

Division of Professional Relations  
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FROM THE EDITOR . . .

Report from Anaheim

Unfortunately, this was one of the few national meetings I was unable to attend. Your Division was represented by several members of the Executive Committee, including one Councilor and one Alternate Councilor voting at the Council meeting. I am indebted to many people for the information contained in the following report, particularly Barbara Abler and Henry Bader. The opinions, of course, are my own.

In a welcome acceptance of a broader oversight role, the Committee on Professional Relations will look into official records of cases against two companies which were accused of involvement in serious cases of pollution or employee exposures to toxic chemicals, to see if there were any violations of the ACS Professional Employment Guidelines. I welcome this decision for two reasons. First, there is no such thing as a corporate being; real people make all the decisions, and real individuals must be held accountable for the results of their decisions. Second, the ACS has Corporation Associates, and while they no longer have membership *per se* in the Society, their desire for formal affiliation must be balanced by a willingness to be judged by the professional standards set by the members of the Society. The investigations may show that there is no basis for ACS action, but whichever way it goes, the examination is a proper one.

I have been appointed to the Committee on Economic Status. Mainly, I suppose, because I wasn't there, I was elected the committee's secretary. I have also been appointed to CES's subcommittee on compensation for employed inventors. You will recall that we have supported this concept for some time, and I will keep you informed of future developments.

The Council meeting was attended by Councilor Barbara Abler and Alternate Councilor John Nelson. One of the items

ELECTION RESULTS

The following are the results of the election for DPR officers for 1978:

	<i>Votes</i>
<i>Chairman-Elect</i>	
Don R. Baker*	265
Herbert P. Kagen	28
<i>Treasurer (1978-1979)</i>	
Myron Linfield*	160
Don B. Sullenger	130
<i>Councilor (1978-1980)</i>	
Barbara M. Abler*	146
Norman J. Pinkowski	141
<i>Alternate Councilor (1978-1980)</i>	
John H. Nelson*	197
Marcia L. Coleman	81
<i>Member-At-Large (Executive Committee)</i>	
Attila E. Pavlath* (1978-1979)	193
Bruce M. Monroe* (1978-1979)	191
Stanley W. Drigot* (1978)	108
Allen W. Verstuyft	74

\*Elected

Three were elected member-at-large, Stanley Drigot filling the unexpired term of Don Baker.

Of the 568 ballots mailed out, 294 (52%) were returned. We are grateful to the members for their high level of support.

Warren Niederhauser  
Chairman, Committee on Nominations  
and Elections

that came up was a draft for election guidelines, prepared by the Committee on Nominations and Elections. These have been in the works for quite some time. They were placed on a back burner while several amendments of the constitution and bylaws were acted upon, but they were resurrected in Anaheim.

I have often said that too much time and energy is being expended in this area, especially as damn few complaints are registered for the hundreds of elections conducted within the Society each year. One

cannot help but think that much of the motivation behind these efforts is an attempt to silence the more liberal elements in the Society, such as GRASSROOTS. Well, the Council almost killed it this time. It voted to table the election guidelines (Abler and Nelson voted to table). However, they were later "removed from the table" and then recommitted. So we probably have not heard the last of them yet.

A couple of more bylaw amendments dealing with the conduct of elections were

# THE CONCEPT OF EMPLOYEE INVENTION LAWS. EQUITABLE REWARD FOR A SPECIAL EFFORT "BEYOND THE CALL OF DUTY"- THE GERMAN EXAMPLE

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To be called an explorer or inventor has throughout history been a coveted achievement. It has heralded an exotic or exciting though strenuous effort and ceaseless struggle which resulted in a discovery — a discovery which commonly culminated a pioneering effort and affected society as a whole or mankind to a large extent.

Research and investigation, usually based on theoretical premises, are the motivating forces which lead to an invention and discovery. However, with due consideration to the gain usually afforded society and the benefits derived by mankind, and not neglecting the unavoidable aspect of the costs and expenses involved, it has been common practice to stake the researcher or explorer and to reward and compensate the successful inventor or discoverer.

This practice was followed by Queen Isabella of Spain with Columbus and by the New York Herald in the case of Henry M. Stanley (so that he might "discover" David Livingstone). Thus the principle — that the search for a treasure must be supported and sustained by financial assistance and its discovery must be adequately rewarded by a financial bounty — has been historically and traditionally well established. The stimulus to effectively set the motivating forces in motion, however, has always been the reward. But only if the reward was adequate, whether monetarily or otherwise, would it have the desired result.

In the same manner in which society in the past has directly benefitted from the discovery of continents and treasures, the economy as such, commerce, industry and business, will and do benefit from inventions. However, the vast majority of these (80% in the Federal Republic of Germany) were and are made by employees.

The recognition of these two aspects: (1) that inventions increase the economic capacity and benefit business and industry and national defense (e.g. increase the GNP) and (2) that most inventions in the modern industrial society are made by employees, led the German Government in 1942, during the Second World War, to

the promulgation of an "Employee-Inventions-Law" in order to stimulate the defense and the national economy. Not encumbered by English Common Law concepts or the historic "Master/Servant" precedent setting legal concepts, Germany could easily deal with this unique problem, which even under German practice had to reconcile two conflicting legislative statutes, labor law and patent law.

Thus, in fact, German legal thought and the decisions of the courts were more or less formed well before the first statutory provisions and decrees went into effect in 1942 and 1943. The basic concept of the German thinking can best be summarized by the view that an employee must in fairness be granted a reasonable compensation for an invention, made during his employment, from which his employer derives a benefit or profit.<sup>1</sup>

Interestingly enough, these concepts are rooted in early employment agreements, established between *chemists* and the *chemical industry* in post-World War I Germany.<sup>2</sup> The German chemical industry recognized that extra compensation for the inventive effort of an employee would increase the inventive production of employees.<sup>3</sup> Thus the collective bargaining agreement for academically trained employees of the chemical industry of April 27, 1920, was declared binding for the entire German Chemical Industry. It in essence contained the first basic terms for the compensation for employee inventions. Its terms were compulsory and binding for the entire territory or area over which the scope of protection of the patents granted by the German Patent Office extended. Thus patent protection and employee-inventor compensation became co-extensive and a fact for the *chemical profession and the chemical industry* in 1920 well before the Statutory Provision or first law went into effect in 1943. In German law, equitable thinking early on established "the duty to compensate an employee-invention fairly and adequately" as a concept, because of the absence of two maxims of Anglo-Saxon Law: 1) the "Master/Servant Relationship" between employer and employee

and 2) the strict separation between "Law" and "Equity".

The foregoing remarks are intended to very briefly touch on the historic development of the Employee-Inventions Law in the Federal Republic of Germany the "Gesetz über Arbeitnehmererfindungen vom 25. Juli 1975", the preceding Decrees or Statutes, the "Verordnung über die Behandlung von Erfindungen von Gefolgschaftsmitgliedern vom 20. März 1953", and the preceding judicial decisions and collective bargaining agreements<sup>4</sup>.

It should be obvious that, in a large segment of industrialized society outside of the United States, the employee-inventor's equitable and adequate compensation for a special effort beyond the call of duty is deemed quite proper and considered a necessity suitable to effectively increase the output and effort of employees.

This paper will be concerned primarily with Germany, or more exactly the Federal Republic of Germany, for two reasons: (a) the author's experience is more specifically limited to Germany, and (b) the impetus towards the establishment of adequate and equitable compensation for the employee-inventor originated in Germany from our profession, from the collective bargaining agreements between *chemists* (academically trained employees of the chemical industry) and the *chemical industry*.

However, numerous other countries also provide for extra compensation (i.e. compensation in addition to the salary paid in consideration of employment) for inventions made by employed inventors, to be paid by the employer who benefits from such invention. Among them are Sweden, Denmark, Holland, Switzerland, Austria, Finland, Canada, Japan, and Italy, as well as the countries behind the "Iron Curtain" — Russia, Yugoslavia, Czechoslovakia, Hungary, Poland and the German Democratic Republic. A thorough discussion of the laws of each of these countries is provided in a study prepared by a Swedish authority at the behest of the United States Congress.<sup>5</sup>

The three main approaches in accordance with which the rights and obligations of employed inventors were defined and established in these respective countries were (I) Special Laws — e.g. Germany, Sweden and Denmark; (II) the insertion of special provisions into the Patent Law — e.g. Austria, Canada, Holland, Finland and Japan; and (III) the provision of special rules and regulations in the Commercial Code and the Statutes of the Law of Contracts — e.g. Switzerland.

So far none of these, however, have been adopted in the United States and until now the Congressional efforts to pass this type of legislation<sup>6</sup> based on the study by Prof. Dr. F. Neumeyer (5 supra) have failed.

With almost thirty years of experience in the Federal Republic with the statutorily-provided-for compensation of the employee-inventor and another twenty-five years of experience in the Chemical Industry through the bargaining agreements between chemists (professional, graduate) and industry, a wealth of information is available to the American chemist that should be utilized and given due consideration when the American Chemical Society attempts to define and clarify the presently quite murky area of what is euphemistically called "Professional Relations".

In the following the experience with employee-inventor compensation, particularly when compared to the absence of such an arrangement, will be considered in the light of benefit to both employer and professional employee.

Contrary to what has recently been said by some American "authorities" it has appeared to me a most desirable feature of a free-world economic society that one does reward inventors among the employees and staff regardless of, and in addition to, the salary mutually agreed to, for their inventions which inure to the benefit of their employer.

More than once have I, as an employee of a corporate patent department and also working for outside counsel of an industrial corporation, encountered employee-inventors who were most reluctant to make a full disclosure of their invention for patenting same under the compelling force of the employment contract. Many felt insufficiently or, in fact, ill-rewarded for their effort. Under the presently existing American system the employed inventor gets no benefit whatsoever from his invention. This in fact contravenes the original intent of the American Constitution which provided for Letters Patent as a limited monopoly, to be reward to the inventor "to for a specific period of time exclusive-ly enjoy the fruits of his labor" for the

permanent benefit derived by society from and through his efforts.

The benefits which could be derived from sharing the rewards and benefits of an invention with employees are many, such as increased technical progress and industrial advancement, greater employee effort, loyalty and satisfaction and lastly, in the view of this author at least, "a true demonstration of the American spirit of fairness, honesty, integrity and due reward for industriousness, effort and application".

The importance which the German Legislature attributes to the proper and equitable rewarding of an employee-inventor is best illustrated by the fact that the German Tax Laws so augment the employee-inventor compensation as to permit the employed inventor to retain a major portion of the special compensation for an invention *exempt* from income-tax, or at least subject to a substantially reduced income tax "bite".<sup>7</sup>

It would likewise well fit into the American System to consider accordingly laws and legislation of this type and this was recognized by the Congress of the United States when it commissioned a study in 1962 and when the Moss Bill was introduced in the House of Representatives in 1970.<sup>8,9</sup>

Of course the most important aspect of an Employee-Invention Law providing for compensation for an invention by an employee beyond and in addition to the salary is the compensation itself.

The German Statutes (*ArbErfG*, §§ 9, 10, 11 and 12) provides for two modes subject to which the employee-inventor will be compensated: (A) if all right, title and interest in and to the invention are exclusively assigned to the employer or if the employer (B) asserts a use similar to what is known in U.S. terminology as a "Shop Right", namely, a non-exclusive right to the use of the invention only. The choice between (A) and (B) will be one factor which will materially affect the type and amount of compensation due. The criteria which apply are (a) the commercial usefulness and utility of the invention, (b) the duties of the employee, the relative staff-position of the employee in the employer's operation, (c) the contributory share of the employer's operations to the initiation and realization of the invention. The law provides that in each instance the employee is entitled to a proper and adequate compensation.

Many mathematical formulae were used since the first Rules and Regulations for computing "proper and adequate" compensation were issued in 1944. The formula which is at present the one most commonly applied is,  $V_j = U_j \times L \times A$ ,

by means of which annual compensation of the inventor is determined.  $V_j$  = annual payment;  $U_j$  = annual sales;  $L$  = royalty percentage, and  $A$  = share factor. If the annual sales amount to  $U_j = 400,000$  DM and the royalty  $L =$  is to be 3% and the share factor  $A = 15\%$ , the annual inventor compensation would amount to  $V_j = 400,000 \times .03 \times .15 = 1800$  DM per year.

The share factor, "A" in the above formula, is determined individually by assigning a value to (1) the problem which the employee had to deal with; (2) a value measuring the accomplishment achieved by the solution of the problem expressed by (1); and (3) a graduated value for the position of the employee-inventor in the employer's operation and to the employee's duties in the normal course of his employment.

All these formulae are fully discussed by F. Neumeyer.<sup>5</sup>

The above illustrates in a very sketchy fashion the operation a Law providing for Employee-Inventor Compensation. Primarily, the motivating psychology, the benefits, the German Law and its historical development, the socio-economic effects and its administration are briefly dealt with while similar and ancillary developments and solutions proposed and enacted by the legislatures of other countries are also mentioned. A detailed bibliography provides details on all that has been discussed.

The practical advantages of such a law seem to be substantial. It stimulates the employed inventor. No more is he grudgingly obliged to turn over an invention to his employer without recognition and material reward. Thus the labor "climate" will be substantially improved by fair and equitable compensation recognizing the contribution made to the employer's commercial success. After more than fifty years experience, if we include the early historical developments beginning with the collective bargaining agreement of the 1920's between the professional chemists and the chemical industry, this particular approach has been found to be very successful and detractors have not been able to fault it in Germany. Its concept to me appears to be thoroughly American in intent and effect and does not contravene any of the fundamental American philosophies but rather supports them. It well unites the three ideals of fair and adequate compensation for an invention which benefits the employer's enterprises; it stimulates and recognizes effort, particularly effort that goes beyond the call of duty; and it puts into practice for the employee, what is

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spelled out in the American Constitution when this document refers to patents.

As the Employee-Inventions Law was shaped by the early arrangements between the members of our profession and the chemical industry in Germany, it behooves the members of our profession in the United States to instigate interest in the reassessment of the Moss Bill and to support its passage as a law so that the progressive, fair and equitable results of such legislation can benefit the professionals and industry of this country. In an evaluation of the results with the law in Germany during the last twenty years Schipfel<sup>10</sup> says: — "The effectiveness of expenditures for research and development in the German Federal Republic is, in the light of the technological progress which has been realized, substantial and entirely comparable to international standards."

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8. See (5) supra.

9. See (6) supra.

10. See (7) supra.

tivities in regional or national elections (local section and division elections had earlier been placed under the jurisdiction of the Committee on Nominations and Elections). Concurrently, the Council was given the power to invalidate an election if it finds "significant violation of the Constitution and Bylaw provisions regulating election procedures . . ." This petition passed (Abler, Nelson for).

Several additions to the Employment Guidelines were adopted. Most surprising was the acceptance of the so called "strike guideline". The version which passed reads as follows:

"*The Chemist* — The chemist should use the period of an enforced work stoppage occurring on the premises in a constructive and professional manner."

"*The Employer* — The employer should not penalize the chemist who performs only his or her duties during any enforced work stoppage occurring on the premises."

You may have noticed that the language is a little ambiguous (should you expect otherwise from the ACS?), but essentially it means that a chemist should not be punished for refusing to be a strikebreaker. I don't know of any companies that will be too terribly concerned that the ACS has added such language to its Guidelines, but it does offer a basis for the Society to investigate charges of mistreatment of chemists.

The Women Chemists Committee introduced a resolution that ACS national meetings be held only in states which have ratified the Equal Rights Amendment. After much discussion, the Council followed standard practice and recommitted the motion. Should you have strong feelings on this issue, talk it over with your section councilors before the next national meeting (which, by the way, is in Miami; Florida has not adopted the ERA).

**Support your Division—**

**• join up some friends.**

## Editor—continued

dealt with. One particularly obnoxious section, requiring detailed financial reports from *any* ACS member who spent \$25 or more *or its equivalent in goods or services* in support of a candidate, was defeated, as well it should have been (Abler, Nelson against). The other gave the Council Policy Committee the authority to investigate charges of improper ac-

— Dennis Chamot