

No. 3856

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

**Agreement (with exchange of notes) to facilitate inter-
change of patent rights and technical information for
defense purposes. Signed at Bonn, on 4 January 1956**

Official texts: English and German.

Registered by the United States of America on 27 May 1957.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Accord (avec échange de notes) en vue de faciliter l'échange
mutuel de brevets d'invention et de renseignements
techniques pour les besoins de la défense. Signé à
Bonn, le 4 janvier 1956**

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 27 mai 1957.

No. 3856. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY TO FACILITATE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES. SIGNED AT BONN, ON 4 JANUARY 1956

The Government of the United States of America and the Government of the Federal Republic of Germany,

Having in mind the Mutual Defense Assistance Agreement between the United States of America and the Federal Republic of Germany signed in Bonn on June 30, 1955,² which provides in Article III that the parties should 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 Contracting Government shall whenever practicable, without undue limitation of, or impediment to, defense production, facilitate the use of privately-owned 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 thereby 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 user in the other country,

¹ Came into force on 4 January 1956 by signature and became operative retroactively from 27 December 1955. See footnote 1, p. 152 of this volume.

² United Nations, *Treaty Series*, Vol. 240, p. 54.

provided that, in the case of classified information, such arrangements are permitted by the laws and security requirements of both Governments, 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 Contracting Government to the other for information 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, under agreed procedures, by one Contracting Government to the other for the purposes of defense discloses an invention which is the subject of a patent or patent application held in secrecy in the country of origin, similar treatment shall be accorded a corresponding patent application filed in the other country.

Article IV

1. Where privately-owned technical information
 - (a) has been communicated by or on behalf of the owner thereof to the Contracting Government of the country of which he is a national, and
 - (b) is subsequently disclosed by that Government to the other Contracting Government for the purpose of defense and is used or disclosed by the latter Government without the express or implied consent of the owner,

the Contracting Governments agree that, where any compensation is paid to the owner by the Contracting 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.

2. When, for the purposes of defense, technical information is made available by a national of one Contracting 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 its laws 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.

3. Nothing in this Agreement shall affect any rights that an owner of patents and of technical information may have to assert claims against the Contracting Governments before the courts, as provided by relevant national legislation.

Article V

1. When one Contracting 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.

2. When one Contracting Government owns or controls an entity owning or 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 Contracting Government shall designate a representative to meet with the representative of the other Contracting Government to constitute a Technical Preparation 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 Contracting Government.
- (b) To make recommendations to the Contracting 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 Contracting Governments 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 Contracting 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 Contracting Government shall, as far as practicable, supply to the other Government all necessary information and other 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

1. "Technical information" as used in this Agreement means information originated by or peculiarly within the knowledge of the owner thereof and those in privity with him and not available to the public.

2. The term “ use ” includes manufacture by or for a Contracting Government.
3. Nothing in this Agreement shall apply to patents, patent applications and technical information in the field of atomic energy.
4. Nothing in this Agreement shall contravene present or future security arrangements between the Contracting Governments.
5. German nationals for the purpose of this Agreement are Germans within the meaning of Article 116 of the Basic Law.

Article IX

1. This Agreement shall enter into force definitively¹ on the date on which the Mutual Defense Assistance Agreement, signed at Bonn on June 30, 1955, enters into force, but shall be applied provisionally from the date of signature.
2. The terms of this Agreement may be reviewed at any time at the request of either Contracting Government.
3. Without prejudice to obligations and liabilities which have accrued pursuant to the terms of this Agreement, this Agreement shall terminate on the date when the Mutual Defense Assistance Agreement terminates or six months after notice of termination by either Contracting Government, whichever is sooner, provided that the provisional application may be terminated by one month's notice by either Contracting Government.

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

DONE at Bonn, in duplicate, in the English and German languages, both of which texts are authentic, this 4th day of January 1956.

For the Government of the United States of America :

James Bryant CONANT

¹ The following information is given by the Department of State of the United States of America (*Treaties and Other International Acts Series, 3478*, p. 11, footnote 1) :

“The date of signature of this agreement, Jan. 4, 1956, is considered the definitive date of entry into force thereof, since the Mutual Defense Assistance Agreement entered into force prior thereto (Dec. 27, 1955); however, the operative date is considered to be the date upon which the Mutual Defense Assistance Agreement entered into force.”

EXCHANGE OF NOTES

I

*The Minister for Foreign Affairs of the Federal Republic of Germany
to the American Ambassador*

[GERMAN TEXT — TEXTE ALLEMAND]

DER BUNDESMINISTER DES AUSWÄRTIGEN

Bonn, den 4. Januar 1956

Eure Exzellenz !

Bezüglich des am 4. Januar 1956 zwischen unseren beiden Regierungen abgeschlossenen „Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Vereinigten Staaten von Amerika zur Erleichterung des Austausches von Patenten und technischen Erfahrungen für Verteidigungszwecke“ möchten wir vorschlagen, daß die folgenden Auslegungen als formeller Bestandteil unserer gegenseitigen Vereinbarung betrachtet werden :

Bezüglich des Artikels IV wird anerkannt, daß die Maßnahmen unserer beiden Regierungen bei der gegenseitigen Übermittlung technischer Erfahrungen, deren Inhaber Privatpersonen sind, oder bei der späteren Preisgabe oder Benutzung solcher Erfahrungen anlässlich einer Preisgabe oder Benutzung derartiger Erfahrungen ohne Zustimmung des Inhabers gegebenenfalls zu einer Haftung der einen Regierung oder beider Regierungen nach den jeweiligen Gesetzen führen können. Es wird ferner anerkannt, daß in gewissen Fällen von der übermittelnden Regierung Entschädigung zu zahlen ist, obgleich die Zahlung einer solchen Entschädigung gegebenenfalls auf die Nichteinhaltung der Bedingungen, unter denen die Erfahrungen zugänglich gemacht worden sind, durch die Empfängerregierung zurückzuführen ist.

Es wird davon ausgegangen, daß es in allen Fällen, in denen gegebenenfalls eine Entschädigung an einen privaten Inhaber als Folge der Nichteinhaltung der Bedingungen durch die Empfängerregierung zu zahlen ist, nach den Gesetzen unserer beiden Staaten möglich sein sollte, Abmachungen für die Übernahme der endgültigen Haftung durch die Empfängerregierung zu treffen. Sollten jedoch Abweichungen in den Gesetzen unserer beiden Staaten gegenseitig zufriedenstellende Abmachungen für die Übernahme der endgültigen Haftung in diesen oder in sonstigen Fällen nicht zulassen, so wird davon ausgegangen, daß der Ausschuß für Patente und technische Erfahrungen diese Abweichungen als eine Angelegenheit behandeln wird, die unter Artikel VI (h) fällt.

2. Es wird davon ausgegangen, daß Artikel IV private Inhaber technischer Erfahrungen nicht daran hindert, sich darum zu bemühen, Entschädigung oder Schutz auf dem üblichen Rechtswege zu erlangen, wenn sie dies für angezeigt halten.

3. In Artikel V soll der Ausdruck „kontrolliert“ einen überwiegenden Einfluß der Regierung auf die Geschäftsführung der betreffenden Körperschaft oder Stelle bedeuten, insbesondere insoweit, als die Regierung die Körperschaft oder Stelle anweisen kann, eine Lizenz im Sinne dieses Artikels zu gewähren.

4. Unter erneuter Bezugnahme auf Artikel V wird davon ausgegangen, daß die benutzende Regierung nur dann „berechtigt ist, die Erfindung unentgeltlich zu benutzen“ oder „Anspruch auf Erteilung einer Lizenz unter Bedingungen hat, die mindestens so günstig sind wie sie die Regierung erhalten würde, die Eigentümerin der betreffenden Körperschaft oder Stelle ist oder diese kontrolliert, oder wie sie anderen Körperschaften oder Stellen dieser Regierung gewährt werden würden“, wenn diese Erfindung oder diese Lizenz für Verteidigungszwecke benutzt wird. Wird die Erfindung oder die Lizenz für zivile Zwecke benutzt, so steht fest, daß Artikel V nicht anwendbar ist.

Die Bestätigung dieser Vereinbarungen durch die Regierung der Vereinigten Staaten würde begrüßt werden.

Ich benutze die Gelegenheit, Eure Exzellenz erneut des Ausdrucks meiner ausgezeichnetsten Hochachtung zu versichern.

V BRENTANO

Seiner Exzellenz James B. Conant
Ausserordentlicher und Bevollmächtigter Botschafter
der Vereinigten Staaten von Amerika
Bad Godesberg

[TRANSLATION¹ — TRADUCTION²]

THE FEDERAL MINISTER FOR FOREIGN AFFAIRS

Bonn, January 4, 1956

Your Excellency :

With reference to the “ Agreement between the Government of the Federal Republic of Germany and the Government of the United States of America to Facilitate the Interchange of Patent Rights and Technical Information for Defense Purposes, ” which was concluded between our two Governments on January 4, 1956,³ we should like to propose that the following interpretations be formally made an integral part of our mutual agreement :

[*See note II*]

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

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

V BRENTANO

His Excellency James B. Conant
Ambassador Extraordinary and Plenipotentiary
of the United States of America
Bad Godesberg

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

³ See p. 144 of this volume.

II

*The American Ambassador to the Minister for Foreign Affairs
of the Federal Republic of Germany*

Bonn, January 4, 1956

Excellency :

I have the honor to acknowledge your letter of January 4, 1956, setting forth certain interpretations concerning the " Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes " concluded between our two Governments on January 4, 1956. This letter states :

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 reason 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 from endeavoring 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 is 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 favorable 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.

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

Please accept the renewed assurances of my highest consideration.

James B. CONANT
American Ambassador

His Excellency Mr. Heinrich von Brentano
Minister for Foreign Affairs
Bonn