

No. 5313

**UNITED STATES OF AMERICA
and
BELGIUM**

**Exchange of notes (with enclosure) constituting an
agreement relating to the interchange of patent rights
and technical information for defense purposes.
Brussels, 6 and 18 May 1960**

Official texts: English and French.

Registered by the United States of America on 17 August 1960.

**ÉTATS-UNIS D'AMÉRIQUE
et
BELGIQUE**

**Échange de notes (avec pièce jointe) constituant un accord
relatif à l'échange de brevets d'invention et de rensei-
gnements techniques pour les besoins de la défense.
Bruxelles, 6 et 18 mai 1960**

Textes officiels anglais et français.

Enregistré par les États-Unis d'Amérique le 17 août 1960.

No. 5313. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND BELGIUM RELATING TO THE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES. BRUSSELS, 6 AND 18 MAY 1960

I

The American Ambassador to the Belgian Minister of Foreign Affairs

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

No. 170

Brussels, May 6, 1960

Excellency :

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of Belgium to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed in Brussels on October 12, 1954,² and to the discussions between representatives of our two Governments regarding procedures for the reciprocal filing of classified patent applications under the terms of Articles III and VI of this Agreement. I attach a copy of the procedures³ prepared during the course of these discussions and agreed to by those representatives.

I am now instructed to inform you that the enclosed procedures have been agreed to by the Government of the United States of America. I would appreciate it if you would confirm that they are also acceptable to your Government. Upon receipt of such confirmation, my Government will consider that these procedures shall thereafter govern the reciprocal filing of classified patent applications, in accordance with the terms of the aforesaid Agreement.

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

William A. M. BURDEN

Enclosure :

Copy of Procedures³.

His Excellency Pierre Wigny
Minister of Foreign Affairs
Brussels

¹ Came into force on 18 May 1960 by the exchange of the said notes.

² United Nations, *Treaty Series*, Vol. 202, p. 289.

³ See p. 34 of this volume.

PROCEDURES FOR RECIPROCAL FILING OF CLASSIFIED PATENT APPLICATIONS IN THE UNITED STATES OF AMERICA AND BELGIUM

1. GENERAL

The following procedures are in implementation of Article III of the Agreement between the Government of the United States of America and the Government of Belgium to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes which was signed and entered into force on October 12, 1954. The purpose of these procedures is to allow the filing in the other country of patent applications which, for defense purposes, have been placed in secrecy in the country of origin, and to guarantee equivalent security in both countries for the inventions disclosed by such applications. These procedures are based upon the following understandings with respect to basic security requirements.

(a) Each Government has authority within its jurisdiction to impose secrecy on an invention the disclosure of which might prejudice national defense.

(b) The authority of each Government, when acting as the originating Government, to impose, modify or remove secrecy orders shall be exercised only at the request, or with the concurrence, of national defense officials of that Government, or pursuant to criteria established by national defense agencies, of that Government.

(c) Secrecy orders shall apply to the subject matter of the inventions concerned, and prohibit unauthorized disclosure of the same by all persons having access thereto.

(d) Adequate physical security arrangements shall be provided in all Government departments, including Patent Offices, handling inventions of defense interest and all persons in these departments and offices required to handle such inventions shall have been security cleared.

(e) Each Government shall take all possible steps to prevent unauthorized foreign filing of patent applications the disclosure of which might prejudice national defense.

(f) Permission for foreign filing of a patent application which has been placed in secrecy for purposes of defense shall remain discretionary with each Government.

(g) The recipient Government shall assign to the invention involved a security classification corresponding to that given in the country of origin and shall take effective measures to provide security protection appropriate to such classification.

(h) Where patent applications covered by a secrecy order are handled by patent agents or attorneys in private practice, arrangements shall be made for the security clearance of these agents or attorneys and such of their employees who may be involved, prior to their handling such applications or information relating thereto, as well as for adequate physical security measures in their offices.

(i) When secrecy has been imposed on an invention in one country and the inventor has been given permission to apply for a patent in the other country, all communications regarding the classified aspects of the invention shall pass through diplomatic or other secure channels.

2. APPLICATIONS ORIGINATING IN THE UNITED STATES

The following provisions shall apply when, for defense purposes, a United States patent application has been placed in secrecy under the provisions of Title 35, United States Code, Section 181, and the applicant wishes to file a corresponding application in Belgium.

(a) The applicant shall petition the United States Commissioner of Patents for modification of the secrecy order to permit filing in Belgium. This petition will be prepared in conformance with paragraph 5.5 of Part 5, Title 37, Code of Federal Regulations, the Provisions of which are incorporated herein by reference.

(b) Permission to file a corresponding patent application in Belgium is conditional upon the applicant agreeing to :

- (1) Make the invention involved and such information relating thereto as may be necessary for its proper evaluation for defense purposes available to the Belgian Government for purposes of defense under the terms and conditions of the Agreement of October 12, 1954.
- (2) Waive any right to compensation for damage which might arise under the laws of Belgium by virtue of the mere imposition of secrecy on his invention in Belgium, but reserving any right or action for compensation provided by the laws of Belgium for use by the Belgian Government of the invention disclosed by the application, or for unauthorized disclosure of the invention disclosed by the application.

(c) Upon obtaining permission to file in Belgium, the applicant shall forward the documents for the Belgian application to the defense agency which initiated the secrecy order.

(d) The defense agency shall transmit, through diplomatic channels, the documents received from the applicant, simultaneously, as follows :

- (1) One copy to the Military Attaché at the Belgian Embassy in the United States for use by the Belgian Government for defense purposes ; and
- (2) One copy to the appropriate section of the American Embassy in Belgium. The letter transmitting the documents to the American Embassy in Belgium shall indicate the security classification given to the application in the United States ; state that the invention involved and such information relating thereto as was necessary for its proper evaluation for defense purposes have been made available to the Belgian Government for purposes of defense under the terms and conditions of the Agreement of October 12, 1954, and state that the applicant has authorization to file a corresponding application in Belgium under the provisions of Title 35, United States Code, Section 184. It shall also include instructions for the Embassy to inquire of appropriate Belgian Ministry of Defense officials as to whether the Belgian attorney or agent

designated by the applicant is security cleared in accordance with the provisions of subparagraph 1 (*h*), *supra*.

(*e*) If the designated attorney or agent is not security cleared, the Belgian Ministry of Defense shall so inform the appropriate section of the American Embassy, which shall forward such information to the United States defense agency which initiated the secrecy order. It shall then be necessary for the designated attorney or agent to become security cleared, if time permits, or for the patent applicant to select another attorney or agent and submit his name through the United States defense agency to the American Embassy in Belgium.

(*f*) When a security cleared attorney or agent has been designated, the Embassy shall transmit the documents to him by personal delivery or in any other manner consistent with Belgian security regulations.

(*g*) The Belgian attorney or agent shall then file the application with the Bureau de dépôt du Gouvernement Provincial du Brabant, including therewith a copy of the documents issued by the United States Government placing the United States application in secrecy and authorizing the applicant to file in Belgium.

(*h*) The Government of Belgium shall then place the application in secrecy.

(*i*) The applicant shall submit as soon as possible to the initiating agency the serial number and filing date of the Belgian application.

3. APPLICATIONS ORIGINATING IN BELGIUM

The following provisions shall apply when, for defense purposes, a Belgian patent application has been placed in secrecy under the provisions of the Belgian law of January 10, 1955, and the applicant wishes to file a corresponding application in the United States.

(*a*) The applicant shall send a written request to the Director, Service de la Propriété Industrielle et Commerciale, asking permission to file such an application in the United States.

(*b*) Permission to file a corresponding patent application in the United States shall be conditional upon the applicant agreeing to :

- (1) Make the invention involved and such information relating thereto as may be necessary for its proper evaluation for defense purposes available to the United States Government for purposes of defense under the terms and conditions of the Agreement of October 12, 1954.
- (2) Waive any right to compensation for damage which might arise under the laws of the United States by virtue of the mere imposition of secrecy on his invention in the United States, but reserving any right of action for compensation provided by the laws of the United States for use by the United States Government of the invention disclosed by the application, or for unauthorized disclosure of the invention disclosed by the application.

(*c*) Upon obtaining permission to file in the United States, the applicant shall forward to the Belgian Ministry of Defense, three copies of the documents for the United States patent application, all in conformance with Belgian security regulations.

(d) The Belgian Ministry of Defense shall transmit, through diplomatic channels, the documents received from the applicant, simultaneously, as follows :

- (1) One copy to the Military Attaché in the American Embassy in Belgium for use by the United States Government for defense purposes, and
- (2) Two copies to the Military Attaché at the Belgian Embassy in the United States. The letter transmitting the documents to the Military Attaché at the Belgian Embassy in the United States shall indicate the security classification given to the application or patent in Belgium and state that the invention involved and such information relating thereto as was necessary for its proper evaluation for defense purposes has been made available to the United States Government for purposes of defense, in accordance with the terms and conditions of the Agreement of October 12, 1954, and that the applicant has authorization to file a corresponding application in the United States in accordance with Article 8 of the Law of 10 January 1955. It shall also include instructions for the Military Attaché to inquire of the Secretary, Armed Services Patent Advisory Board, Patents Division, Office of the Judge Advocate General, Department of the Army, Washington 25, D.C., as to whether the American attorney or agent designated by the applicant is security cleared in accordance with the provisions of subparagraph 1(h), supra.

(e) If the designated attorney or agent is not security cleared, the Secretary, Armed Services Patent Advisory Board, shall so inform the Military Attaché, who shall forward such information to the Belgian Ministry of Defense. It shall then be necessary for the designated attorney or agent to become security cleared, if time permits, or for the patent applicant to select another attorney or agent and submit his name through the Belgian Military Attaché to the Secretary of the Armed Services Patent Advisory Board.

(f) When a security cleared attorney or agent has been designated, the Belgian Military Attaché shall transmit the documents to him by personal delivery or in any other manner consistent with United States security regulations. The designated attorney or agent shall then file the application in the United States Patent Office and shall forward to the Secretary of the Armed Services Patent Advisory Board a copy of the application as filed, as well as a copy of the document issued by Belgium to the patent applicant permitting to file in the United States.

(g) The Government of the United States shall then place the application in secrecy.

(h) The applicant shall submit as soon as possible to the Belgian Ministry of National Defense the serial number and date of the United States application.

4. SUBSEQUENT CORRESPONDENCE BETWEEN APPLICANT AND FOREIGN PATENT OFFICE

(a) All subsequent correspondence of a classified nature between an applicant in either country and the patent office in the other country shall be through the same channels as outlined for the original application.

(b) Unclassified formal notifications such as statements of fees, extensions of time limits, etc., may be sent by the patent offices directly to the applicant or his authorized representative without any special security arrangements.

5. REMOVAL OF SECRECY

(a) A secrecy order shall be removed only on the request of the originating Government.

(b) The originating Government shall give the other Government at least six weeks' notice of its intention to remove secrecy and shall take into account, as far as possible, any representations made by the other Government during this period.

6. NOTIFICATION OF CHANGES IN LAWS AND REGULATIONS

Each Government shall give the other Government prompt notice through the Technical Property Committee of any changes in its laws or regulations affecting these procedures.

II

The Belgian Minister of Foreign Affairs to the American Ambassador

[TRANSLATION¹ — TRADUCTION²]

MINISTRY OF FOREIGN AFFAIRS AND FOREIGN COMMERCE

Policy Division

No. D.11.J/1184

Brussels, May 18, 1960

Mr. Ambassador :

I have the honor to acknowledge receipt of note No. 170 dated May 6, 1960, with which Your Excellency transmitted to me the text of the Agreement regarding the procedure for the reciprocal filing of classified patent applications under the terms of Articles III and VI of the Agreement concluded between the Government of the United States of America and the Belgian Government on October 12, 1954, as well as the agreement of Your Excellency's Government.

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

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

My Government agrees to the text appended to Your Excellency's note mentioned above and takes due note of the fact that the procedure referred to will henceforth be governed by the terms of the aforesaid Agreement.

I avail myself of this opportunity, Mr. Ambassador, to renew to Your Excellency the assurance of my very high consideration.

P. WIGNY
Minister of Foreign Affairs

His Excellency William A. M. Burden
Ambassador of the United States of America
Brussels