

Claims to inventor remuneration: Accrual and time-barring separately for each financial year

BGH, judgment of 11 November 2025, X ZR 170/23 – Scheiben-Naben-Verbindung



by
Dominik Reim

Patent Attorney
European Patent Attorney
Representative before the UPC

BACKGROUND

The decision in the ***Scheiben-Naben-Verbindung*** case addresses the time-barring period applicable to claims for payment of employee inventor remuneration under the German Employee Inventions Act (Arbeitnehmererfindergesetz, ArbNErfG). Inventor remuneration is often paid over an extended period of time and on the basis of different accounting periods. In the present case the question arose as to when such claims become time-barred. Particularly, the present case raises the question: Is the claim to inventor remuneration time-barred as a whole over the entire time of use of the invention or are annual claims time-barred separately?

Section 9 ArbNErfG grants an employee inventor a claim to appropriate remuneration. In parallel, Section 12 ArbNErfG provides that the type and amount of remuneration are to be determined by agreement between the employer and the employee inventor within

a reasonable time following the employer's assertion of the employee invention. If no such agreement is achieved, the employer must determine and pay the remuneration. In order to ensure that the employee inventor receives the remuneration, or at least a basis for calculating such remuneration, as soon as possible after the employer has asserted the invention, Section 12 (3) ArbNErfG provides that the remuneration must be determined no later than three months after the grant of the patent.

In the present decision, the Federal Court of Justice (Bundesgerichtshof, BGH) addresses the question of when a claim for payment of appropriate remuneration pursuant to Section 9 ArbNErfG becomes time-barred at the earliest. The BGH also addresses the relationship between the claims under Sections 9 and 12 ArbNErfG and the implications of this relationship for the applicable time-barring periods.

DECISION

The plaintiff was managing director of the defendant from 1995 until the end of June 1998. His service agreement as managing director provided for the application of the ArbNErfG.

During his employment relationship with the defendant, the plaintiff made an invention which was asserted by the defendant and for which the defendant filed a patent application on 12 November 1996. A European patent was subsequently granted, and the mention of the grant of the patent was published on 11 July 2001.

In 2016, the plaintiff became aware that the defendant was marketing a corresponding product. He asserted against the defendant that the product would be a use of the technical teaching of the invention and that he was therefore entitled to inventor remuneration.

The defendant denied using the invention, whereupon the plaintiff filed a lawsuit. In his lawsuit, the plaintiff sought information and accounting for a period from 2008 to 2016 (until the lapse of the patent) in order to determine the amount of inventor remuneration, as well as payment of the inventor remuneration resulting therefrom. The lawsuit was served on 6 August 2019.

The Regional Court (Landgericht) ordered the defendant to provide such information and accounting for the years 2013 to 2016. It dismissed the action to the extent it concerned the period from 2008 to 2012, on the ground that the relevant claims were time-barred.

The defendant filed an appeal against said decision. The Higher Regional Court (Oberlandesgericht) allowed the defendant's appeal and dismissed the plaintiff's lawsuit in its entirety.

The Higher Regional Court based its decision on the finding that the plaintiff's claim to appropriate remuneration was already time-barred and that the corresponding claim for information and accounting could therefore no longer be enforced.

Since there was no indication that the plaintiff had become aware of the grant of the patent, or that he had

failed to obtain such knowledge as a result of gross negligence, the Higher Regional Court decided that the rules governing time-barring irrespective of the claimant's knowledge pursuant to Section 199 (4) German Civil Code (Bürgerliches Gesetzbuch – BGB) applied. Under those rules, the time-barring period begins to run at the accrual of the claim. According to the Higher Regional Court, the claim had accrued with the end of three months after publication of the mention of grant, i.e. after the time-limit for determination of appropriate remuneration according to Section 12 (3) sentence 2 ArbNErfG. Since the lawsuit had not been filed and served more than ten years later, the claim was therefore time-barred as a whole.

The plaintiff then brought an appeal on points of law (Revision) before the Federal Court of Justice (Bundesgerichtshof, BGH) against the decision of the Higher Regional Court, and sought reinstatement of the decision of the Regional Court. The present decision concerns that appeal.

The BGH held the appeal to be well-founded and reinstated the judgment of the Regional Court.

With regard to the time-barring of claims for inventor remuneration, the Higher Regional Court had correctly decided that, in the absence of specific provisions in the ArbNErfG, such claims are subject to the general time-barring provisions of Sections 195 and 199 BGB.

Pursuant to Section 199 (1) No. 1 BGB, the regular time-barring period begins at the end of the year in which the claim arose. As a general rule, a claim accrues only once it has also become due.

Contrary to the view of the Higher Regional Court, the claim to remuneration pursuant to Section 9 ArbNErfG does not become due merely when the employee inventor may demand the determination of appropriate remuneration pursuant to Section 12 (3) ArbNErfG.

The claim to remuneration can be enforced even if no determination of remuneration has occurred. In reverse, the determination of remuneration does not establish the remuneration claim under Section 9

ArbnErfG. Rather, it presupposes that such a claim already exists.

The claim under Section 9 ArbnErfG therefore exists independently of the claim to have the remuneration determined pursuant to Section 12 (3) ArbnErfG. Consequently, the two claims may also become due at different times and may therefore also become time-barred at different times.

As regards when the claim to inventor remuneration pursuant to Section 9 ArbnErfG becomes due, the BGH held that the employee inventor can only demand payment once the employer has actually commenced use of the invention.

Once the employer has commenced use, the remuneration claims are to be accounted for annually, unless the parties have agreed otherwise. However, the claims do not become due continuously with each individual act of use. Rather, they become due only upon the end of the respective financial year. The Federal Court of Justice nevertheless left open whether, having regard to the work required for preparing the accounts, the claim might only become due some time after the end of the financial year.

It follows that a claim for payment of remuneration pursuant to Section 9 ArbnErfG accrues only to the extent that the employer has commenced use of the invention and a remuneration claim has accrued for the relevant accounting period, for example because sales have been generated with products according to the invention or licensing income has been received.

The time-barring period for such a claim therefore begins separately for each financial year and, at the earliest, upon expiry of the relevant year. Accordingly, not all of the plaintiff's claims for payment of remuneration were time-barred.

The plaintiff's claim for information and accounting is ancillary to the principal claim, i.e. the claim for payment of remuneration pursuant to Section 9 ArbnErfG, and therefore cannot become time-barred before the principal claim itself. The Higher Regional Court's dismissal of the lawsuit could therefore not stand.

The BGH consequently set aside the judgment of the Higher Regional Court and dismissed the defendant's appeal against the judgment of the Regional Court.

COMMENTS

The BGH clarifies that the claims under Sections 9 and 12 (3) ArbnErfG exist independently of one another. The period prescribed by Section 12 (3) ArbnErfG for determining the remuneration thus has no effect on the start of the time-barring period for the claim to payment of appropriate remuneration under Section 9 ArbnErfG.

At the same time, the BGH clarifies that the remuneration claims under Section 9 ArbnErfG do not accrue as a single claim covering the entire period of use of the invention, nor do they become time-barred as such. Rather, remuneration claims accrue separately for each financial year. Accordingly, the time-barring period begins separately for each financial year, upon expiry of the respective year. Remuneration claims accruing at a later date – for example, as a result of subsequent sales of products

according to the invention or licensing income received at a later date – thus become time-barred at a later time. A prerequisite for a remuneration claim to accrue is, first, that the employer actually uses the invention and that such use generates an economic value attributable to the invention. If this is the case, the remuneration claim becomes due upon the end of the relevant financial year and is subject to the regular time-barring period under Sections 195 and 199 BGB.

From a practical perspective, each financial year is to be considered separately. An employee inventor may thus still assert remuneration claims after a considerable period of time, specifically for those years, for which the claims have not yet become time-barred. Conversely, the employer may, in principle, rely on the fact that all those claims relating

to earlier financial years are time-barred. However, the fact that a considerable period of time has passed since the employer asserted the employee invention does not, in itself, result in all remuneration claims becoming time-barred.

With the present decision, the BGH thus provides employers with an opportunity to rely on the fact that claims relating to earlier financial years are time-barred. However, in the case of employee inventors whose employment relationship is still ongoing, an employer should carefully consider whether to rely on the fact that such claims are time-barred, as this may affect the parties' future working relationship. After all, successfully relying on the fact that a claim is time-barred requires not only that the employee inventor acted late, but also

that the employer failed to take the relevant action in due time.

By contrast, upon termination of an employment relationship, all intellectual property rights that are still in force, as well as any remuneration claims that may accrue from these, should be identified and clarified. Depending on the circumstances of the individual case, it may be appropriate to agree on a lump-sum remuneration covering and fully satisfying all future claims. In cases of doubt, this can prevent disputes or even costly lawsuits accruing years later when it is discovered that further claims remain outstanding. (Reim)