

NORWAY

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

*Agreement amending the agreement of December 5, 1958, and January 6 and
17, 1959.*

Effected by exchange of notes

Signed at Oslo April 25 and August 12, 1960;

Entered into force August 12, 1960.

The American Ambassador to the Norwegian Minister of Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA
Oslo, April 25, 1960.

No. 6

EXCELLENCY:

I have the honor to refer to the Agreement regarding Procedures for the Reciprocal Filing of Classified Patent Applications between the Government of the United States of America and the Government of Norway, effected by an exchange of notes signed in Oslo on December 5, 1958 and January 6 and 17, 1959,^[1] which implements the Agreement on Arrangements respecting Patents and Technical Information in Defense Programs between the Government of the United States of America and the Government of Norway signed in Oslo on April 6, 1955.^[2]

In a recent meeting of the Technical Property Committee established under Article VI of the 1955 Agreement, the representatives of our two governments agreed to the following changes in the Agreement regarding Procedures for the Reciprocal Filing of Classified Patent Applications:

1. Delete paragraphs 2(f) and 2(g) of the Procedures and substitute the following:

"2(f) When a security cleared patent attorney or agent has been designated, the Embassy shall transmit the documents to the appropriate Norwegian Ministry of Defense officials who will notify the patent attorney or agent of the availability of the documents for processing."

¹ TIAS 4187; 10 UST 302.

² TIAS 3226; 6 UST 799.

2(g) After completion of the necessary processing of the documents by the patent attorney or agent, under Ministry of Defense control, the patent attorney or agent in accordance with regulations prescribed by the Ministry of Defense, then shall file the application in the Norwegian Patent Office."

I am now instructed to inform you that these amendments to the Procedures are acceptable to the Government of the United States of America. My Government shall consider these amendments to be in force upon the date of Your Excellency's note in reply confirming that these amendments are also acceptable to your Government. Please accept, Excellency, the renewed assurances of my highest considerations.

FRANCES E. WILLIS

His Excellency
 HALVARD LANGE,
 Minister of Foreign Affairs,
 Oslo.

The Norwegian Acting Minister of Foreign Affairs to the American
 Ambassador

MINISTÈRE ROYAL
 DES
 AFFAIRES ÉTRANGÈRES

OSLO, 12 August 1960.

EXCELLENCY,

I have the honour to acknowledge receipt of your Note of April 25, 1960 reading as follows:

"I have the honor to refer to the Agreement regarding Procedures for the Reciprocal Filing of Classified Patent Applications between the Government of the United States of America and the Government of Norway, effected by an exchange of notes signed in Oslo on December 5, 1958 and January 6 and 17, 1959, which implements the Agreement on Arrangements respecting Patents and Technical Information in Defense Programs between the Government of the United States of America and the Government of Norway signed in Oslo on April 6, 1955.

In a recent meeting of the Technical Property Committee established under Article VI of the 1955 Agreement, the representatives of our two governments agreed to the following changes in the Agreement regarding Procedures for the Reciprocal Filing of Classified Patent Applications:

1. Delete paragraphs 2 (f) and 2 (g) of the Procedures and substitute the following:

"2 (f) When a security cleared patent attorney or agent has been designated, the Embassy shall transmit the documents to the appropriate Norwegian Ministry of Defense officials who will notify the patent attorney or agent of the availability of the documents for processing".

"2 (g) After completion of the necessary processing of the documents by the patent attorney or agent, under Ministry of Defense control, the patent attorney or agent in accordance with regulations prescribed by the Ministry of Defense, then shall file the application in the Norwegian Patent Office".

I am now instructed to inform you that these amendments to the Procedures are acceptable to the Government of the United States of America. My Government shall consider these amendments to be in force upon the date of Your Excellency's note in reply confirming that these amendments are also acceptable to your Government".

I hereby confirm that the proposed changes to the Procedures are acceptable to the Norwegian Government. My Government shall consider these amendments to be in force from to-day on.

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

ARNE SKAUG

Her Excellency,
Miss FRANCES E. WILLIS,
*Ambassador of the
United States of America,
Oslo.*

NORWAY

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

*Agreement effected by exchange of notes
Signed at Oslo December 5, 1958, and January 6 and 17, 1959;
Entered into force January 17, 1959.*

*The American Ambassador to the Norwegian Acting Minister
of Foreign Affairs*

EMBASSY OF THE
UNITED STATES OF AMERICA
Oslo, December 5, 1958.

No. 17

EXCELLENCY:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of Norway to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed in Oslo on April 6, 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 VI and III 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, in accordance with the terms of the aforesaid Agreement.

¹ TIAS 3226; 6 UST 799.

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

FRANCES E. WILLIS

Enclosure:

Copy of Procedures.

His Excellency

ARNE SKAUG,

*Acting Minister of Foreign Affairs,
Oslo.*

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

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 Norway to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes which was signed and entered into force on April 6, 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 all of their employees 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 Norway:

(a) The applicant shall petition the United States Commissioner of Patents for modification of the secrecy order to permit filing in Norway. 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 Norway is conditional upon the applicant agreeing to:

(1) Make the invention involved or any information relating thereto available to the Norwegian Government for purposes of defense;

(2) Waive any right to compensation for damage which might arise under the laws of Norway by virtue of the mere imposition of secrecy on his invention in Norway, but reserving any right of action

for compensation provided by the laws of Norway for use by the Norwegian Government of the invention disclosed by the application.

(c) Upon obtaining permission to file in Norway, the applicant shall forward the documents for the foreign 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 Norwegian Embassy in the United States for use by the Norwegian Government for defense purposes; and

(2) One copy to the appropriate section of the United States Embassy in Norway. The letter transmitting the documents to the United States Embassy in Norway shall indicate the security classification given to the application in the United States; state that the invention involved or information relating thereto has been made available to the Norwegian Government for purposes of defense, and state that the applicant has authorization to file a corresponding application in Norway under the provisions of Title 35, United States Code, Section 185.^[1] It shall also include instructions for the Embassy to inquire of appropriate Norwegian Ministry of Defense officials as to whether the Norwegian 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 Norwegian 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 Norway.

(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 Norwegian security regulations.

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

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

¹ Post. p. 308.

(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 Norway*

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

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

(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 or any information relating thereto available to the United States Government for purposes of defense;

(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.

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

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

(1) One copy to the Military Attache in the United States Embassy in Norway for use by the United States Government for defense purposes; and

(2) Two copies to the Military Attache at the Norwegian Embassy in the United States. The letter transmitting the documents to the Military Attache at the Norwegian Embassy in the United States shall indicate the security classification given to the application or patent in Norway and state that the invention involved and information relating thereto has been made available to the United States Government for purposes of defense, in accordance with provisions of Title 35, United States Code, Sections 181-188,

inclusive. 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 Norwegian 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 Norwegian Military Attache to the Secretary of the Armed Services Patent Advisory Board.

(f) When a security cleared attorney or agent has been designated, the Norwegian 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 Norwegian Government 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 notification 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 American Ambassador to the Norwegian Minister of Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA
Oslo, January 6, 1959.

No. 1

EXCELLENCY:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of Norway to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed in Oslo on April 6, 1955, and to my Note of December 5, 1958 to which was attached a copy of the procedures prepared by representatives of our two Governments that are to be followed under this Agreement.

I now regret to have to inform your Excellency that a typographical error was made in the copy of the agreement on procedures forwarded as an attachment to my Note of December 5, 1958, and that I have been asked to call to your Excellency's attention that the number referred to in paragraph 2.(d) (2) line 11 should read 184 instead of 185.

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

FRANCES E. WILLIS

His Excellency

HALVARD LANGE,

*Minister of Foreign Affairs,
Oslo*

*The Norwegian Minister of Foreign Affairs to the American
Ambassador*

MINISTÈRE ROYAL
DES
AFFAIRES ÉTRANGÈRES

OSLO, 17th January 1959.

EXCELLENCY,

I have the honour to acknowledge receipt of your Notes of 5th December, 1958, and 6th January, 1959, the former reading as follows:

"I have the honor to refer to the Agreement between the Government of the United States of America and the Government of Norway to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed in Oslo on April 6, 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 VI and III 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, in accordance with the terms of the aforesaid Agreement."

I hereby confirm that the proposed procedures are acceptable to the Norwegian Government and that they hereafter shall govern the reciprocal filing of classified patent applications, in accordance with the terms of the Agreement between the Government of the United States of America and the Government of Norway to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, signed in Oslo on 6th April, 1955.

Please accept, Excellency, the assurance of my highest consideration.

HALVARD LANGE

Her Excellency
Miss FRANCES E. WILLIS,
Ambassador of the United States of America,
Oslo.

NORWAY

INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR DEFENSE PURPOSES

*Agreement, with agreed minutes to article V,
Signed at Oslo April 6, 1955;
Entered into force April 6, 1955.*

TIAS 3226
Apr. 6, 1955

AGREEMENT TO FACILITATE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL IN- FORMATION FOR DEFENSE PURPOSES

AGREEMENT TO FACILITATE INTERCHANGE OF PATENT
RIGHTS AND TECHNICAL INFORMATION FOR DE-
FENSE PURPOSES

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

TIAS 2016,
1 UST 106.

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 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.

TIAS 3226

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 or may be 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 purposes of the mutual defense program, of all inventions which are, or hereafter come, within the provisions of Article V.

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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 "national" as used in this Agreement means any person who is a citizen or subject of one of the Contracting Governments or domiciled within the territory of such Government, or any business enterprise or other organization organized under the laws of, and having a bona fide and effective commercial or industrial establishment within the territory of, such Government.
- (c) The term "use" includes manufacture by or for a Contracting 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 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 Oslo this 6th day of April, 1955.

For the Government
of the United States
of America:

L. CORRIN STRONG

[SEAL]

For the Government
of Norway:

HALVARD LANGE

[SEAL]

Agreements [6 UST

from the Mutual
six months after
Contracting Government,
to obligations and
to the terms of

ing duly authorized
signed the present

f April, 1955.

or the Government
of Norway:

HALVARD LANGE

[SEAL]

AGREED MINUTES TO ARTICLE V

(a) It is understood that Article V is not applicable to companies of shareholders, corporations or other entities in which a Contracting Government owns less than 100% of the shares or other proprietary interests. Each Contracting Government will, however, use its best endeavors to facilitate the use on reasonable terms for defense purposes of any inventions of entities in which it has a substantial but less than 100% interest.

(b) It is further understood that Article V is not applicable to any patent which might be expropriated from private owners by the Government of Norway at the request of and for the purpose of defense use by the Government of the United States.

TIAS 3228