

German Patent and Trade Mark Office

III. Document SCP/14/4

In addition, we suggest that item 94 of document SCP/14/4 on the law on employee's inventions in Germany should read as follows:

94. However, this is not the case in some other countries, e.g., in Germany and Japan.

In Germany, an employee inventor has a duty to notify an employee's invention to his or her employer without undue delay.

Subsequently, the employer can claim an employee's invention by making a written statement addressed to the employee. The statement claiming the invention is deemed to have been made when the employer does not release the invention by a declaration in text form vis-à-vis the employee within four months after the receipt of the report on the invention duly made by the employee. By claiming the invention, all property rights to the employee's invention will pass to the employer. The employee has a claim to reasonable remuneration against the employer as soon as the employer has claimed the employee's invention. Guidelines on calculating the entitled remuneration are published by the authorities, and in the case of a dispute on the amount of remuneration, the German Patent and Trade Mark Office provides arbitration.

This provision aims at ensuring that, on the one hand, an employee's invention made within the scope of employment is as a rule attributed to the employer, while on the other, ensuring that the inventor employee is reasonably recompensed for the attribution of his/her invention to the employer.

However, if the employer releases the invention within 4 months from the report of the employee, the right remains with the inventor employee and the inventor employee can take over the right in the application.

In Japan, a right in a patent belongs to an employee inventor in cases of employees' inventions. The statutory right of an employer is an entitlement to a non-exclusive license for the patent obtained by the employee. In reality, a contractual agreement is concluded between the employer and the employee to the effect that the employee assigns his or her right in a patent to the employer. When he or she assigns his or her right to, or concludes an exclusive license with, the employer, the employee shall have the right to reasonable remuneration.