–

(1) A service invention shall become free:

- (i) where the employer releases it by a written statement;

- (ii) where the employer makes a limited claim to it, subject to the employer's right to use the invention in accordance with Section 7(2);
- (iii) where the employer has not made a claim to it within four months upon receiving a proper invention report (Section 5(2) and (3)) or, for cases falling under Section 7(2), within two months of the request filed by his employee.

(2) The employee may dispose of a service invention that has become free and the restrictions in Sections 18 and 19 shall not apply.

Compensation for an Unlimited Claim

9.–

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

Compensation for a Limited Claim

10.–

(1) The employee shall have a right to reasonable compensation as against his employer, as soon as the employer has made a limited claim to a service invention and has used it. Section 9(2) shall apply *mutatis mutandis*.

(2) After having stated a claim to a service invention, an employer may not, in dealing with his employee, contest the invention's eligibility, at the time of the claim, for industrial property protection unless a decision to this effect has been rendered by the Patent Office or a court of law. The employee's right to such compensation as becomes payable before the decision has force of law shall not be affected thereby.

Directives Governing Compensation Payments

11.–

After hearing leading organizations representing employers and employees (in accordance with Section 10a of the Law on Collective Bargaining Agreements), the Federal Minister of Labor shall issue Directives for assessing compensation.

Ascertaining or Fixing Compensation

12.–

(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, giving his reasons in writing to the employee, and shall pay in accordance with his settlement. For unlimited claims to a service invention, compensation must be fixed within three months from the grant of the industrial property protection; for limited claims, it must be fixed within three months from when the invention began to be used.

(4) An employee who disagrees with the settlement may object thereto in writing 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.

Application for Domestic Industrial Property Protection

13.–

(1) An employer shall be under a duty—and he shall be solely entitled—to apply for domestic industrial property protection 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) An employer's obligation to file such an application shall terminate:

- (i) where the service invention has become free (Section 8(1));
- (ii) where the employee has agreed that no application is to be filed;
- (iii) where the conditions contained in Section 17 are present.

(3) Where, after making an unlimited 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.

Application for Industrial Property Protection Abroad

14.–

(1) After making an unlimited 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.

Mutual Rights and Duties in Acquiring Industrial Property Protection

15.–

(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.

Abandoning Industrial Property Applications or Granted Industrial Property Rights

16.–

(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.

Trade Secrets

17.–

(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

Duty to Notify

18.–

(1) An employee who has made a free invention during the term of an employment contract shall notify his employer in writing 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 written declaration to the employee within three months of the notification, he may no longer claim the invention as a service invention.

(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.

Duty to Offer

19.–

(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

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

Inventors' Consultants

21.–

(1) One or more inventors' consultants may be appointed in an enterprise by agreement between the employer and the works council.

(2) The inventor's consultants shall have the task of helping employees draft the invention report (Section 5) or the notification of an invention (Section 18) and, at the request of the employer and employee, of participating in the determination of reasonable compensation.

Mandatory Applicability (Unabdingbarkeit)

22.–

The provisions of this Law 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.

Inequitable Agreements

23.–

(1) Agreements concerning service inventions, free inventions, or technical improvement proposals (Section 20(1)) permitted by this Law, 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 written statement addressed to the other party, within six months following termination of the employment contract.

Duty of Secrecy

24.–

(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(1)).

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

Duties Arising from Employment

25.–

Other duties arising for the employer and employee under their employment relationship shall not be affected by this Law unless the position is otherwise, due to the fact that an invention has become free (Section 8(1)).

Termination of Employment

26.–

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

Bankruptcy

27.–

(1) Where bankruptcy proceedings are instituted against an employer, the employee shall have a preemptive right to his own service inventions to which the employer has made an unlimited claim, provided the trustee in bankruptcy of the estate disposes of them independently of the enterprise.

(2) Claims by an employee to compensation for the employer's unlimited claim to a service invention (Section 9), for his right to use the invention (Sections 10, 14(3), 16(3) and 19), or for his exploitation of a technical improvement proposal (Section 20(1)) shall rank, in bankruptcy proceedings against the employer, below the debts set forth in Section 61(i) of the Bankruptcy Rules but above all other debts. If there are two or more such debts, they shall be paid proportionately.

5. Arbitration Proceedings

Amicable Settlement Procedure

28.–

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

Establishment of the Arbitration Board

29.–

- (1) The Arbitration Board shall be established within the Patent Office.
- (2) The Arbitration Board may meet outside its permanent seat.

Membership of the Arbitration Board

30.–

- (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 Law on the Judiciary. They shall be appointed by the Federal Minister of Justice for one year at the beginning of each calendar year.
- (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 organization.

(6) The Arbitration Board shall be under the supervision of its chairman; the chairman shall be under the supervision of the Federal Minister of Justice.

Appeals to the Arbitration Board

31.–

(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.

Requests for Enlargement of the Arbitration Board

32.–

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)).

Proceedings Before the Arbitration Board

33.–

(1) Sections 1032(1), 1035 and 1036 of the Civil Procedure Code shall apply *mutatis mutandis* to proceedings before the Arbitration Board. Section 1034(1) of the Civil Procedure Code 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 Law Amending the Industrial Property Regulations and Adding Provisional Rules thereto, of July 2, 1949), and representatives of associations falling under Section 11 of the Law on Labor Courts.

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

Settlement Proposals of the Arbitration Board

34.–

(1) The Arbitration Board shall take its decisions by a majority vote. Section 196(2) of the Law on the Judiciary 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 *Landgericht* having jurisdiction in the place of the petitioner's residence, in accordance with the Civil Procedure Code.

Termination of Arbitration Proceedings Without Result

35.–

(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.

Costs of Arbitration Proceedings

36.–

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

6. Judicial Proceedings

Requisites for Instituting Proceedings

37.–

(1) Any right or legal position that is governed by this Law 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 Civil Procedure Code.

Action for Reasonable Compensation

38.–

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.

Jurisdiction

39.–

(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 Law). 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

Employees in Public Service

40.–

Inventions and technical improvement proposals made by employees in enterprises and offices of the Federal Government and state governments, 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 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 Law, Sections 29 to 32 shall not apply.

Civil Servants and Members of the Armed Forces

41.–

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.

Special Provisions for Inventions Made by Teachers and Assistants at Universities

42.–

(1) In derogation from Sections 40 and 41, inventions made by professors, lecturers and scientific assistants, in their capacity as such, at universities and higher schools of science shall be free inventions. Sections 18, 19 and 22 shall not be applicable.

(2) Where the employer made available special resources for the research work that led to the invention, the persons mentioned in subsection (1) shall notify him in writing of the exploitation of the invention and shall, upon his request, specify the kind of exploitation and the amount of proceeds achieved. Within three months of such written notification, the employer may demand a reasonable share of the proceeds from the invention. The amount of this share shall not exceed the value of the resources made available.

CHAPTER IV TRANSITIONAL AND FINAL PROVISIONS

Inventions and Technical Improvement Proposals Made Prior to Entry Into Force of This Law

43.–

(1) As from the date of its entry into force, this Law shall apply to patentable employee inventions made since July 21, 1942, and before the effective date of this Law, save that the provisions of the earlier law shall still apply to the claims to such inventions.

(2) This provision shall also apply to patentable employee inventions made before July 22, 1942, where the conditions of Section 13(1), second sentence of the Implementing Regulations to the Rules on Inventions of Workers, of March 20, 1943 (*Reichsgesetzblatt*, I, p. 257), are satisfied and where the declaration provided for therein relating to unsatisfactory handling of compensation had not been made by the time this Law entered into force. Such declaration shall be made with the Arbitration Board (Section 29). The declaration may no longer be made if the patent granted for that invention has expired. The second and third sentences of this subsection shall not be applicable where judicial proceedings relating to a demand for reasonable compensation had already been instituted by the effective date of this Law.

(3) In the case of inventions that may only be protected as utility models, made since July 21, 1942, and before the effective date of this Law, only the provisions governing arbitration proceedings and judicial proceedings (Sections 28 to 39) shall apply. In all other cases, the provisions of the earlier law shall still be applicable.

(4) Section 20(1) shall not apply to technical improvement proposals where exploitation had begun before the effective date of this Law.

Pending Proceedings

44.–

For proceedings pending on the effective date of this Law, the courts having jurisdiction under the provisions of the earlier law shall continue to have jurisdiction.

Implementing Provisions

45.–

In consultation with the Federal Minister of Labor, 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.

Provisions Repealed

46.–

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

- (i) the Regulations concerning the Treatment of Inventions by Workers, of July 12, 1942 (*Reichsgesetzblatt, I, p. 466*);
- (ii) the Implementing Regulations to the Rules on Inventions of Workers, of March 20, 1943 (*Reichsgesetzblatt, I, p. 257*).

Special Provisions for Berlin

47.¹

48. [Repealed]

Entry Into Force

49.–

This Law shall enter into force on October 1, 1957.

¹ No longer applicable (*Editor's note*).