

GERMANY



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Employees' Invention Act simplified

On October 1 2009, the Law on Simplification and Modernisation of the Patent Law will enter into force in Germany, and the amendments affect several German acts relating to intellectual property.

A significant change introduced by the new Law relates to inventions made by an employee. According to the German Employees' Invention Act as now in force, any employee making an invention needs to report the invention to the employer immediately in writing. After receiving the report, the employer must claim the invention within four months. If this time limit is missed by the employer, there will be no transfer of rights and the invention still belongs to the employee who might then even claim damages if the employer uses the invention without the employee's consent.

Especially for small companies, the procedure outlined here has always been a heavy burden as it requires significant organisational efforts.

The new Law now stipulates that a claim for an employee's invention is deemed to have been made if the employer does not provide within four months of receipt of the employee's report a declaration that the employee's invention has been released. In other words, as the new Law provides this kind of legal fiction, a transfer of the invention automatically becomes effective even if the employer does not take any action.

Additionally, according to the new Law, the employee's report and declarations made by the employer do not need to be made in writing anymore but can be made in text form, thereby enabling use of modern communication means such as e-mail.

It is expected that the amendments introduced by the new Law will significantly reduce the organisational efforts companies had to make in the past for complying with the legal requirements and, on the other hand, increase legal certainty for the companies.