

NETHERLANDS

Interchange of Patent Rights and Technical Information for Defense Purposes: Filing Classified Patent Applications

*Agreement effected by exchange of notes
Signed at The Hague October 8, 1959;
Entered into force October 8, 1959.*

*The American Chargé d'Affaires ad interim to the Netherlands
Minister for Foreign Affairs*

THE AMERICAN EMBASSY
The Hague, October 8, 1959

No. 181

EXCELLENCY:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed at The Hague on April 29, 1955, [1] 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 procedures 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, under the terms of the aforesaid Agreement.

¹ TIAS 3287; 8 UST 2187.

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

HERRBERT P. FALES
Charge d'Affaires a.i.

Enclosure:

Copy of Procedures

His Excellency

J.M.A.H. LUNS,

*Minister for Foreign Affairs,
The Hague.*

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

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 the Kingdom of the Netherlands to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, dated April 29, 1955. The purpose of these procedures is to facilitate the filing of patent applications involving classified subject matter of defense interest, by inventors of one country in the other country, and to guarantee adequate security in such other country 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 of defense interest which it considers to involve classified subject matter.

(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 which may involve classified subject matter of defense interest.

(f) Permission for foreign filing of a patent application involving classified subject matter of defense interest shall remain discretionary with each Government.

(g) The recipient Government shall assign to the invention involved a 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 the Netherlands.

(a) The applicant shall petition the United States Commissioner of Patents for modification of the secrecy order to permit filing in the Netherlands. 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 classified patent application in the Netherlands 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 Netherlands Government for purposes of defense under the terms and conditions of the Agreement of April 29, 1955.
- (2) Assign in trust the rights resulting from the application to the Kingdom of the Netherlands, since under present Netherlands law a secret patent can be issued only to the Kingdom of the Netherlands.
- (3) Waive any right to compensation for damage which might arise under the laws of the Netherlands by virtue of the mere imposition of secrecy on his invention in the Netherlands, but

reserving any right of action for compensation provided by the laws of the Netherlands for use by the Netherlands Government of the invention disclosed by the application or for unauthorized disclosure of the invention in the Netherlands.

(c) Upon obtaining permission to file in the Netherlands, the applicant shall forward the documents for the Netherlands 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 Attache at the Embassy of the Netherlands in the United States for use by the Netherlands Government for defense purposes; and
- (2) Two copies to the appropriate section of the American Embassy in the Netherlands. The letter transmitting the documents to the American Embassy in the Netherlands 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 has been made available to the Netherlands Government for purposes of defense under the terms and conditions of the Agreement of April 29, 1955; and state that the applicant has authorization to file a corresponding application in the Netherlands under the provisions of Title 35, United States Code, Section 184. It shall also include instructions for the Embassy to inquire of appropriate Netherlands Ministry of Defense officials as to whether the Netherlands 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 Netherlands Minister 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 the Netherlands.

(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 Netherlands security regulations.

(g) The Netherlands attorney or agent shall then file the application in the Netherlands Patent Office (Octrooiraad).

(h) The Government of the Netherlands 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 foreign application.

3. *Applications Originating in the Netherlands.*

The following provisions shall apply when, for defense purposes, a Netherlands patent application involving classified subject matter of defense interest has been placed in secrecy under the provisions of Netherlands law, and the applicant wishes to file a corresponding application in the United States:

(a) The applicant shall send a written request to the Netherlands Minister of Defense asking permission to file such an application in the United States.

(b) Permission to file a classified 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 April 29, 1955.

(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 in the United States.

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

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

(1) One copy to the appropriate Service Attache in the American Embassy in the Netherlands for use by the United States Government for defense purposes; and

(2) Two copies to the Military Attache at the Embassy of the Netherlands in the United States. The letter transmitting the documents to the Military Attache at the Embassy of the Netherlands in the United States shall indicate the security classification given to the application or patent in the Netherlands and state that the invention involved and such infor-

mation 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 April 29, 1955. It shall also include instructions for the Military Attache 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 Attache, who shall forward such information to the Netherlands Minister 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 Netherlands Military Attache to the Secretary of the Armed Services Patent Advisory Board.

(f) When a security cleared attorney or agent has been designated, the Netherlands Military Attache 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 the Netherlands to the patent applicant permitting him to file in the United States.

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

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.

*The Netherlands Under Secretary of State for Foreign Affairs to the
American Chargé d'Affaires ad interim*

MINISTRY OF FOREIGN AFFAIRS

THE HAGUE

8TH OCTOBER 1959.

SIR,

I have the honour to acknowledge receipt of your note nr. 181 dated 8th October, 1959, which reads as follows:

"I have the honor to refer to the Agreement between the Government of the United States of America and the Government of the Kingdom of The Netherlands to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed at The Hague on April 29, 1955, 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 procedures 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 under the terms of the aforesaid Agreement."

I have the honour to confirm that the Government of the Netherlands accept your proposals and consider your Note and this reply as an agreement for the implementation of Article III of the Agreement of 1955.

Please accept, Sir, the assurances of my high consideration.

H VAN HOUTEN
*Under Secretary of State
for Foreign Affairs*

To The CHARGÉ D'AFFAIRES OF
THE UNITED STATES OF AMERICA,
The Hague.

TIAS 4332

NETHERLANDS

Interchange of Patent Rights and Technical Information For Defense Purposes

Agreement and exchange of letters

Signed at The Hague April 29, 1955;

*Entered into force provisionally April 29, 1955; definitively
July 13, 1955.*

TIAS 3287
Apr. 29, 1955

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

The Government of the United States of America and the Government of the Kingdom of the Netherlands - hereinafter referred to as the Governments -

having agreed in the Mutual Defense Assistance Agreement signed in Washington on January 27, 1950, 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 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 prospective 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 countries, and provided further that the terms of all such arrangements shall remain subject to the applicable laws of the two countries.

TIAS 2015.
1 UST 88.

TIAS 3287

OVEREENKOMST TER BEVORDERING VAN
DE UITWISSELING VAN OCTROOIRECHTEN EN
TECHNISCHE INLICHTINGEN VOOR DEFENSIEDOELINDEN

De Regering van de Verenigde Staten van Amerika en de Regering van het Koninkrijk der Nederlanden - hierna te noemen de Regeringen -

die in het op 27 Januari 1950 te Washington ondertekende Verdrag tot Wederzijdse Hulpverlening inzake Verdediging overeen gekomen zijn, op verzoek van elk hunner te zullen onderhandelen over passende regelingen betreffende octrooien en technische inlichtingen,

die in het algemeen behulpzaam wenssen te zijn bij de productie van uitrusting en materieel voor de verdediging door de uitwisseling van octrooirechten en technische inlichtingen te vergemakkelijken en te bevorderen, en

die erkennen, dat de rechten van particuliere eigenaars van octrooien en technische inlichtingen volledig erkend en beschermd moeten worden overeenkomstig de wetten welke van toepassing zijn op zodanige octrooien en technische inlichtingen, zijn overeengekomen als volgt:

ARTIKEL I

Beide Regeringen zullen, steeds als dit zonder al te grote beperking of belemmering van de defensieproductie uitvoerbaar is, het gebruik van octrooirechten bevorderen en het doorgeven en het gebruik van technische inlichtingen in particulier bezit, als omschreven in Artikel VIII, voor defensiedoeleinden aanmoedigen:

- a) door middel van bestaande handelsrelaties tussen de eigenaar van die octrooirechten en van die technische inlichtingen en diegenen in het andere land, die het recht hebben die octrooirechten en technische inlichtingen te gebruiken, en
 - b) bij ontbreken van bestaande relaties, door middel van het tot stand brengen van dergelijke relaties door de eigenaar en de toekomstige gebruiker in het andere land,
- mits, in het geval van gerubriceerde inlichtingen, dergelijke regelingen door de wetten en veiligheidseisen van beide landen zijn toegelaten en mits de bepalingen van alle zodanige regelingen onderworpen zullen blijven aan de toepasselijke wetten van beide landen.

ARTICLE II

When, for defense purposes, technical information is supplied by one Government to the other for evaluation and planning 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 for purposes of defense by one 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 applicable law, accord similar treatment to a corresponding patent application to be filed in the recipient country. The Governments agree to develop operational procedures as may be required to effectuate this Article.

ARTICLE IV

a) Where privately-owned technical information

- (i) has been communicated by or on behalf of the owner thereof to the Government of the country of which he is a national or resident, and
- (ii) is subsequently disclosed by that Government to the other Government for the purposes of defense and is used or disclosed by the latter Government, for any purpose whether or not for defense,

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

ARTIKEL II

Wanneer voor defensiedoeleinden technische inlichtingen door een der Regeringen aan de andere worden verschaft alleen om de waarde daarvan te bepalen en plannen te ontwerpen en dit bij de levering is bepaald, zal de andere Regering de technische inlichtingen behandelen als in vertrouwen medegedeeld en naar beste vermogens ervoor zorgdragen, dat de inlichtingen niet worden behandeld op een manier waardoor mogelijkerwijs de aanspraken van de eigenaar op octrooi of andere soortgelijke wettelijke bescherming zullen worden geschaad.

ARTIKEL III

Wanneer technische inlichtingen, welke voor defensiedoeleinden door een der Regeringen ter beschikking van de andere worden gesteld, een uitvinding onthullen welke het onderwerp is van een octrooi of een octrooi-aanvraag die in het land van oorsprong geheim wordt gehouden, zal de andere Regering, voor zoveel zulks onder de toepasselijke wetten mogelijk is, een overeenkomstige octrooi-aanvraag bij indiening in het ontvangende land op soortgelijke wijze behandelen. De Regeringen komen overeen, de nodige uitvoeringsmaatregelen te treffen voor de uitvoering van dit artikel.

ARTIKEL IV

- a) Wanneer technische inlichtingen in particulier bezit
- (i) door of namens hun eigenaar aan de Regering van het land waarvan deze onderdaan of ingezetene is, zijn medegedeeld, en
 - (ii) vervolgens voor defensiedoeleinden door die Regering ter kennis van de andere Regering worden gebracht en door deze laatste al dan niet voor defensiedoeleinden worden gebruikt of bekend gemaakt,
- komen de Regeringen overeen dat, indien door de Regering, die het eerst de inlichtingen ontvangt, aan de eigenaar enige vergoeding wordt betaald, deze betaling onverlet laat de tussen beide Regeringen eventueel te treffen regelingen ten aanzien van de door ieder van hen te aanvaarden aansprakelijkheid voor vergoeding. De Commissie voor Technische Eigendom, ingesteld krachtens Artikel VI van deze Overeenkomst, zal deze regelingen bespreken en daarentrent aanbevelingen aan de Regeringen doen.

b) When, for the purposes of defense, technical information is made available by a national or resident of the country of one 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 applicable law 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 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.

When one Government owns or controls entities 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 Government shall designate a representative to meet with the representative of the other 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 Government;

b) Wanneer voor defensiedoeleinden technische inlichtingen door een onderdaan of ingezetene van het land van de ene Regering aan de andere Regering, op verzoek van de laatste, ter beschikking worden gesteld en deze vervolgens al dan niet voor defensiedoeleinden worden gebruikt of bekend gemaakt, zal de andere Regering, op verzoek van de eigenaar, al datgene doen hetwelk onder de toepasselijke wetten mogelijk is om zorg te dragen voor onverwilde, rechtvaardige en doeltreffende vergoeding voor dat gebruik of die bekendmaking, in zoverre de eigenaar krachtens die wetten daarop aanspraak heeft.

ARTIKEL V

Wanneer een der Regeringen een uitvinding bezit of het recht heeft om licentie te verlenen tot het gebruik daarvan en deze uitvinding worat door de andere Regering voor defensiedoeleinden gebruikt, dan zal de laatstbedoelde Regering het recht hebben de uitvinding kosteloos te gebruiken, behoudens voorzover er aansprakelijkheid mocht bestaan jegens een particuliere eigenaar met vaststaande belangen bij de uitvinding.

Wanneer een der Regeringen instellingen bezit of daarin beslissende zeggenschap heeft, welke instellingen het recht hebben een licentie te verlenen tot gebruik van een uitvinding, en deze uitvinding wordt door de andere Regering voor defensiedoeleinden gebruikt, dan zal de laatstbedoelde Regering recht hebben op een licentie op voorwaarden welke tenminste even gunstig zijn als die, welke kunnen worden verkregen door de eerstgenoemde Regering of door andere instellingen van die regering, mits daardoor voor de Regering die het bezit of de zeggenschap heeft, geen financiële verplichtingen ontstaan.

ARTIKEL VI

Elk der Regeringen zal een vertegenwoordiger aanwijzen om met de vertegenwoordiger van de andere Regering samen te komen teneinde een Commissie voor Technische Eigendom te vormen. De taak van deze Commissie zal zijn:

- a) het bezien van en het doen van aanbevelingen omtrent aangelegenheden, die op het onderwerp van deze Overeenkomst betrekking hebben en door elk dezer Regeringen aan haar worden voorgelegd;

- b) to make recommendations to the 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 countries 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 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 Government shall, as far as practicable, supply to the other Government all necessary information and appropriate 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 (including instructions, methods of manufacture, professional, scientific or technological information in any form) originated by or peculiarly within the knowledge of the owner thereof and those in privity with him and not available to the public.
- b) "Invention" means that which is patented or patentable under the law of the respective countries.
- c) The term "use" includes manufacture by or for a Government.
- d) Nothing in this Agreement shall apply to patents, patent applications and technical information in the field of atomic energy.
- e) Nothing in this Agreement shall contravene present or future security arrangements between the Governments.

ARTICLE IX

- a) As far as the Netherlands is concerned, this Agreement shall apply to the territory of the Kingdom in Europe only.
- b) This Agreement shall apply provisionally from the date of signature. It shall enter into force on the date the Government of the United States of America is notified⁽¹⁾ that the approval constitutionally required in the Netherlands has been obtained.
- c) The terms of this Agreement may be reviewed at any time at the request of either Government.

¹ July 13, 1955.

- a) de eigenaar van technische inlichtingen, ter beschikking gesteld voor defensiedoeleinden, in de gelegenheid te stellen alle rechten die hij op de technische inlichtingen mocht hebben, te beschermen en te bewaren, en
- b) betalingen en beloningen vast te stellen, die voortvloeien uit het gebruik van octrooirechten en technische inlichtingen, ter beschikking gesteld voor defensiedoeleinden.

ARTIKEL VIII

a) "Technische Inlichtingen" wordt in deze Overeenkomst gebruikt in de betekenis van inlichtingen (waarbij inbegrepen voorschriften, werkwijzen, vakwetenschappelijke, wetenschappelijke of technische inlichtingen in welke vorm ook), die zijn voortgebracht door, of in het bijzonder behoren tot de kennis van de eigenaar en van zijn ingewijden en waarover het publiek niet beschikt.

b) "Uitvinding" betekent datgene wat geoctrooieerd of octrooieerbaar is krachtens de wetten van het betrokken land.

c) "Gebruiken" houdt mede de vervaardiging door of voor een der Regeringen in.

d) Deze Overeenkomst is niet van toepassing op octrooien, octrooiaanvragen en technische inlichtingen op het gebied van atoomenergie.

e) Deze Overeenkomst zal bestaande of toekomstige veiligheidsregelingen tussen de Regeringen onverlet laten.

ARTIKEL IX

a) Voor wat Nederland betreft zal deze Overeenkomst uitsluitend van toepassing zijn op het grondgebied van het Rijk in Europa.

b) De bepalingen van deze Overeenkomst zullen voorlopig toepassing vinden van de datum van ondertekening af. De Overeenkomst zal in werking treden op de dag waarop de Regering van de Verenigde Staten van Amerika ervan in kennis wordt gesteld, dat de in Nederland grondwettelijk vereiste goedkeuring is verkregen.

c) De bepalingen van deze Overeenkomst kunnen op verzoek van elk der Regeringen op elk tijdstip worden herzien.

d) This Agreement shall terminate on the date when the Mutual Defense Assistance Agreement terminates or six months after notice of termination by either 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 at The Hague in duplicate in the English and Dutch languages, both texts authentic, this 29th day of April 1955.

For
the United States of America:

H. FREEMAN MATTHEWS

For
the Kingdom of the Netherlands:

J W BEYEN

J M A H LUNA

d) Deze Overeenkomst zal eindigen op de dag, dat het Verdrag tot Wederzijdse Hulpverlening inzake Verdediging eindigt of zes maanden na mededeling van opzegging door een der Regeringen, naar gelang welke datum de vroegste is, maar onverminderd de verplichtingen en aansprakelijkheden, die alsdan ingevolge de bepalingen van deze Overeenkomst zijn ontstaan.

Ten blijk waarvan de ondergetekenden, daartoe behoorlijk gemachtigd door hun onderscheidene Regeringen, deze Overeenkomst hebben ondertekend,

Gedaan te 's-Gravenhage, in tweevoud in de Engelse en de Nederlandse taal, zijnde beide teksten authentiek, de 29ste April 1955.

Voor
de Verenigde Staten van Amerika:
H. FREEMAN MATTHEWS

Voor
het Koninkrijk der Nederlanden:
J W BEYEN
J M A H LUNS

Netherlands:
YEN
LUNS

*The Netherlands Minister for Foreign Affairs and the Minister
Without Portfolio to the American Ambassador*

MINISTRY OF FOREIGN AFFAIRS
THE HAGUE

APRIL 29TH, 1955.

EXCELLENCY:

With regard to the "Agreement to facilitate the exchange of Patent Rights and Technical Information for Defense Purposes" concluded on April 29th 1955 between our two Governments, we would propose that the following interpretations be considered as constituting a formal part of our mutual understanding.

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 to endeavour 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 are qualified to instruct the entity to grant a license in the sense of this Article.

and the Minister
Ambassador

APRIL 29TH, 1955

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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 favourable 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.

5. The State Universities including the Institute of Technology
of Delft and the Institute of Agriculture of Wageningen, in the
views of our Government, are not owned or controlled by them
in such a sense as to enable them to instruct these institutions to
grant licenses or otherwise to dispose of their intellectual property,
with regard to the application of Article V.

The same applies for the Netherlands Central Organization
for Applied Physical Research and the Netherlands Organization
for Pure Scientific Research and their dependent organizations
and laboratories. Notwithstanding the fact that the whole or
part of their revenue is obtained from Government funds, these
organizations are fully autonomous and the Netherlands Govern-
ment accordingly could not dispose of their patent rights and/or
technical information.

However, the Netherlands Government would, when so
requested, be willing to use their best efforts to provide for the
United States Government, for defense purposes, a license to use
an invention owned by the institutions referred to above on terms
at least as favourable as may be received by the Netherlands
Government themselves.

6. Nothing in this Agreement shall be construed to derogate
from the provisions of the Agreement concluded December 14,
1954 between our two Governments on, as well as the contract
relating to the "Air Defense Technical Center".

TIAS 3236.
Note, p. 915.

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

We avail ourselves of this opportunity to renew to Your Ex-
cellency the assurances of our highest consideration.

THE MINISTER WITHOUT
PORTFOLIO:
J M A H LENS

THE MINISTER FOR
FOREIGN AFFAIRS:
J W BEYEN

To His Excellency H. FREEMAN MATTHEWS,
*Ambassador Extraordinary and Plenipotentiary
of the United States of America,
The Hague.*

The American Ambassador to the Netherlands Minister for Foreign Affairs and the Minister Without Portfolio

AMERICAN EMBASSY

THE HAGUE

April 29, 1955

EXCELLENCIES:

I have the honor to acknowledge your Excellencies' letter of April 29, 1955 setting forth certain interpretations concerning the Agreement to Facilitate the Exchange of Patent Rights and Technical Information for Defense Purposes concluded between our two Governments on April 29, 1955. This letter states:

1. With regard to Article IV it is recognized that the action of our two Governments in transmitting privately-owned technical information to each other, or in the subsequent disclosure of such information, might on occasion result in liability by or for 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 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 to endeavor 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 dominant influence of the Government in the management of the entity concerned, especially to the extent that the Government are 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 United States Government shall be "entitled to use the invention without compensation."

nd Minister for Foreign
Portfolio

EMBASSY
THE HAGUE
April 29, 1955

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5. The State Universities including the Institute of Technology of Delft and the Institute of Agriculture of Wageningen, in the views of our Government, are not owned or controlled by them in such a sense as to enable them to instruct these institutions to grant licenses or otherwise to dispose of their intellectual property, with regard to the application of Article V.

The same applies for the Netherlands Central Organization for Applied Physical Research and the Netherlands Organization for Pure Scientific Research and their dependent organizations and laboratories. Notwithstanding the fact the whole or part of their revenue is obtained from Government funds, these organizations are fully autonomous and the Netherlands Government accordingly could not dispose of their patent rights and/or technical information.

However, the Netherlands Government would, when so requested, be willing to use their best efforts to provide for the United States Government, for defense purposes, a license to use an invention owned by the institutions referred to above on terms at least as favorable as may be received by the Netherlands Government themselves.

6. Nothing in this Agreement shall be construed to derogate from the provisions of the Agreement concluded December 14, 1954 between our two Governments on, as well as the contract relating to the "Air Defense Technical Center."

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

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

H. FREEMAN MATTHEWS

Their Excellencies

J. W. BEYEN

Minister for Foreign Affairs

and

J. M. A. H. LUNS

Minister without Portfolio

Royal Netherlands Ministry

for Foreign Affairs,

The Hague