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Author

ULRICI, Bernhard

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Abstract

Intellectual works that are eligible for protection, e. g. patents, copyrights, or semiconductor topographies, in each case are tied to the holder of the rights entailed by such protection. In the vast majority of cases, such works will be created by employees, also where research institutions or cooperative research projects are concerned. Since the protected privileges serve to recognize a particular human performance, and also because their origination ties in with the personality, creativity, or individuality of a person, they cannot be acquired as something separate from the person who is the creator of the intellectual work. Thus, the cooperative research projects that provided the pre-requisites for achieving the results and funded the work done will not have the capacity of inventors, authors, or creators – this is the role of their employees who, by their intellectual activity, fashioned the work results. They are the ones who are fundamentally and inalienably entitled to the rights to the intellectual achievement. The legal order in Germany does, however, take account of the legitimate interests that research institutions or cooperative research projects have in being able to realize the work results obtained by their employees that are eligible for protection; German law does

so based on the above premise in a consistent and constructive manner by opening up a whole range of ways to achieve this. For inventions, the Gesetz über Arbeitnehmererfindungen (German Act governing Inventions by Employees) stipulates that an employer may transfer so-called "service inventions" to itself without this entailing any assistance by the employee. This fundamentally also applies to scientists employed by an institution. However, these scientists do enjoy the right to keep secret the inventions they have made where this is dictated by reasons of their freedom to teach and to pursue research. In the case of works protected by copyrights, an employer may demand that its employee grant it usage rights inasmuch as the employer depends on such usage rights in order to use the work performance by the employee that will then lead to the work. This means that where research serves no concrete purpose, e. g. the research done at a university, a scientist need not grant any such rights. However, the situation in law is different for contract research, to cite but one example. In derogation therefrom, the law stipulates as a general principle for computer programs that the employer will automatically be entitled to exercise all economic rights in the program so created (Art. 2 paragraph 3 of Directive 2009/24/EC). Where topographies of semiconductor products are concerned, the legal situation in Germany is similar (cf. Art. 3 paragraph 2 lit. a of Directive 87/54/EEC). The German legislator has not made sufficient provision for collaborative creative processes by employees. This will have practical repercussions in particular in scenarios in which – as is the case in cooperative research projects – employees of different employers divide up the work efforts amongst each other to achieve intellectual results. Where the parties involved (collaborative research project, partners in the cooperative project, employees) fail to coordinate a legal basis in advance, there is the threat of legal fragmentation, which will impede the realization of the work results. (HRK / Abstract übernommen)