



# Joint University/Industry R&D Cooperations in Europe – The Legal Framework

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# Rights of Universities and Professors (Researchers) in Germany

- University:
  - ◆ Right to claim and evaluate inventions
- Professor:
  - ◆ Right to get remuneration (30 % of University income)
  - ◆ Right not to publish
  - ◆ Right to decide on future consultancy
  - ◆ Right to file in foreign countries not „claimed“ by University/Industry
  - ◆ Right to continue patents given up by University/Industry

# Common Provisions for Agreements in Industry-University Interactions

- “Trilateral“ agreement between university, industry partner and researcher advisable
- Legal obligations and duties
  - ◆ Inventions - university/industry
  - ◆ Know-how and consultancy - researcher/industry
  - ◆ Renouncing of researcher - researcher/industry
- Joining declaration of all university members participating

# Model Agreements in Germany

- Berlin Contract (edition 2007)
- Marburg Contract
- Max Planck Contract
- Munich Contract
- NRW Contract
- Hamburg Contract
- BMWi Contract

# Berlin Contract – Kinds of Research Interactions/Commissions Industry/University

- Service/work contract
- Research on commission
- Research cooperation

# Berlin Contract – Differentiation Indicia – Service/Work Agreement

- Definite, known goal
- Determined way of conduct
- University requests takeover of full cost
- No interpretation of data or results by researcher necessary
- No interest in publication
- Duty of success

# Berlin Contract – Differentiation Indicia – Research on Commission

- Oriented towards a goal, result uncertain
- Defined way of conduct
- Defined goal of research
- University requests takeover of full cost
- Interpretation of data results by researcher necessary
- Interest of industry in a short term or well-in-time result
- Publication interest of university
- No duty of success

# Berlin Contract – Differentiation Indicia – Research Cooperation

- Open goal, open result
- Conduct not defined in detail
- Application purpose neither known in detail nor defined
- Contribution by both parties
- Medium to long term interest of industry in the results
- High interest in publication, possibly jointly
- No duty of success



# Berlin Contract - Contract Components for Research on Commission

- Research results belong exclusively to industry
- First filing
  - ◆ University and industry as joint applicants
  - ◆ Realization alternatively by university or industry
- Foreign filings
  - ◆ By industry in its sole name

# Berlin Contract - Invention Remuneration in Research on Commission

- 2.500 EUR after first application (first remuneration)
- Further remuneration according to following alternatives:
  - ◆ 2.500 EUR at start of commercial use, latest 7 years after first filing date
  - ◆ Further lump sum payments when reaching turnover milestones
  - ◆ After start of commercial use reasonable remuneration, still to be negotiated

# Munich Contract

- Contract only between University and Industry
  - ◆ No renouncing of Researcher's rights
- Patents in the name of Universities
  - ◆ Licenses for Industries
- No differentiation between different kinds of interactions
  - ◆ „everything“ is contract research

# Hamburg Contract

- Contract only between University and Industry
- Results belong to industry
- Obligations of university, as far as binding for universities, are transferred to industry
- Remuneration duties are transferred to industry
- Problem: Legally disputable

# BMW i Contract

- Similar to the Berlin Contract (edition 2007) in many aspects
- In case of research on commission, „purchase“ solution as an alternative
  - ◆ i.e., part of total industry project funds considered as lump sum payment for all inventions expected from commission/cooperation

# Model Agreements in United Kingdom

- No Professors' Privilege in United Kingdom
- Lambert Agreements only between University and Industry, no participation of Professor/Researcher
- Ownership of research results „usually“ with university
- Remuneration to professors/researchers according to U.K. model agreements generally lower than according to the „30%-rule“ in Germany

# European Union Provisions

- Art. 107 AEU Agreement defines framework for allowability of public research supports
  - ◆ Support framework published in EU 2006/C323/01 of December 30, 2006, binding since January 1, 2009
- No „prohibited support“ if University charges all project cost to industry partner
- Otherwise, sale/licensing out of results must be under market conditions
- German Berlin Contract and BMWi Contract fulfill all requirements of Art. 107(1) AEU Agreement