

University inventions in Germany

The reform debate surrounding Section 42 of the German Employee Inventions Act (ArbEG)

University inventions have long occupied a distinct position under German employee invention law. Since the 2002 reform of Section 42 of the German Employee Inventions Act (*Gesetz über Arbeitnehmererfindungen, ArbEG*), which abolished the professors' privilege (*Hochschullehrerprivileg*), universities have generally been able to claim and commercially exploit service inventions (*Diensterfindungen*) made by their employees. At the same time, Section 42 ArbEG safeguards specific rights of university researchers and entitles university inventors to 30 percent of the proceeds derived from exploiting their inventions.



This regulatory framework has recently come under renewed scrutiny. Since 2025, the German Chemical Industry Association (*Verband der Chemischen Industrie, VCI*) has called for an amendment to Section 42 ArbEG under which patenting costs saved by universities would not be treated as proceeds derived from exploitation. The 2025 coalition agreement also provides for a national intellectual property (IP) strategy and binding standardized spin-off agreements for universities and research institutions. The Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz, BMJV*) has confirmed that issues relating to the Employee Inventions Act are being examined in this context. At EU level, the European Commission is developing a Blueprint for IP Licensing and Spinoff Creation.¹

The special status of university inventions affects technology transfer in two principal respects: the contractual availability of rights and the economic terms on which inventions may be exploited. Current initiatives address these aspects differently. Standardization is intended primarily to simplify procedures and contractual arrangements, whereas the specific proposal to amend the German Employee Inventions Act concerns the statutory remuneration rule in Section 42 no. 4 ArbEG.

The special status of university inventions

Before the 2002 reform, inventions made by professors, lecturers, and research assistants at universities were generally regarded as free inventions (*freie Erfindungen*) under the former Section 42 ArbEG. Only where the employer had provided special budgetary resources for the research could it claim a limited share of the proceeds. The 2002 reform abolished this professors' privilege and brought university inventions largely within the general framework of employee invention law. The legislature sought to enable universities to claim commercially exploitable service inventions, coordinate applications for IP protection, and facilitate the industrial exploitation of research results. It expressly viewed the reform as a means of promoting knowledge and technology transfer.²

University inventions nevertheless remained subject to special provisions. Section 42 nos. 1 and 2 ArbEG protect the rights to publish (*positive Publikationsfreiheit*) and to refrain from publication (*negative Publikationsfreiheit*); Section 42 no. 3 ArbEG preserves a non-exclusive right to

Section 42 of the German Employee Inventions Act - Special provisions for inventions at universities

The following special provisions shall be applicable to inventions by staff employed at a university:

- (i) The inventor shall be entitled to disclose the service invention within the framework of his teaching or research activity if he has notified this fact to the employer in due time, as a rule, two months previously. Section 24(2) shall not be applicable in this respect.
- (ii) Where the inventor refuses the disclosure of his service invention due to his freedom of teaching and research, he shall not be obliged to report the invention to the employer. Where the inventor wants to disclose his invention at a later date, he shall report the invention to the employer without delay.
- (iii) In the case that the service invention is claimed, the inventor shall retain a non-exclusive right to use the service invention within the framework of his teaching and research activity.
- (iv) Where the employer exploits the service invention, the amount of the remuneration shall be 30 percent of the proceeds realised by the exploitation.
- (v) Section 40(1) shall not be applicable.

use a claimed service invention for teaching and research. In addition, Section 42 no. 4 ArbEG provides for a distinct remuneration regime: if the university exploits the invention, the inventor receives 30 percent of the proceeds realized. Unlike Section 9 ArbEG, the provision does not require an individual calculation based on the invention's value and the inventor's share factor (*Anteilsfaktor*); instead, it provides for a fixed share of exploitation proceeds. In structural terms, university inventors are thus placed in a more favorable position than under the general remuneration rules.³

The individual provisions of Section 42 ArbEG thus affect different phases of technology transfer. Sections 42 nos. 1-3 ArbEG determine the extent to which future research results can be made contractually available in advance, whereas Section 42 no. 4 ArbEG governs the financial consequences of their subsequent exploitation.

¹ VCI, Forschungsk Kooperationen zwischen Wissenschaft und Industrie: Innovationen zum Vorteil des Innovationsstandorts heben – Ein 7-Punkte-Plan, 19 May 2025, p. 2, item 4; CDU/CSU/SPD, Koalitionsvertrag 2025: Verantwortung für Deutschland, pp. 80-81; information provided by the BMJV to the author, email of 17 September 2026; European Commission, Survey on an EU Blueprint for intellectual property licensing and spinoff creation, 17 July 2026.

² Bartenbach/Volz, Erfindungen an Hochschulen – Zur Neufassung des § 42 ArbEG, GRUR 2002, 743, 743 et seq.; BT-Drs. 14/5975, pp. 2, 5 et seq.

³ Section 42 nos. 1-4 ArbEG; Bartenbach/Volz, Arbeitnehmererfindungsgesetz, 7th ed. 2024, Section 42, marginal nos. 57 et seq., 101 et seq., 131 et seq., 145, 165, 178.



Contractual availability of university IP

Research collaborations and contract research generally require industry partners to have reliable access to IP rights arising from a project. In the case of university inventions, however, universities cannot provide such assurances without taking into account the participating researchers' statutory rights. In particular, the right to refrain from publication (Section 42 no. 2 ArbEG) may mean that a service invention is not initially reported to the university, while the right to publish (Section 42 no. 1 ArbEG) can affect the timing of its disclosure. The inventor also retains a right of use for teaching and research under Section 42 no. 3 ArbEG.⁴

Various contractual models and standard agreements have therefore developed in practice. They typically oblige universities to claim reported service inventions and grant rights to their industry partners, together with provisions on publication, confidentiality and research use. The inventor's statutory rights cannot, however, simply be waived or curtailed by an advance agreement. Section 22 ArbEG prohibits contractual derogations to an employee's detriment before a service invention has been reported. Whether, and to what extent, this restriction also applies to declarations made by university researchers directly to industry partners remains disputed. Accordingly, separate agreements between researchers and industry partners are commonly used in an attempt to restrict the rights under Section 42 nos. 1 and 2 ArbEG. The validity of this contractual practice has not yet been conclusively determined by the courts.⁵

Against this background, standardized agreements can help structure recurring negotiation issues, clarify responsibilities and reduce transaction costs. They cannot, however, displace the statutory rights laid down in Section 42 ArbEG.

Accordingly, current policy initiatives on the contractual side have focused primarily on standardizing transfer practices. The coalition agreement envisages binding standardized spin-off agreements; the Federal Report on Research and Innovation 2026 also refers to the EXIST IP-Toolbox 3.0 and the IP-Transfer 3.0 pilot program as resources designed to simplify and accelerate IP transfer.⁶

Remuneration and exploitation costs

Section 42 no. 4 ArbEG adopts a distinct approach to inventor remuneration. University inventors are entitled to 30 percent of the proceeds derived from exploitation. The legislature deliberately chose a gross-proceeds basis (*Bruttoeinnahmen*): proposals to deduct patenting costs beforehand were not adopted. Costs incurred in obtaining, maintaining, defending, or exploiting IP rights are therefore not deducted when determining the relevant gross proceeds. This fixed-percentage approach is intended to simplify remuneration calculations, avoid disputes, and provide a substantial incentive for inventors.⁷

⁴ Boos, Vertragsgestaltung bei F&E-Projekten mit Hochschulen im Lichte des § 42 Nr. 1-3 ArbEG, GRUR-Prax 2024, 286, 286 et seq.; Bartenbach/Volz, Arbeitnehmererfindungsgesetz, 7th ed. 2024, Section 42, marginal nos. 190 et seq.

⁵ Section 22 ArbEG; Boos, GRUR-Prax 2024, 286, 287 et seq.; on existing standard agreements, see Eberle/Czychowski, F&E-Zusammenarbeit zwischen Unternehmen und Hochschulen: Ein wichtiger Teil von Deutschlands Innovationsfähigkeit – ein Überblick und einige Vorschläge, GRUR Patent 2024, 316, 323 et seq.

⁶ CDU/CSU/SPD, Koalitionsvertrag 2025: Verantwortung für Deutschland, pp. 80-81; BMFT, Bundesbericht Forschung und Innovation 2026, Section 11.2.2 (Schutz geistigen Eigentums).

⁷ BT-Drs. 14/5975, p. 7; Bartenbach/Volz, Erfindungen an Hochschulen – Zur Neufassung des § 42 ArbEG, GRUR 2002, 743, 756 et seq.; Bartenbach/Volz, Arbeitnehmererfindungsgesetz, 7th ed. 2024, Section 42, marginal nos. 165 et seq.; see also BGH, judgment of 5 February 2013 – X ZR 59/12, GRUR 2013, 498 – Genveränderungen, para. 16.

The Federal Court of Justice (*Bundesgerichtshof, BGH*) clarified the scope of this rule in its judgment of 5 February 2013 (X ZR 59/12 – Genveränderungen). The term »proceeds« in Section 42 no. 4 ArbEG covers not only monetary payments but also other benefits of monetary value (*geldwerte Vorteile*) obtained by the employer as a consequence of exploitation. Where a licensee bears the costs of filing, prosecuting, maintaining, or defending IP rights for the university's benefit, that assumption of costs must generally be included in the remuneration basis. In principle, the licensee's actual expenditure may be used to value the benefit.⁸

This has significant consequences for technology-transfer arrangements. A university may owe inventor remuneration on an economic benefit without receiving a corresponding cash payment. At the same time, the university generally bears the risk that exploitation proceeds will not cover its costs. As a result, the inventor's entitlement to 30 percent of gross proceeds can represent a substantially greater share of net proceeds; legal commentary notes that it may frequently exceed half of the invention-related net proceeds.⁹

This is the central issue in the current reform debate. The assumption of patenting costs by a commercialization partner may ease the financial burden of protecting an invention; under the current rules, however, that same relief increases the basis on which inventor remuneration is calculated. Conversely, the legislature deliberately chose to involve university inventors in the full range of economic benefits arising from exploitation, regardless of the university's internal cost structure.¹⁰

Current reform initiatives in Germany

The specific reform proposal therefore concerns not the 30 percent rate itself, but the benefits that factor into the calculation basis. Calls for legislative clarification of the treatment of patenting costs borne by commercialization partners predate the VCI initiative. Since May 2025, the VCI has specifically been proposing excluding saved patenting costs from universities' exploitation proceeds under Section 42 ArbEG. This addresses a particular transfer scenario and does not, in itself, entail a general shift from gross to net proceeds.¹¹



⁸ BGH, judgment of 5 February 2013 – X ZR 59/12, GRUR 2013, 498 – Genveränderungen, paras. 17–23, 25–27.

⁹ Bartenbach/Volz, Arbeitnehmererfindungsgesetz, 7th ed. 2024, Section 42, marginal nos. 165, 168, 178.

¹⁰ BGH, GRUR 2013, 498 – Genveränderungen, paras. 12, 16, 26; Bartenbach/Volz, Arbeitnehmererfindungsgesetz, 7th ed. 2024, Section 42, marginal no. 165.

¹¹ Eberle/Czychowski, F&E-Zusammenarbeit zwischen Unternehmen und Hochschulen, GRUR Patent 2024, 316, 328; VCI, Forschungsk Kooperationen zwischen Wissenschaft und Industrie – Ein 7-Punkte-Plan, 19 May 2025, p. 2, item 4.

The effect of such a targeted amendment is readily identifiable: a commercialization partner's assumption of patenting costs would no longer, in itself, give rise to additional inventor remuneration on those costs, while the 30 percent model would otherwise remain intact. At the same time, an economic benefit that currently forms part of the inventor's remuneration basis would be excluded. The reform debate thus concerns the balance between the financial viability of exploitation and the legislature's deliberately broad protection of university inventors' entitlement to participate in its benefits.

The Federal Report on Research and Innovation 2026 identifies the national IP strategy as a means of making the rules governing IP clearer, faster and more practically oriented. The strategy provides a broader policy framework for technology transfer. At the German Patent and Trade Mark Office's (*Deutsches Patent- und Markenamt, DPMA*) User Forum in March 2026, a BMJV representative addressed the prospect of further reform and highlighted the difficulty of balancing the competing interests and the structural challenges involved. Meanwhile, the Federal Ministry of Research, Technology, and Space (*Bundesministerium für Forschung, Technologie und Raumfahrt, BMFTR*) is leading work on the national IP strategy. According to the Federation of German Industries (*Bundesverband der Deutschen Industrie, BDI*), the BMFTR held five thematic roundtables in August 2026, with initial key points expected in autumn 2026 and further expert discussions to follow.¹²

In a response to the author on 17 September 2026, the BMJV confirmed that questions concerning the Employee Inventions Act are being examined in connection with the national IP strategy. The ministry did not specify which provisions or legislative options are under consideration. It acknowledged the VCI proposal and noted that similar demands had been raised by other parties. No concrete legislative steps or timetable were announced; internal government deliberations were continuing.¹³ In a further response dated 8 October 2026, the BMFTR confirmed that the strategy remains under internal coordination and that a draft is expected to be published during autumn 2026. The envisaged measures include standardized conditions for IP transfer, a central IP toolkit, stronger IP competence centers, and greater emphasis on IP skills in academic

education. The ministry expressly noted that the role of individual, existing tools, including the EXIST IP-Toolbox 3.0, has yet to be determined.¹⁴

The proposed standardization measures are particularly relevant to spin-offs, where the structure of IP transfer agreements may intersect with Section 42 no. 4 ArbEG. Licensing a service invention to a spin-off or contributing it to the company in kind constitutes exploitation for the purposes of that provision. The form of consideration selected - such as license fees, equity interests, or the assumption of costs - may therefore also affect inventor remuneration. Clearer rules on the treatment of gross proceeds, together with standardized spin-off agreements, could make these transactions easier to structure.¹⁵

Current reform initiatives at EU level

The proposed EU Blueprint for IP Licensing and Spinoff Creation provides a complementary European policy context. The European Commission intends to offer universities and public research organisations practical guidance on academic IP transfer, including licensing, royalty and revenue sharing, equity participation in spin-offs, and standard contract models. Consultation on the discussion paper closed on 16 August 2026, with publication of the final Blueprint expected by the end of 2026. At this stage, the Blueprint is neither a legislative proposal nor a binding instrument, but a prospective set of non-binding practical guidelines. It discusses institution-specific models for sharing proceeds with researchers rather than prescribing a uniform remuneration percentage.¹⁶

For German employee invention law, the Blueprint's significance is therefore primarily contextual: European reference models may help structure contractual terms, but they do not determine university inventors' statutory remuneration rights under Section 42 ArbEG. A separate legislative development is the Commission's proposal of 9 September 2026 for a European Innovation Act, which proposes a voluntary Union-wide framework for IP valuation and an EU-wide digital platform to facilitate IP licensing and transfer. However, that proposal does not harmonise national employee invention law.¹⁷

¹² DPMA, Bericht vom DPMA Nutzerforum 2026; BDI, Nationale IP-Strategie: Geistiges Eigentum als Schlüssel für Innovation und Wettbewerbsfähigkeit, 23 September 2026.

¹³ Information provided by the Federal Ministry of Justice and Consumer Protection (BMJV) to the author, email of 17 September 2026.

¹⁴ BMFTR, Division S11 (Grundsatzfragen der Innovation), response to the author, email of 8 October 2026.

¹⁵ BMFTR, Bundesbericht Forschung und Innovation 2026, Chapter 1 (Forschungs- und innovationspolitische Leitlinien der Bundesregierung); CDU/CSU/SPD, Koalitionsvertrag 2025: Verantwortung für Deutschland, pp. 80-81; Bartenbach/Volz, Arbeitnehmererfindungsgesetz, 7th ed. 2024, Section 42, marginal nos. 208-209.

¹⁶ European Commission, Survey on an EU Blueprint for intellectual property licensing and spinoff creation, 17 July 2026; European IP Helpdesk, European Commission prepares blueprint for academic IP licensing and spin-off creation, 9 July 2026.

¹⁷ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a framework of measures for strengthening the Union innovation ecosystem and amending Regulation (EU) 2017/1001 (European Innovation Act), COM(2026) 567 final, 9 September 2026, in particular Chapter III, Article 32(3)(a)-(b).

Outlook

The current debate thus returns to the underlying purpose of Section 42 ArbEG: to facilitate the commercial exploitation of university inventions while preserving the special legal position of university inventors. Under present-day technology-transfer conditions, this balance concerns more than remuneration alone. It also affects the extent to which future research results can be made contractually available and the financial consequences of licensing, cost assumption, or contributions to spin-offs.

Any adjustment would need to reconcile three objectives: appropriate and predictable remuneration for university inventors; financially sustainable decisions by universities on protecting and exploiting IP; and foreseeable terms for research partners, spin-offs, and investors. A narrowly targeted amendment to the definition of exploitation proceeds under Section 42 no. 4 ArbEG would address only the remuneration issue, leaving the contractual questions discussed above unresolved. Whether the national reform process will also address other interfaces between university inventors' rights and standardized transfer models remains open. It nevertheless offers an opportunity to consider these instruments together as part of a coherent framework for university inventions.



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