

No. 5673

**UNITED STATES OF AMERICA
and
PORTUGAL**

**Agreement to facilitate interchange of patent rights and
technical information for defense purposes. Signed at
Lisbon, on 31 October 1960**

Official texts: English and Portuguese.

Registered by the United States of America on 14 April 1961.

**ÉTATS-UNIS D'AMÉRIQUE
et
PORTUGAL**

**Accord en vue de faciliter l'échange de brevets d'invention
et de renseignements techniques pour les besoins de
la défense. Signé à Lisbonne, le 31 octobre 1960**

Textes officiels anglais et portugais.

Enregistré par les États-Unis d'Amérique le 14 avril 1961.

No. 5673. AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND PORTUGAL TO FACILITATE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES. SIGNED AT LISBON, ON 31 OCTOBER 1960

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

Having agreed in the Mutual Defense Assistance Agreement signed in Washington on January 5, 1951,² 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 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 relationships 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.

¹ Came into force on 31 October 1960, the date of signature, in accordance with article IX.

² United Nations, *Treaty Series*, Vol. 133, p. 75.

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

(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

When one Contracting Government, or an entity or agency owned or controlled by such 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.

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 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 purpose 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 compensations 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) 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 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.

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

DONE in duplicate at Lisbon in the Portuguese and English languages, this 31st day of October 1960.

For the Government
of the United States of America :
John GOODYEAR
[SEAL]

For the Government
of Portugal :
Marcello MATHIAS
[SEAL]