

No. 5663

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**UNITED STATES OF AMERICA  
and  
SPAIN**

**Exchange of notes constituting an agreement relating to the  
interchange of patent rights and technical information  
for defense purposes. Madrid, 13 and 21 July 1960**

*Official texts: English and Spanish.*

*Registered by the United States of America on 28 March 1961.*

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

**Échange de notes constituant un accord relatif à l'échange  
de brevets d'invention et de renseignements techniques  
pour les besoins de la défense. Madrid, 13 et 21 juillet  
1960**

*Textes officiels anglais et espagnol.*

*Enregistré par les États-Unis d'Amérique le 28 mars 1961.*

No. 5663. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND SPAIN RELATING TO THE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES. MADRID, 13 AND 21 JULY 1960

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*The American Chargé d'Affaires ad interim to the Spanish Minister of Foreign Affairs*

Madrid, July 13, 1960

No. 51

Excellency :

I have the honor to refer to discussions between representatives of our Governments concerning a proposal for an agreement to govern the interchange of patent rights and technical information for defense purposes, as specified in Article II of the Mutual Defense Assistance Agreement between Spain and the United States of America, signed in Madrid on September 26, 1953.<sup>2</sup> In accordance with those discussions, I submit for your Excellency's consideration the proposed text of such an agreement, as follows :

AGREEMENT TO FACILITATE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES

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

Having agreed in the Mutual Defense Assistance Agreement signed in Madrid on September 26, 1953, 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 :

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<sup>1</sup> Came into force on 21 July 1960 by the exchange of the said notes.

<sup>2</sup> United Nations, *Treaty Series*, Vol. 207, p. 61, and Vol. 265, p. 374.

*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 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 relationship by the owner and the user in the other country, 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 because of national defense reasons, similar treatment shall be accorded a corresponding patent application filed in the other country in accordance with the laws in force in the latter country regarding patents or patent applications held in secrecy, which will be fully applicable.

*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 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.

(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*

When one Contracting Government or an entity or agency owned or controlled by such Government, owns or has the right 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 such interests are protected in the country in which the invention is used.

#### *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. 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 his 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) Nothing in this Agreement shall contravene present or future security arrangements between the Contracting Governments.

*Article IX*

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

(b) 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, but without prejudice to obligations and liabilities which have then accrued pursuant to the terms of this Agreement.

If the foregoing text is acceptable to Your Excellency's Government, I have the honor to propose that this note and Your Excellency's note in reply to that effect shall constitute an Agreement between our two Governments on this matter, which shall enter into force on the date of your note in reply.

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

W. PARK ARMSTRONG  
Chargé d'Affaires ad interim

His Excellency Fernando Maria Castiella y Maiz  
Minister of Foreign Affairs  
Madrid

Al comunicar a V.I. la conformidad del Gobierno español sobre lo que precede, le ruego, Señor Encargado de Negocios, acepte las seguridades de mi alta consideración.

Fernando M. CASTIELLA

Ilmo. Sr. W. Park Armstrong  
Encargado de Negocios a.i. de los Estados Unidos de América  
Madrid

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

MINISTRY OF FOREIGN AFFAIRS

Madrid, July 21, 1960

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No. 513

Sir :

I have the honor to acknowledge receipt of your note No. 51 dated the 13th of this month, the text of which, translated into Spanish, reads as follows :

[*See note I*]

In informing you of the Spanish Government's acceptance of the foregoing, I beg you, Mr. Chargé d'Affaires, to accept the assurances of my high consideration.

Fernando M. CASTIELLA

Mr. W. Park Armstrong  
Chargé d'Affaires ad interim of the United States of America  
Madrid

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<sup>1</sup> Translation by the Government of the United States of America.

<sup>2</sup> Traduction du Gouvernement des États-Unis d'Amérique.