



Compensation law in Germany

Dr Jan Dombrowski, Associate in our German patent team, provides a brief summary of the German rules for compensating employee inventors.

Calculation of the amount of the reward

The amount of the reward paid to inventors is intended to balance the interests of the employer and the employee and to ensure that the inventor receives fair remuneration. The amount of the reward is based on the value of the invention and is calculated using the following formula:

Inventor's reward = value of invention x proportional factor / 100

Value of invention

There are three different methods that can be used to calculate the value of the invention:

- By analogy with the fees that would have been payable by the employer under a licence agreement to use an equivalent invention. This method is usually used if the invention is put to commercial use. The value of the reward is calculated by multiplying the turnover by the usual licence rate. The value of the invention is therefore based on the market value that the employer would have had to pay an independent inventor under a licence agreement.
- Based on the value of the invention to the company. This calculation method is most appropriate for inventions that are only used within the company, and is based on the difference between the cost of the invention and the income generated by using the invention.
- If neither of the above calculation methods is appropriate, the value of the invention can be estimated. This is generally done by taking the amount that the employer would have spent had it been obliged to purchase the invention from an independent inventor.

Proportional factor

The proportional factor is indicative of the relative involvement of the company and the employee in the invention process. The following are important when considering this factor:

- Who (employer or employee) set the original task that led to the invention?
- Who (employer or employee) ultimately resolved the task underlying the invention? If this was the employee: to what extent did the employee use the employer's technical resources?
- The role of the employee within the company. If the employee is expected to come up with inventions as part of their role, then the reward will generally be lower.

Timing and method of payment of reward to inventor

The reward is normally due to the inventor three months after the company begins using the invention. If the company does not use the invention, the reward is due three months after the patent is granted.

The amount of the reward should be recorded in an agreement between the employer and employee, but if the parties do not reach an agreement within a reasonable period the amount is set unilaterally by the employer. The discretion exercised by the employer in setting the fee can be verified by a court.

The reward is generally calculated and paid on an annual basis (in arrears at the end of the financial year). In some circumstances payment may be made in a lump sum, for example if the commercial value of an invention can be accurately predicted or if the employment relationship ends.