

## GERMANY



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## Joint ownership of patents

**T**he legal relationship between joint owners of a patent is based on the applicable national law. In

Germany, in the absence of any contract, the principle of Bruchteilsgemeinschaft (community of part owners) in accordance with Section 741 and following of the German Civil Code will apply: a legal entity sharing undivided interests in the patent is created.

There has been a long and controversial debate over whether a co-owner in a Bruchteilsgemeinschaft is entitled to compensation for the benefits which another owner obtained from using the patent. While the prevailing opinion in the literature answered this in the affirmative, the German Supreme Court recently decided that, in the absence of any agreement to the contrary, the use by individual parties in principle does not create an obligation towards the others to make compensation payments (“Gummielastische Masse II” of March 22 2005).

The Supreme Court pointed out that in order for a claim for compensation to come into existence, the non-using co-owner will be required to call upon the using coowner to consent to an arrangement concerning use (Section 745 of the Civil Code).

If it is not possible to come to an arrangement about the use of the patent, the Supreme Court emphasized that according to Section 749 of the Civil Code each party can demand the dissolution of the joint ownership at any time. This provides the non-using coowner with an adequate instrument for realizing his due share of the economic value of the joint patent, since the threatened break-up of the joint ownership and possible loss of the patent right by its auctioning off is an incentive to come to an agreement on reasonable compensation for the non-using co-owner.

This decision highlights the importance of making an arrangement concerning use of a patent already at the initial stage when a joint ownership is being created in order to avoid the applicability of the principles of the

Bruchteilsgemeinschaft. Only by making such an arrangement can it be ensured that those owners who do not use the patent themselves can reasonably participate in the economic exploitation by the other owners. On the other hand, this arrangement should also rule out the dissolution of the joint ownership (to the extent that Section 749 of the Civil Code law allows it) in order to protect the using co-owner.