

No. 4446

**UNITED STATES OF AMERICA
and
AUSTRALIA**

Agreement (with exchange of notes) to facilitate the interchange of patent rights and technical information for defense purposes. Signed at Washington, on 24 January 1958

Official text: English.

Registered by the United States of America on 24 July 1958.

**ÉTATS-UNIS D'AMÉRIQUE
et
AUSTRALIE**

Accord (avec échange de notes) visant à faciliter l'échange mutuel de brevets d'invention et de renseignements techniques pour les besoins de la défense. Signé à Washington, le 24 janvier 1958

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 24 juillet 1958.

No. 4446. AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA TO FACILITATE THE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES. SIGNED AT WASHINGTON, ON 24 JANUARY 1958

The Government of the United States of America and the Government of Australia,

Having agreed in the Security Treaty signed at San Francisco on September 1, 1951² to maintain and develop their individual and collective capacity to resist armed attack by means of continuous and effective self-help and mutual aid ;

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 ;

Agree as follows :

Article I

Each Contracting 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 owners of such patents or technical information or those to whom rights have been ceded by the said owners on the one hand, and the user on the other, whether this user be a private person, a firm or a Government body ; and
- (b) In the absence of such commercial relationships, by encouraging the parties to enter into them.

¹ Came into force on 24 January 1958, the date of signature, in accordance with article IX (a).

² United Nations, *Treaty Series*, Vol. 131, p. 83.

However, the commercial relationships referred to in paragraphs (a) and (b) shall not be contrary to security requirements, and their provisions shall remain subject to the applicable laws of each of the Contracting Governments.

Article II

When technical information is supplied for defense purposes by one Contracting Government to the other, unless otherwise stipulated, the recipient Government shall treat the technical information as supplied for information only and use its best endeavors to insure 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 Contracting 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 its laws, accord similar treatment to a corresponding patent application to be filed in the recipient country. The Contracting Governments agree to develop appropriate procedures to facilitate the carrying out of this Article.

Article IV

(a) Where privately owned technical information

- (i) 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
- (ii) is subsequently disclosed by that Government to the other Contracting Government for the purposes 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.

(b) 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.

Article V

(a) When an invention owned by one Contracting Government is used by the other Contracting Government for defense purposes, such use shall, to the extent that no liability is incurred by either Government to any private owner of a proprietary or other legal interest in the invention, be without cost to such other Government.

(b) Whenever either Contracting Government can grant to the other Contracting Government for defense purposes a license to use an invention not covered by (a) above without incurring liability to any private owner of a proprietary or other legal interest therein, it shall do so without cost to such other Government.

(c) Nothing in this Article shall affect any licensing or other agreement already in force at the date of this Agreement or any royalty or other compensation paid or agreed to be paid thereunder.

Article VI

Each Contracting Government shall designate a representative to meet with the representative of the other Contracting Government to constitute a Technical Property Committee. Each Government shall have the right to appoint special advisors for its representative. 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

(a) "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.

(b) The term "use" includes manufacture by or for a Contracting Government.

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

(d) Except for Article IV (a), nothing in this Agreement shall contravene present or future security arrangements between the Contracting Governments. Nothing in this Agreement shall relieve the nationals of either country from the

obligations placed upon them under the internal security laws and regulations of their respective Governments.

Article IX

(a) This Agreement shall enter into force on the date of signature.

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

(c) This Agreement will terminate six months after written notice of termination has been given by either Contracting Government to the other, 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 in duplicate at Washington this twenty-fourth day of January, 1958.

For the Government of the United States of America :

Thomas C. MANN

For the Government of Australia :

Percy C. SPENDER

EXCHANGE OF NOTES

I

The Acting Secretary of State to the Australian Ambassador

DEPARTMENT OF STATE
WASHINGTON

January 24, 1958

Excellency :

With reference to the "Agreement to Facilitate the Interchange of Patent Rights and Technical Information for Defense Purposes"¹ concluded today between our two Governments, the United States Government proposes that the following interpretations be considered as constituting a formal part of our mutual understanding.

¹ See p. 106 of this volume.

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.

2. 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*).

3. Nothing in this Agreement or in this note should be regarded as abandonment of the principle that a recipient Government should accept ultimate liability for unauthorized use or disclosure by it of proprietary rights furnished hereunder.

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

Accept, Excellency, the renewed assurances of my highest consideration.

For the Acting Secretary of State :

Thomas C. MANN

His Excellency the Honorable Sir Percy Spender, K.C.V.O., K.B.E., Q.C.
Ambassador of Australia

II

The Australian Ambassador to the Acting Secretary of State

AUSTRALIAN EMBASSY
WASHINGTON, D. C.

No. 33/58

24th January, 1958

Sir :

I have the honor to acknowledge your letter of today's date setting forth certain interpretations concerning the "Agreement to Facilitate the Interchange of Patent Rights and Technical Information for Defense Purposes" concluded today between our two Governments. This letter states :

[See note I]

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

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

Percy C. SPENDER
Ambassador

The Honorable the Acting Secretary of State
Department of State for the United States
Washington, D. C.