

JAPAN

Interchange of Patent Rights and Technical Information for Defense Purposes

*Agreement and protocol
Signed at Tokyo March 22, 1956:
Entered into force June 6, 1956.*

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERN- MENT OF JAPAN TO FACILITATE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR PURPOSES OF DEFENSE

The Government of the United States of America and the Government of Japan.

Having agreed in the Mutual Defense Assistance Agreement between the United States of America and Japan signed at Tokyo on March 8, 1954, to make, upon the request of either of them, appropriate arrangements between them respecting industrial property rights and technical information;

TIAS 3387
5 OCT 1961

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 under the Mutual Defense Assistance Agreement; and

Acknowledging that the rights of private owners of patent rights and technical information should be fully recognized and protected in accordance with the law applicable to such patent rights 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 purposes of defense.

- (a) through the medium of any existing commercial relationships between the owner of such patent rights and technical information in one country 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 commercial relationships by the owner and the user;

provided that, in the case of classified information, such arrangements shall not conflict with security requirements, and provided further that the terms of all such arrangements shall be subject to the applicable laws of the two countries.

ARTICLE II

When, for purposes of defense, technical information is supplied by one Government to the other for information purposes only, and such fact is so 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 Government to the other for purposes of defense discloses an invention which is the subject of a 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 Government of the country of which he is a national, and
 - (ii) is subsequently disclosed by that Government to the other Government for purposes of defense and is used or disclosed by the latter Government without the express or implied consent of the owner,

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

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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 the present Agreement will discuss and make recommendations to the Governments concerning such arrangements.

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(b) When, for purposes of defense, technical information is made available by a national of one country to the Government of the other country at the latter Government's request and is subsequently used or disclosed by that Government 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.

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ARTICLE V

When one Government, or an entity or agency owned or controlled by such Government, owns or has the right to authorize the use of an invention or technical information and that invention or technical information is used by the other Government for purposes of defense, the using Government shall be entitled to use the invention or technical information without cost, except to the extent that there may be liability to a private owner with established interests in the invention or 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 technical information.

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ARTICLE VI

Each Government shall designate a member (or members) to constitute a Technical Property Committee. It shall be the function of this Committee:

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- (a) To consider and make recommendations to the Governments on such matters relating to the subject of the present Agreement as may be brought before it by either Government;
- (b) To make recommendations to the Governments concerning any question, brought to its attention by either Government, relating to the interchange or use of patent rights and technical information for purposes of defense;

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- (c) To assist, where appropriate, in the negotiation of commercial or other agreements for the use of patent rights and technical information for purposes of defense;
- (d) To take note of pertinent commercial or other agreements for the use of patent rights and technical information for purposes of defense, and, where necessary and appropriate, 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 to the Governments, where appropriate, respecting payment of indemnities covering inventions or technical information used for purposes of defense;
- (f) To facilitate the interchange and use of patent rights and technical information in connection with technical collaboration between and among the defense services of the two Governments;
- (g) To keep under review all questions concerning the use, for purposes of defense, of all inventions or technical information 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 differences between the principles of the two countries governing the compensation for or otherwise concerning technical information made available for purposes of defense might be adjusted.

ARTICLE VII

Upon request, each Government shall, as far as practicable, supply the other Government all necessary information and other assistance required for the purposes of:

- (a) affording the owner of an invention or technical information made available for purposes of defense the opportunity to protect and preserve any rights he may have in the invention or technical information;
- (b) assessing payments and awards arising out of the use of patent rights and technical information made available for purposes of defense.

ARTICLE VIII

(a) "Technical information" as used in the present 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) "Patent rights" means in the application of the present Agreement in Japan those rights which are granted under the Patent Law or the Utility Model Law of Japan, and in the application thereof in the United States of America those rights which are granted under the Patent Laws of the United States of America.

(c) The term "use" includes manufacture by or for a Government.

(d) Nothing in the present Agreement shall apply to patent rights, applications for patent rights and technical information in the field of atomic energy.

(e) Nothing in the present Agreement shall contravene present or future security arrangements between the Governments.

ARTICLE IX

(a) The present Agreement shall enter into force on the date of receipt [1] by the Government of the United States of America of a note from the Government of Japan stating that Japan has approved the Agreement in accordance with its legal procedures.

(b) The terms of the present Agreement may be reviewed at the request of either of the two Governments or amended by agreement between them at any time.

(c) The present Agreement shall terminate on the date when the Mutual Defense Assistance Agreement between the United States of America and Japan signed at Tokyo on March 8, 1954, terminates or six months after the date of receipt by either Government of a written notice of the intention of the other to terminate it, whichever is earlier, but without prejudice to obligations and liabilities which have then accrued pursuant to the terms of the present Agreement.

IN WITNESS WHEREOF the representatives of the two Governments, duly authorized for the purpose, have signed the present Agreement.

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U. S. Treaties and Other International Agreements [7 U.S.T.]

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DONE in duplicate, in the English and Japanese languages, both equally authentic, at Tokyo, this twenty-second day of March, one thousand nine hundred fifty-six.

For the Government of the United States of America:

JOHN M. ALLISON

For the Government of Japan:

MAMORU SHIGEMITSU,

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[SEAL]

the invention or utility model which is the subject of the said Agreement Application, such application shall not, until such time as provided for in subparagraph (a) above, be published by the Government of Japan, except when the invention or utility model which is the subject of such subsequent application is patentable or registrable and was made independently of the invention or utility model which is the subject of the said Agreement Application.

4. With respect to paragraph 3 of the present Protocol the Government of the United States of America undertakes:

- (a) To notify the Government of Japan, under agreed procedures, that a patent application is held in secrecy in the United States of America, such notification to be made on or before the date of filing of an Agreement Application for the invention which is the subject of such patent application held in secrecy, and to use its best endeavors to ensure that applicants for Agreement Applications attach to their applications appropriate documents identifying them as such.
- (b) To notify the Government of Japan, under agreed procedures, that a patent application held in secrecy in the United States of America is no longer so held, whenever an Agreement Application for the invention which is the subject of such patent application held in secrecy has been filed in Japan.

5. The procedure for the giving of notifications pursuant to paragraph 4 of the present Protocol and the form and content of the identifying documents to be attached to Agreement Applications, which identifying documents are referred to in paragraph 4 (a) of the present Protocol, shall be agreed upon in the Technical Property Committee as part of its functions under the Agreement.

6. The provisions on dates of filing of applications, contained in paragraph 3 (b) of the present Protocol, are subject to the provisions on priority rights in the Union Convention of Paris of March 20, 1883, (1) for the Protection of Industrial Property, revised at Brussels December 14, 1900, at Washington June 2, 1911, at The Hague November 6, 1925, and at London June 2, 1934.

¹ TS 411, 579, AM, 611,
37 Stat. 1936, 34
Stat. 1643, 47 Stat.
1789, 33 Stat. 1744.

IN WITNESS WHEREOF the respective representatives have signed the present Protocol.

¹ Vol. 2 Malloy, p. 1035.

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23. — (1) Where a person who is to resume the procedure for an examination, a trial or a retrial which has been interrupted or suspended fails to do so, the President of the Patent Office or the trial examiner shall, upon a motion or ex officio, order such person to resume the procedure and designate an adequate time limit for this purpose.

(2) Where the procedure is not resumed within the time limit designated in accordance with the preceding subsection, the resumption may be deemed by the President of the Patent Office or the trial examiner to have commenced on the date when the time limit expired.

(3) When the resumption is deemed to have taken place, in accordance with the preceding subsection, the President of the Patent Office or the trial examiner-in-chief shall notify the parties accordingly.

24. — Sections 208, 209(1) 210, 211, 212(1), 213 to 217, 218(1), 220, 221 and 222(2) (interruption or suspension of litigation) of the Code of Civil Procedure shall apply mutatis mutandis to the procedure with regard to an examination, trial or retrial. In such a case, "process attorney" in Section 213, "court" in Section 217, "court" in Sections 218(1) and 221, and "court" in Section 220 of the said Code shall read, respectively, "representative entrusted with the examination, trial or retrial," "President of the Patent Office or the trial examiner-in-chief," "President of the Patent Office or the trial examiner," and "Patent Office."

(Enjoyment of rights by aliens)

25. — An alien who is neither domiciled nor resident (nor established, in the case of a legal entity) in Japan shall not enjoy a patent right or other right relating to a patent, except in any one of the following cases:

(i) where his country allows Japanese nationals to enjoy patent rights or other rights relating to a patent under the same conditions as its own nationals;

(ii) where his country allows Japanese nationals to enjoy patent rights or other rights relating to a patent under the same conditions as its own nationals provided that Japan allows his country's nationals to enjoy such rights;

(iii) where there are specific provisions in a treaty.

(Effect of treaties)

26. — Where there are specific provisions relating to patents in a treaty, such provisions shall prevail.

(Registration in Patent Register)

27. — (1) The following matters shall be registered in the Patent Register kept in the Patent Office:

(i) the establishment, transfer, extinguishment or restriction on disposal of a patent right or the conversion of a patent right in accordance with Section 75(1);

(ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of an exclusive or non-exclusive license;

(iii) the establishment, transfer, modification, extinguishment or restriction on disposal of rights in a pledge upon a patent right or an exclusive or non-exclusive license.