



BOEHMERT & BOEHMERT
ANWALTSSOZIELTÄT

Technology Transfer Conference

Jožef Stefan Institute & National Institute of Chemistry

Dr. Christian Czychowski

Attorney at Law, Certified Lawyer for IT-Law and for Copyright- and Media Law

Lecturer at the University of Potsdam

BOEHMERT & BOEHMERT

Titel der Folie

FAZ.NET FAZFINANCE.NET FAZJOB.NET FAZSCHULE.NET Montag, 24. Oktober 2011
HERAUSGEGEBEN VON WERNER D'INKA, BERTHOLD KOHLER, GÜNTHER NONNENMACHE

Frankfurter Allgemeine
Wirtschaft

AKTUELL MULTIMEDIA THEMEN BLOGS ARCHIV

Politik **Wirtschaft** Feuilleton Sport Gesellschaft Finanzen Technik & Motor

Aktuell > Wirtschaft

Innovationen
Deutschland bleibt Europameister bei
Forschungsausgaben

The EU is not harmonised in this field ... or “it is a long way to tipperary...”

Lissbon Agenda (2000):

Make the EU within 10 years to most competitive and dynamic knowledge based economy of the world

EU Counsel 2002 Barcelona:

The expenditure for R&D within EU should rise to 3% of the GDP

KOM (2004) 353 of June 16, 2004:

Communication from the Commission “Science and Technology EU policy to support research”

KOM (2007) 182 of April 4, 2007:

Communication from the commission Improving knowledge transfer between research institutions and industry ...

KOM (2008) 1329 of April 10, 2008:

Communication from the Commission to wards joint programming and research: Identified best practices of model contracts

Because of this (or despite?) There have been some activities

- DE Berlin Model Contract Clauses, Hamburg contract, Düsseldorf Contract Practice and now Model Contracts of the Federal Ministry of Economy
- GB Lambert Agreements
- SE VINN Model Contract 2006
- IE National Code of Practice
- DN Contracts, Contacts and Codices

Why is this so?

The national rules on inventions by university employees differ:

Trend: no privilege anymore

Often unclear if and if so how the university becomes owner of the rights

All this hinders general contractual regulations

The impact of R&D and its intensity is very diverse:

DE, F + GB = 61 % of the R&D expenses in EU (with ES + IT = 74 %)

In other countries there is seen no need to act

And what has Germany done?



The group of experts has covered all groups in the industry and universities

▶ Unternehmen

Herr Ingo A. Brückner, DaimlerChrysler AG
Herr Dr. Bernhard Fischer, SAP AG
Herr Peter Karge / Herr Uwe Schriek, Siemens AG
Frau Prof. Dr. Christine Lang,
Organobalance GmbH
Herr Dr. Lothar Steiling, Bayer AG

▶ Hochschulen

Herr Bernhard M. Lippert,
Hochschulrektorenkonferenz
Herr Thomas A. H. Schöck,
Kanzler der FAU Erlangen-Nürnberg

▶ Außeruniversitäre Forschungseinrichtungen

Herr Dr. Friedrich Rückert,
Forschungszentrum Karlsruhe
Herr Dr. Helmut Schubert,
Fraunhofer-Gesellschaft
Herr Michael Truchseß,
Max-Planck-Gesellschaft

▶ Patentverwertungsagenturen

Herr Alfred Schillert,
Vorsitzender der Technologieallianz e. V.

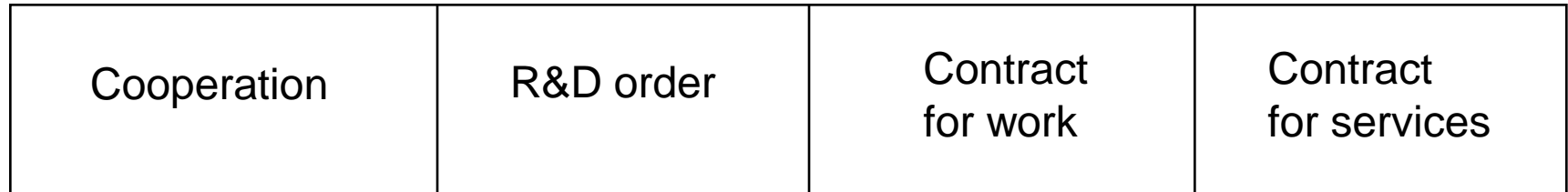
▶ Bundesministerium für Bildung und Forschung

Frau Bettina Litpher, Z 24- Förderverfahren;
Projektträger



10 (12 von 80)

... and there are various types of RND cooperation agreements

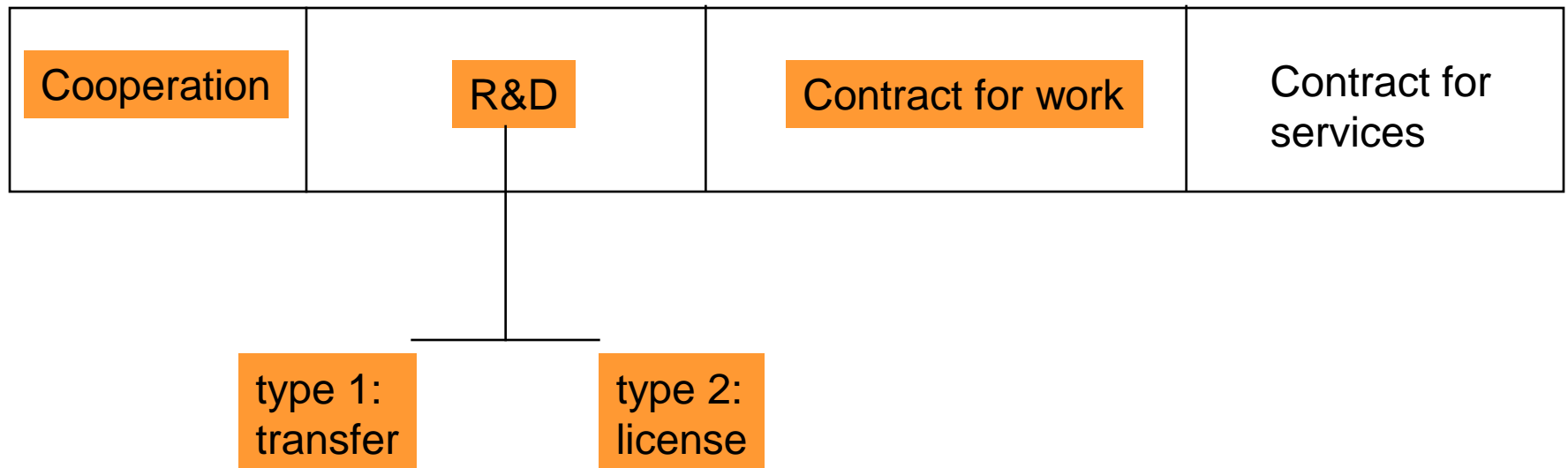


long term
Unknown result
High interest in publication
High risk for industry
High value for university

short term
„result“ necessary
nearly no interest
high value
nearly no interest

source: Dr. Brigitte Lehmann, Humboldt-Universität

The participants have chosen three types



All of these follow a model

- other than the Berlin contract „building blocks“: full model contracts
- emphasis with regard to inventions
 - inventions, IPR, partly KnowHow
 - negative and positive publication right
 - rules for technical processing of an application including identity who applies for the IPR
 - application in foreign countries
 - remuneration for service (mere memo) and for IPRs
 - specific exhibits
- all this is a mere suggestion to save time in individual negotiations:
 - without prejudice

The major difference is the section on IP Rights

R&D Order

- All IPRs belong to the Industry

[but: differentiation between licence model and transfer model as well as inventions outside the scope of the contract]

- „technical “ clauses for processing the application

Cooperations

- Differentiation between

Industry partner-results
Joint results
University results

- =

The bitter pill one party had to swallow was the remuneration

R&D order

- Is included in the remuneration for service. It takes notice of specifics and the respective type of industry and of the experience with regard to the number and value of prospective inventions
- „bestseller" clause

Cooperations

- two types:
 - All inclusive model (like R&D order)
 - lump-sum payment

The other bitter pill was the license type

- there is a type of full transfer even for an R&D order, but also a mere license type
- background: especially the extra university research organizations only license out and do not transfer and this is more and more the will of universities

Further subject: state subsidies...

- EU frame work for state subsidies 2006/C/32301
- Section 3.2 rules on the borderline for indirect states subsidies
- If the criterias lay down there are not met, an illegal subsidy may apply with all is legal consequences...

Drawing the borderline is not easy (overview)

R&D order

- Research organization offers service for market price or
 - If there is no market price: all costs + reasonable profit margin

Cooperations

- Industry takes over all costs or
- Whatever IP is produced solely by research organization belongs to research organization or
- Research organization receives for IP transferred a market price minus any financial contribution of the industry with regard to the costs for the research organization

The only way out would be ...

- De minimis rules: Regulation (EG) No. 1998/2006 of December 15, 2006
- Block Exemption EG 800/2008 of August 6, 2008
Art. 31: Rules for R&D State Subsidies
Differentiation between
 - fundamental research
 - industrial research
 - applied research

Questions?

czychowski@boehmert.de

Tel.: 030/2360767-0

Fax: 030/2360767-21

www.boehmert.de