

FINAL TEXT INITIALED
BY U.S. & KOREA ON
11/6/91

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR THE SAFEGUARDING OF SECRECY OF INVENTIONS
RELATING TO DEFENSE
AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE

The Government of the United States of America and the
Government of the Republic of Korea,

Parties to the Agreement on Mutual Defense Assistance signed at
Seoul on January 26, 1950;

Desirous of encouraging economic collaboration and technology
sharing between the two Governments;

Considering that mutual defense assistance makes desirable
reciprocal communications of inventions relating to defense,
and that the mutual safeguarding of secrecy of certain
inventions will facilitate reciprocal communication and the use
of such inventions;

Acknowledging that the imposition of secrecy on an invention
relating to defense in one country has generally as its
corollary, when a patent has been applied for or granted, a
prohibition to apply for a patent for the same invention in the
other country;

Considering that this prohibition may impose obstacles to
reciprocal communications of inventions relating to defense,
may cause prejudice to the applicants for patents and
consequently may adversely affect technology sharing between
the countries;

Considering that arrangements have been made between the
Governments for the mutual protection and safeguarding of the
security information they may interchange;

Have agreed as follows:

Article 1

Under agreed procedures, each Government shall safeguard and
cause to be safeguarded the secrecy of inventions for which
applications for patents have been received whenever the
secrecy has been imposed on such inventions in the interests of
national defense by the other Government (hereinafter referred
to as the "Originating Government") which was the first to
receive an application for a patent covering these inventions;

provided that this provision shall not prejudice the right of the Originating Government to prohibit the filing of an application for a patent for the invention with the other Government (hereinafter referred to as the "Receiving Government").

Article 2

The Receiving Government shall treat the patent technical information as disclosed in confidence and shall use its best endeavors to ensure that the inventions and patent technical information are not dealt with in any manner likely to prejudice the rights of the owner thereof to obtain patent or other like statutory protection thereof.

Article 3

The provisions of Article 1 shall be applied at the request either of the Originating Government or of the applicant for the patent, provided that the latter produces evidence that secrecy has been imposed by the Originating Government and that the applicant has received authorization from that Government to file an application under secrecy for a patent in the country in question.

Article 4

(1) Inventions and patent technical information for which applications for patents have been received under this Agreement shall be used only for purposes of defense and may not be transferred by the Receiving Government to any person not an officer or agent of the Government without prior written consent of the Originating Government, subject to the provisions of this Article.

(2) The Receiving Government shall be entitled to receive and utilize for information purposes only, without cost, inventions and patent technical information for which applications for patents have been received under this Agreement.

(3) Subject to the provisions of paragraph 4 below, insofar as the Originating Government or entity or agency controlled by such Government owns or has the right to authorize the use of an invention or patent technical information transferred under this Agreement, the Receiving Government may be entitled to use the invention or patent technical information for conducting research and development and manufacturing for defense purposes without cost, except to the extent that there may be liability to a private owner with established interests in such invention or patent technical information. The two Governments shall cooperate to ensure that, prior to such use, the using

Government is informed of any such established interests in the invention or patent technical information.

(4) Inventions and patent technical information received under this Agreement may be transferred outside the Receiving Government only pursuant to a separate memorandum between the defense agencies of both Governments. When inventions or patent technical information are to be used by the Receiving Government for conducting research and development or manufacturing for purposes of defense, any such use shall be subject to a prior separate memorandum between the defense agencies of the two Governments. Such memorandum shall specify the nature of the use contemplated and the detailed terms and conditions of the use, including any research and development nonrecurrent cost recoupment fees which may be required by the Originating Government.

(5) When privately-owned inventions and patent technical information are transferred pursuant to this Agreement, the rights of the owner concerning such inventions and technical information will be protected in accordance with the provisions, inter alia, in Articles 1, 2, and 4 of this Agreement.

(6) Subject to paragraphs 3-5 above, when a private party or parties own in whole or in part an invention or patent technical information and the invention or patent technical information is used or disclosed by the Receiving Government without the consent of the owner, the Receiving Government shall, at the owner's request, take steps 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 5

The Government called upon to safeguard the secrecy of an invention under the terms of Article 1 shall be entitled to demand from the applicant for the patent a waiver of any claim to compensation for loss or damage due solely to the imposition of secrecy on the invention as a condition prerequisite to the application of such safeguard.

Article 6

(1) Before the Originating Government removes the secrecy measures imposed under Article 1, it shall give the other Government concerned six weeks' notice in writing of its intention to remove its own measures. The Originating Government shall take into account, as far as possible, the representations made by other Government within the said

six-week period.

(2) At the request of either Government, the two Governments shall consult as to the appropriateness of maintaining the secrecy measures on a secrecy application.

Article 7

(1) Each Government shall designate a representative (or representatives) to constitute a technical committee, which shall consider and make recommendations on such matters relating to the subject of this Agreement as may be brought before it by either Government. The technical committee shall facilitate, for the purpose of defense, the use of inventions and patent technical information covered under this Agreement.

(2) The Governments agree to develop such operational procedures as may be required to effectuate this Agreement.

Article 8

(1) "Patent technical information" as used in this Agreement means defense-related technical information disclosing inventions which are the subject of patent applications held in secrecy by either Government.

(2) Such patent technical information will be made available to the Receiving Government by the consent of both Governments for purposes of defense.

(3) In implementation of Article 8(2), the Parties agree that patent technical information, other than that which is exclusively concerned with equipment which either Government is prohibited or restrained from acquiring or keeping under constitutional or other domestic legal restrictions, treaty obligations or national law, may be transferred to the Receiving Government.

(4) Where the Receiving Government does not consent to receive the filing of a patent application under this Agreement, the Originating Government may request consultations.

Article 9

(1) This Agreement shall enter into force on the thirtieth day after the day on which the two Governments shall have notified each other to the effect that all legal requirements for the entry into force of the Agreement have been fulfilled.

(2) This Agreement shall not affect the rights which have been owned or acquired, prior to the effectuation of or

independently from this Agreement, by the Receiving Government or its private party or parties.

Article 10

(1) This Agreement shall terminate one year after notice of termination in writing by either Government, but without prejudice to rights, obligations and liabilities which have then accrued pursuant to the terms of this Agreement.

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

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

Done in duplicate at this day
of in the English and Korean languages, each
being equally authentic.

For the Government of the
United States of America

For the Government of the
Republic of Korea