

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Electric Boat Company (United States) v. Germany

21 April 1930

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The Commission finds nothing either in the petition or in the record of this case which would justify an additional award on behalf of the claimants.

Accordingly, the petition for a rehearing and an additional award is found to be without merit and is hereby dismissed.

Done at Washington May 1, 1929.

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

ELECTRIC BOAT COMPANY (UNITED STATES)
v. GERMANY

(*April 21, 1930, pp. 960-965.*)

USE UNDER GERMAN LICENCE OF INVENTION COVERED BY GERMAN PATENT. —
PROCEDURE: AGREEMENT BETWEEN AGENTS. — INTEREST: SPECIAL
CIRCUMSTANCES, SPECIAL BASIS. *Held* that building in of appliances or
arrangements in submarines under construction constitutes use for which,
under licence, licence fee must be paid. Agreement between Agents on
number of devices for which licence fee due. Special basis adopted for
allowance of interest in view of special circumstances.

Bibliography: Woolsey, A.J.I.L., Vol. 35 (1941), p. 283, footnote 4.

BY THE COMMISSION:

The Commission, having carefully considered the issues presented in this claim by the pleadings and the questions of fact and law raised in the briefs on both sides, and having examined the evidence submitted, and after hearing oral argument by counsel on both sides and after due deliberation thereon, finds and decides as follows:

I. The Commission finds, on the evidence submitted, that the claimant's contention that its German patents, No. 147,345 and No. 255,966, have been infringed by the use of certain devices and appliances on German submarine boats, has not been sustained, and decides that the German Government is not liable, under the Treaty of Berlin, for damages for any alleged infringements of these patents.

II. The Commission finds that the rights granted under the compulsory license issued pursuant to German law by the Reichsgericht, by virtue of its Decree of March 13, 1913, to the German Navy and to the Germania Wharf, to use the invention protected by the claimants' German patent No. 133,607, have been exercised by the licensees —

(a) In so far as the licensees have used in the construction of submarine boats an arrangement for simultaneously moving a torpedo forward to the expulsion tube, while compensating or balancing water is being moved in the opposite direction to a containing tank or tanks, or for simultaneously moving a mine in one direction and the water in the opposite direction, so as to maintain the trim and equilibrium of the boat during the process, and

(b) In so far as the licensees have used in the construction of submarine boats a "zwischen" water tank containing the exact volume of water required

for filling the space left free by the torpedo in the expulsion tube, but only in connection with the loading of reserve torpedoes.

The Commission also finds that the use of these appliances or arrangements, up to the time of the expiration of this patent on August 27, 1916, in the construction of a submarine boat, even before it has been placed in commission, is sufficient to constitute a use under the compulsory license, for which the license fee must be paid.

III. The Commission further decides that the claimant is entitled to compensation at the rate fixed in the compulsory license, namely, 4,000 marks per each expulsion tube on a submarine boat in which either or both of the patented arrangements or appliances covered by the compulsory license were used as above specified. If, however, the use on a boat of either of the protected appliances or arrangements, as above specified, is only in connection with the launching of mines, or only in connection with the launching of torpedoes, then only the mine expulsion tubes, or the torpedo expulsion tubes, as the case may be, are to be counted in computing the compensation under the license.

Under the provisions of the Treaty of Berlin, as interpreted by this Commission in its earlier decisions, the license fees due in this case are to be valorized in American money at the rate, for debts, of sixteen cents to the mark.

IV. The Agents of the two Governments have agreed upon and submitted a tabulation entitled "Summary of Torpedo and Mine Compensation Devices Installed on the German Submarine Boats", and showing the number of torpedo and mine expulsion tubes on these boats, and also the time of completion of the boats with reference to the date of the expiration of the claimant's patent No. 133,607, to which this summary has reference.

This classification and figures given in this summary are as follows:

" I. *Arrangement (a)*

Older Torpedo Compensating Arrangement having 2 tanks, namely T2T and TAT.

1) Boats in commission prior to expiration of Patent No. 133607 (August 27, 1916)	
2 tubes each on following 18 boats,	
U 1-4	
U 9-22	36 tubes
4 tubes each on following 4 boats	
U 5-8	16 "
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	52 tubes
2) Boats ordered before, completed after August 27, 1916,	
18 boats having 4 tubes each, namely	
UB 54-71	72 tubes
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TOTAL ARRANGEMENT (a)	124 tubes

" II. *Arrangement (b)*

Newer torpedo compensating arrangement having one compensating tank (TAT) only.

- 1) Boats in commission prior to August 27, 1916,
- 2 tubes each on following 54 boats,
- U 23-41
- U 51-58
- U 63-65

UB 18-41	108 tubes
3 tubes each on following 13 boats,	
UC 16-19	
UC 22-30	39 „
4 tubes each on following 6 boats,	
U 66-70	
U 81	24 „
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	171 tubes
2) Boats ordered before, completed after August 27, 1916,	
1 tube each on following 18 boats,	
UB 54-71	18 „
2 tubes each on following 4 boats,	
U 59-62	8 „
	<hr/>
	26 tubes
3 tubes each on following 51 boats	
UC 20-21	
UC 31-79	153 „
4 tubes each on following 21 boats,	
U 82-86	
U 99-104	
U 117-126	84 „
5 tubes each on following 6 boats,	
UB 48-53	30 „
6 tubes each on following 23 boats,	138 „
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	431 tubes
TOTAL ARRANGEMENT (b)	602 tubes

“ III. *Arrangement (c)*

No compensation tank, but merely tank TZZ.

1) Boats in commission prior to August 27, 1916,	
1 tube each on following 5 boats,	
U 66-70	5 tubes
2 tubes each on following 81 boats,	
U 1-4	
U 9-41	
U 51-58	
U 63-65	
U 71-80	
UB 1-17	
UB 42-47	162 tubes
6 tubes each on following 8 boats,	
U 43-50	48 „
	<hr/>
	215 tubes
2) Boats ordered before, completed after August 27, 1916	
2 tubes each on following 4 boats,	
U 59-62	8 „
6 tubes each on following 6 boats,	
U 87-91	36 „
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	44 tubes
TOTAL ARRANGEMENT (c)	259 tubes

“ IV. *Mine Compensation Device.*

1) Boats in commission prior to August 27, 1916	
2 tubes each on following 10 boats	
U 71-80	20 tubes
2) Boats ordered before, completed after August 27, 1916	
2 tubes each on following 10 boats	
U 117-126	20 „
TOTAL MINE COMPENSATION DEVICE	40 tubes

“ V. *Torpedo Compensating Device*

on boats ordered prior to August 27, 1916, but never completed.
Character of device not known.

4 tubes each on following 8 boats,

U 42

U 127-134

32 tubes”

V. In accordance with the hereinabove stated conclusions of the Commission as to the liability of the licensees under the compulsory license of March 13, 1913, for the use of the appliances or arrangements protected by this patent, the Commission holds that the licensees are under obligation to pay the compulsory license fee of 4,000 marks for each of the 124 expulsion tubes included in the subdivisions of this summary “ I. Arrangement (a) ”, paragraphs (1) and (2), and the 40 expulsion tubes included in subdivision “ IV. Mine Compensation Device ”. The Commission also holds that the licensees must be held liable for the compulsory license fee for the 32 expulsion tubes on the eight boats included in the subdivision of this summary “ V. Torpedo Compensating Device ”.

These three groups make a total of 196 expulsion tubes to which the compulsory license fee attaches.

The Commission further holds that the licensees are not liable for compensation to the claimant for a license fee for the use of any of the arrangements or appliances included in the subdivisions of this summary “ II. Arrangement (b) ” and “ III. Arrangement (c) ”.

VI. In view of the special circumstances of this case, the Commission has adopted a special basis for the allowance of interest, which is to be computed as follows: On the compensation for 52 tubes at 4,000 marks each, amounting to 208,000 marks, which, valorized at 16 cents per mark, amounts to \$33,280, interest is allowed at the rate of five per cent per annum from January 1, 1910, until the date of payment, and on the compensation for 144 tubes at 4,000 marks each, amounting to 576,000 marks, which, valorized at 16 cents per mark, amounts to \$92,160, interest is allowed at the rate of five per cent per annum from January 1, 1916, until the date of payment.

VII. The Commission accordingly decides that under the Treaty of Berlin, and in accordance with its terms, the Government of Germany is obligated to pay to the Government of the United States, on behalf of the claimant herein, as compensation due under the compulsory license above mentioned, the sum of 784,000 marks, valorized at 16 cents to the mark, which amounts to \$125,440, with interest as above stated.

Done at Washington April 21, 1930.

Roland W. BOYDEN
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner