

No. 2969

NETHERLANDS
and
UNITED STATES OF AMERICA

**Agreement (with exchange of letters) to facilitate the inter-
change of patent rights and technical information for
defense purposes. Signed at The Hague, on 29 April
1955**

Official texts of the Agreement: Dutch and English.

Official text of the exchange of letters: English.

Registered by the Netherlands on 20 October 1955.

PAYS-BAS
et
ÉTATS-UNIS D'AMÉRIQUE

**Accord (avec échange de lettres) tendant à faciliter l'échange
mutuel de brevets d'invention et de renseignements
techniques pour les besoins de la défense. Signé à La
Haye, le 29 avril 1955**

Textes officiels de l'Accord: néerlandais et anglais.

Texte officiel de l'échange de lettres: anglais.

Enregistré par les Pays-Bas le 20 octobre 1955.

No. 2969. AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE UNITED STATES OF AMERICA TO FACILITATE THE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES. SIGNED AT THE HAGUE, ON 29 APRIL 1955

The Government of the Kingdom of the Netherlands and the Government of the United States of America — hereinafter referred to as the Governments —

having agreed in the Mutual Defense Assistance Agreement signed in Washington on January 27, 1950,² to negotiate, upon the request of either of them, appropriate arrangements between them respecting patents and technical information,

desiring generally to assist in the production of equipment and materials for defense, by facilitating and expediting the interchange of patent rights and technical information, and

acknowledging that the rights of private owners of patents and technical information should be fully recognized and protected in accordance with the law applicable to such patents and technical information,

have agreed as follows :

Article I

Each Government shall, whenever practicable without undue limitation of, or impediment to, defense production facilitate the use of patent rights, and encourage the flow and use of privately-owned technical information, as defined in Article VIII, for defense purposes :

- a) through the medium of any existing commercial relationships between the owner of such patent rights and technical information and those in the other country having the right to use such patent rights and technical information, and
- b) in the absence of such existing relationships, through the creation of such relationships by the owner and the prospective user in the other country, provided that, in the case of classified information, such arrangements are

¹ Came into force on 13 July 1955, the date on which the Government of the United States of America was notified that the approval constitutionally required in the Netherlands had been obtained, in accordance with article IX (b).

² United Nations, *Treaty Series*, Vol. 80, p. 219.

permitted by the laws and security requirements of both countries, and provided further that the terms of all such arrangements shall remain subject to the applicable laws of the two countries.

Article II

When, for defense purposes, technical information is supplied by one Government to the other for evaluation and planning only, and this is stipulated at the time of supply, the recipient Government shall treat the technical information as disclosed in confidence and use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner thereof to obtain patent or other like statutory protection therefor.

Article III

When technical information made available for purposes of defense by one Government to the other discloses an invention which is the subject of a patent or patent application held in secrecy in the country of origin, the recipient Government will, to the fullest extent possible under applicable law, accord similar treatment to a corresponding patent application to be filed in the recipient country. The Governments agree to develop operational procedures as may be required to effectuate this Article.

Article IV

a) Where privately-owned technical information

- (i) has been communicated by or on behalf of the owner thereof to the Government of the country of which he is a national or resident, and
- (ii) is subsequently disclosed by that Government to the other Government for the purposes of defense and is used or disclosed by the latter Government, for any purpose whether or not for defense,

the Governments agree that, where any compensation is paid to the owner by the Government first receiving the information, such payment shall be without prejudice to any arrangements which may be made between the two Governments regarding the assumption as between them of liability for compensation. The Technical Property Committee established under Article VI of this Agreement will discuss and make recommendations to the Governments concerning such arrangements.

b) When, for the purposes of defense, technical information is made available by a national or resident of the country of one Government to the other Government at the latter's request and use or disclosure is subsequently made

of that information for any purpose whether or not for defense, the recipient Government shall, at the owner's request, take such steps as may be possible under applicable law to provide prompt, just, and effective compensation for such use or disclosure to the extent that the owner may be entitled thereto under such laws.

Article V

When one Government owns or has the right to grant a license to use an invention and that invention is used by the other Government for defense purposes, the using Government shall be entitled to use the invention without cost, except to the extent that there may be liability to a private owner with established interests in the invention.

When one Government owns or controls entities having the right to grant a license to use an invention and that invention is used by the other Government for defense purposes, the using Government shall be entitled to a license on terms at least as favorable as may be received by the Government owning or controlling the entity concerned or by other entities thereof, provided that the owning or controlling Government is not placed under financial obligations thereby.

Article VI

Each Government shall designate a representative to meet with the representative of the other Government to constitute a Technical Property Committee. It shall be the function of this Committee :

- a) to consider and make recommendations on such matters relating to the subject of this Agreement as may be brought before it by either Government;
- b) to make recommendations to the Governments concerning any question, brought to its attention by either Government, relating to patent rights and technical information which arises in connection with the mutual defense program;
- c) to assist, where appropriate, in the negotiation of commercial or other agreements for the use of patent rights and technical information in the mutual defense program;
- d) to take note of pertinent commercial or other agreements for the use of patent rights and technical information in the mutual defense program, and, where necessary, to obtain the views of the two Governments on the acceptability of such agreements;

- e) to assist, where appropriate, in the procurement of licenses and to make recommendations, where appropriate, respecting payment of indemnities covering inventions used in the mutual defense program;
- f) to encourage projects for technical collaboration between and among the armed services of the two countries and to facilitate the use of patent rights and technical information in such projects;
- g) to keep under review all questions concerning the use, for the purposes of the mutual defense program, of all inventions which are, or hereafter come, within the provisions of Article V;
- h) to make recommendations to the Governments, either with respect to particular cases or in general, on the means by which any disparities between the laws of the two countries governing the compensation for or otherwise concerning technical information made available for defense purposes might be remedied.

Article VII

Upon request, each Government shall, as far as practicable, supply to the other Government all necessary information and appropriate assistance required for the purposes of :

- a) affording the owner of technical information made available for defense purposes the opportunity of protecting and preserving any rights he may have in the technical information, and
- b) assessing payments and awards arising out of the use of patent rights and technical information made available for defense purposes.

Article VIII

a) "Technical information" as used in this Agreement means information (including instructions, methods of manufacture, professional, scientific or technological information in any form) originated by or peculiarly within the knowledge of the owner thereof and those in privity with him and not available to the public.

b) "Invention" means that which is patented or patentable under the law of the respective countries.

c) The term "use" includes manufacture by or for a Government.

d) Nothing in this Agreement shall apply to patents, patent applications and technical information in the field of atomic energy.

e) Nothing in this Agreement shall contravene present or future security arrangements between the Governments.

Article IX

a) As far as the Netherlands is concerned, this Agreement shall apply to the territory of the Kingdom in Europe only.

b) This Agreement shall apply provisionally from the date of signature. It shall enter into force on the date the Government of the United States of America is notified that the approval constitutionally required in the Netherlands has been obtained.

c) The terms of this Agreement may be reviewed at any time at the request of either Government.

d) This Agreement shall terminate on the date when the Mutual Defense Assistance Agreement terminates or six months after notice of termination by either Government, whichever is sooner but without prejudice to obligations and liabilities which have then accrued pursuant to the terms of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at The Hague in duplicate in the Dutch and English languages, both texts authentic, this 29th day of April 1955.

For the Kingdom of the Netherlands :

(Signed) J. W. BEYEN

(Signed) J. LUNS

For the United States of America :

(Signed) H. Freeman MATTHEWS

EXCHANGE OF LETTERS

I

MINISTRY OF FOREIGN AFFAIRS

The Hague, April 29th, 1955

Excellency :

With regard to the "Agreement to facilitate the exchange of Patent Rights and Technical Information for Defense Purposes" concluded on April 29th 1955 between our two Governments, we would propose that the following interpretations be considered as constituting a formal part of our mutual understanding.

1. With regard to Article IV it is recognized that the actions of our two Governments in transmitting privately-owned technical information to each other, or in the subsequent disclosure or use of such information, might on occasion result in liability by one or both of our Governments, under our respective laws, by reasons of a disclosure or use of such information without consent of the owner. It is further recognized that in certain cases compensation might be paid by the transmitting Government even though the payment of such compensation might have resulted from the failure of the recipient Government to respect the conditions under which the information was made available.

It is believed that, in any cases in which compensation might be payable to a private owner in consequence of such failure on the part of the recipient Government, it should be possible under the laws of our respective countries to make arrangements for the assumption of ultimate liability by the recipient Government. In the event, however, that discrepancies in the laws of our two countries should preclude mutually satisfactory arrangements for the assumption of ultimate liability under this or other circumstances, it is understood that the Technical Property Committee will consider such discrepancies as a matter falling within the purview of Article VI (*h*).

2. It is understood that Article IV does not preclude private owners of technical information to endeavour to obtain compensation or protection, whenever they think appropriate, through normal legal procedures.

3. In Article V, the term "control" is meant to express a predominant influence of the Government in the management of the entity concerned, especially to the extent that the Government are qualified to instruct the entity to grant a license in the sense of this Article.

4. Referring again to Article V, it is understood that the using Government shall be "entitled to use the invention without cost" or be "entitled to a license on terms at least as favourable as may be received by the Government owning

or controlling the entity concerned or by other entities thereof” only if such invention or such license is used for defense purposes. Whenever the invention or license is used for civil needs, it is evident that Article V is not applicable.

5. The State Universities including the Institute of Technology of Delft and the Institute of Agriculture of Wageningen, in the views of our Government, are not owned or controlled by them in such a sense as to enable them to instruct these institutions to grant licenses or otherwise to dispose of their intellectual property, with regard to the application of Article V.

The same applies for the Netherlands Central Organization for Applied Physical Research and the Netherlands Organisation for Pure Scientific Research and their dependent organizations and laboratories. Notwithstanding the fact that the whole or part of their revenue is obtained from Government funds, these organizations are fully autonomous and the Netherlands Government accordingly could not dispose of their patent rights and/or technical information.

However, the Netherlands Government would, when so requested, be willing to use their best efforts to provide for the United States Government, for defense purposes, a license to use an invention owned by the institutions referred to above on terms at least as favourable as may be received by the Netherlands Government themselves.

6. Nothing in this Agreement shall be construed to derogate from the provisions of the Agreement concluded December 14, 1954 between our two Governments on, as well as the contract relating to the “Air Defense Technical Center”.

The confirmation of these understandings by the United States Government will be appreciated.

We avail ourselves of this opportunity to renew to Your Excellency the assurances of our highest consideration.

The Minister without Portfolio :
(Signed) J. LUNS

The Minister for Foreign Affairs :
(Signed) J.W. BEYEN

To His Excellency H. Freeman Matthews
Ambassador Extraordinary and Plenipotentiary
of the United States of America
The Hague

II

AMERICAN EMBASSY

The Hague, April 29, 1955

Excellencies :

I have the honor to acknowledge Your Excellencies' letter of April 29, 1955 setting forth certain interpretations concerning the Agreement to Facilitate the Exchange of Patent Rights and Technical Information for Defense Purposes concluded between our two Governments on April 29, 1955. This letter states :

[See letter I]

I have the honor to confirm that the interpretations as given in Your Excellencies' letter are acceptable to my Government.

Please accept, Excellencies, the renewed assurances of my highest consideration.

(Signed) H. Freeman MATTHEWS

Their Excellencies

J. W. Beyen, Minister for Foreign affairs, and
J. M. A. H. Luns, Minister without Portfolio,
Royal Netherlands Ministry for Foreign Affairs
The Hague
