

# DENMARK

## Interchange of Patent Rights and Technical Information for Defense Purposes [1]

*Agreement signed at Copenhagen February 19, 1960;  
Entered into force February 19, 1960.*

### AGREEMENT

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

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

Having agreed in the Mutual Defense Assistance Agreement signed in Washington on January 27, 1950, [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

<sup>1</sup> Also TIAS 4521; *post*, Part 2.

<sup>2</sup> TIAS 2011; 1 UST 19.

laws and security requirements of both Governments, and provided further that the terms of all such arrangements shall remain subject to the applicable laws of the two countries.

Article II.

When, for defense purposes, technical information is supplied by one Contracting Government to the other for information only, and this is stipulated at the time of supply, the recipient Government shall treat the technical information as disclosed in confidence and use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner thereof to obtain patent or other like statutory protection therefor.

Article III.

When technical information made available, under agreed procedures, by one Contracting Government to the other for the purposes of defense discloses an invention which is the subject of a patent or patent application held in secrecy in the country of origin, 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

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RIGHTS PURPOSES

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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;

(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 to protect and preserve

any rights he may have in the technical information;

(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 be-

tween 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 Copenhagen this 19th day of February, 1960.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

[SEAL]

VAL PETERSON

FOR THE ROYAL GOVERNMENT OF DENMARK

[SEAL]

J. O. KRAG.

## DENMARK

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

.. *Agreement effected by exchange of notes  
Signed at Copenhagen June 13 and 20, 1960;  
Entered into force June 20, 1960.*

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*The American Ambassador to the Danish Minister for Foreign Affairs*

EMBASSY OF THE  
UNITED STATES OF AMERICA  
*Copenhagen, June 13, 1960.*

No. 402

#### EXCELLENCY:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of Denmark to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed in Copenhagen on February 19, 1960,<sup>1</sup> and to the discussions between representatives of our two Governments regarding procedures for the reciprocal filing of classified patent applications under the terms of Article III of this Agreement. I attach a copy of the procedures prepared during the course of these discussions and agreed to by these 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.

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<sup>1</sup> TIAS 4423: *ante*, p. 148.

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

VAL PETERSON

Enclosure:  
Copy of Procedures

His Excellency  
JENS OTTO KRAG,  
Minister for Foreign Affairs,  
Copenhagen.

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

1. General

The following procedures are in the implementation of Article III of the Agreement between the Government of the United States of America and the Government of Denmark to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes which was signed and entered into force on February 19, 1960. 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 understanding 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, as far as Denmark is concerned, in accordance with the provisions of the Secret Patents Act of January 27, 1960.

(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 disclosures 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 in-

TIAS 4521

ventions of defense interest and groups of 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 those 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,<sup>1</sup> and the applicant wishes to file a corresponding application in Denmark.

(a) The applicant shall petition the United States Commissioner of Patents for modification of the secrecy order to permit filing in Denmark. 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 Denmark 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 Danish Government for purposes of defense under the terms and conditions of the Agreement of February 19, 1960.
- (2) Waive any right to compensation for damage which might arise under the laws of Denmark by virtue of the mere imposition of secrecy on his invention in Denmark, but reserv-

<sup>1</sup> 66 Stat. 805.

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

(c) Upon obtaining permission to file in Denmark, the applicant  
shall forward the documents for the Danish application to the defense  
agency which initiated the secrecy order.

(d) The defense agency shall transmit, through diplomatic chan-  
nels, the documents received from the applicant, simultaneously, as  
follows:

(1) One copy to the Military Attache at the Danish Embassy in  
the United States for use by the Danish Government for de-  
fense purposes; and

(2) One copy to the appropriate Service Attache at the Amer-  
ican Embassy in Denmark. The letter transmitting the docu-  
ments to the American Embassy in Denmark 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 Danish Government for purposes of defense under the  
terms and conditions of the Agreement of February 19, 1960  
and state that the applicant has authorization to file a cor-  
responding application in Denmark under the provisions of  
Title 35, United States Code, Section 184. It shall also in-  
clude instructions for the Embassy to inquire of appropriate  
Danish Ministry of Defense officials as to whether the Danish  
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  
Danish Ministry of Defense shall so inform the appropriate Service  
Attache at the American Embassy, which shall forward such in-  
formation 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 Denmark.

(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 Danish security regulations.



(g) The Danish attorney or agent shall then file the application with the Direktoratet for Patent-Og Varemaerkevaesenet, including therewith a copy of the documents issued by the United States Government placing the United States application in secrecy and authorizing the applicant to file in Denmark.

(h) The Government of Denmark 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 Denmark*

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

(a) The applicant shall send a written request to the Ministry 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 February 19, 1960.
- (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 Danish Ministry of Defense, four copies of the documents for the United States patent application, all in conformance with Danish security regulations.

(d) The Danish Ministry of Defense shall retain one copy and transmit, through diplomatic channels, the remaining documents received from the applicant, simultaneously, as follows:

- (1) One copy to the appropriate Service Attache at the American Embassy in Denmark for use by the United States Government for defense purposes, and

the application including the United States Government and authority to the initiation of the application. For defense purposes, a matter of defense provisions of the pending application.

the Ministry of Defense in the United States in the United States to:

information relating to the evaluation for defense purposes of the Government of the United States.

which might be used by the United States for compensation for use by the Government of the United States in the event of disclosure of the invention in the United States.

the United States, the Government of the United States, four copies of the application, all in conformity with the provisions of the agreement.

one copy and the original documents retained by the applicant.

at the American Embassy in the United States.

(2) Two copies to the Military Attache at the Danish Embassy in the United States. The letter transmitting the documents to the Military Attache at the Danish Embassy in the United States shall indicate the security classification given to the application or patent in Denmark and 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 United States Government for purposes of defense, in accordance with the terms and conditions of the Agreement of February 19, 1960. 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 Danish 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 Danish Military Attache to the Secretary of the Armed Services Patent Advisory Board.

(f) When a security cleared attorney or agent has been designated, the Danish 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 Denmark 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.

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*The Danish Minister for Foreign Affairs to the American Ambassador*

UDENRIGSMINISTERIET<sup>1</sup>

COPENHAGEN, June 20, 1960.

EXCELLENCY,

I have the honour to acknowledge receipt of your note of June 13, 1960, 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 Denmark to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes, which was signed in Copenhagen on February 19, 1960, and to the discussions between representatives of our two Governments regarding procedures for the reciprocal filing of classified patent applications under the terms of Article III of this Agreement. I attach a copy of the procedures prepared during the course of these discussions and agreed to by these 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."

In reply, I have the honour to confirm that the Danish Government accept the procedures referred to in your note and consider that these procedures shall hereafter govern the reciprocal filing of classi-

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<sup>1</sup> Ministry for Foreign Affairs.

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American Ambassador

IAGEN, June 20, 1960.

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ified patent applications, in accordance with the terms of the Agree-  
ment of February 19, 1960.  
Please accept, Excellency, the renewed assurances of my highest  
consideration.

J. O. KRAG.

His Excellency  
Mr. VAL PETERSON,  
Ambassador of the  
United States of America,  
Copenhagen.