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& P A R T N E R

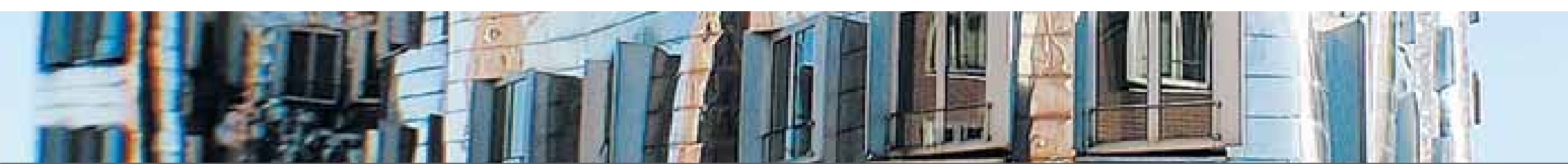
**German  
Employee Invention Law, 2009**

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## Amendment of the German Act on Employee Inventions

- In force since October 1, 2009
- Employer **automatically** becomes legal successor of the employee who notified a service invention (職務発明), if the employer does not release a statement that he does not file this invention within 4 months.
- After 4 months, the employee automatically acquires a right for adequate remuneration.
- As the legal successor, the employer is required to file a patent application.



- Employee:

A person who has a legally employed under German law.

- Free invention:

Non-tied invention, i.e. an invention which is not service invention;  
however: obligation to notify and duty to offer a non-exclusive license.



## Transitional Provisions

- Notification **before** October 1, 2009

→ former regulations

- Notification **on or after** October 1, 2009

→ amended regulations



## Adequate Emuneration

Guidlines for Emuneration of Employee Inventions:

$$E = V \times F$$

E = Emuneration

V = Value of the invention (could be claimed by a „free“ inventor)

F = Fractional factor (considers the fact the employee is no „free“ inventor)



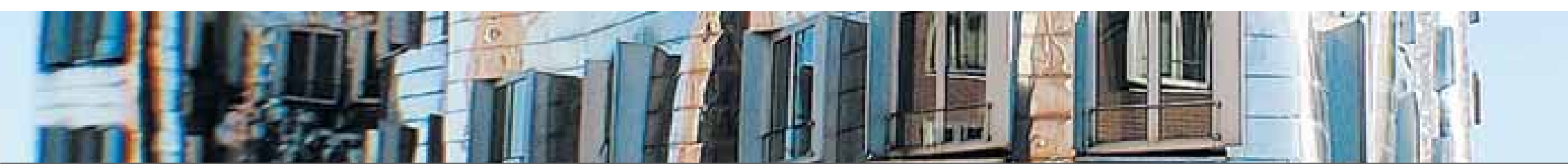
## Value of the Invention

- Value of using the invention in the company
- May be calculated according to
  - License analogy ( $V = T \times R \times L$ ),
  - Ascertainable advantage for the company, or
  - Estimation.

T = turnover

R = reference factor (considers the fact that the invention might not cover the whole product)

L = percentaged license fee



## Fractional Factor

- Accounts for the fact that employee is no „free inventor“ but is employed and is expected to develop and invent
- Is calculated based on
  - a = definition of the object (1 to 6 points)
  - b = solution of the object (1 to 6 points), and
  - c = employees position and tasks in the company (1 to 8 points)

a+b+c =	...	6	7	8	9	10	11	...
F =	...	10%	13%	15%	18%	21%	25%	...



## Typical Example: Fractional Factor

- Inventor is an engineer working in R&D:
  - $a = 3$  when he discovered the problem himself, without the company setting him the object, however, he knew of existing shortcomings
  - $b = 3$  when he found the solution not only due to his own knowledge but also due to internal knowledge of the company
  - $c = 4$  when he holds a university degree and works as a research engineer

→ Fractional factor  $F = 21\%$





## Typical Example, Calculation of Emunireation

- Fractional factor:  $F = 21\%$
- Percentaged license fee is  $3\%$
- Reference factor is  $30\%$

$$\begin{aligned} E &= V \times F \\ &= T \times R \times L \times F \\ &= T \times 30\% \times 3\% \times 21\% \end{aligned}$$

$$\underline{E = T \times 0.19\%}$$

More than 85% of the inventors receive emuneration of  $< 500 \text{ €}$  per year per patent.



# Conflicts between Employer and Employee

## German Arbitration Board for Employee Invention Law Issues

- Free of charge
- Can be called by employee or employer
- No ruling, but suggests settlement (acceptance 65-70%)
- About 100 to 150 cases per year
  
- In case of no acceptance from both sides: Civil law suit.

**Thank you very much for your kind attention.**



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