



Department of Defense DIRECTIVE

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ASD(ISA)

SUBJECT: International Interchange of Patent Rights and Technical Information

- References: (a) DoD Directive 2000.3, "Technical Property Interchange Agreements," dated April 15, 1954 (canceled herein)
- (b) Section 506 or the Mutual Security Act of 1954, as amended (22 U.S.C. 1758)
 - (c) Section 413(a) or the Mutual Security Act or 1954, as amended (22 U.S.C. 1933(a))
 - (d) Section 414 or the Mutual Security Act or 1954, as amended (22 U.S.C. 1934)

1. PURPOSE AND CANCELLATION

The purpose of this Directive is to restate Department of Defense policy concerning the international interchange for Defense purposes or patent rights and technical information. Reference (a) is hereby superseded and canceled.

2. SCOPE

This Directive applies to the activities of all Department of Defense personnel involved in the international interchange for defense purposes or patent rights and technical information. The policy prescribed herein applies to unclassified as well as classified information, owned by the U.S. Government or privately owned, but does not apply to patents, patent applications, and technical information in the field of atomic energy.

3. BACKGROUND

3.1. Pursuant to the provisions of the Mutual Security Act of 1954, as amended, and of predecessor legislation superseded by that Act, the United States has entered into agreements for the Interchange of Patent Rights and Technical Information for Defense Purposes with Australia, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, The Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom. The agreements, which are published in the Treaties and Other International Act Series, are basically similar in substance but are not identical. Under the agreements:

3.1.1. Each government undertakes to facilitate the interchange of privately owned patent rights and of technical information through the medium of commercial relationships, to the extent permitted by the laws and security requirements of the contracting governments.

3.1.2. When technical information is supplied by one government to the other for information only, the recipient government undertakes to treat the information as disclosed in confidence and to use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner to obtain patent or similar statutory protection.

3.1.3. When technical information supplied by one government to the other discloses an invention that is the subject of a patent or patent application held in secrecy in the country of origin, the recipient government undertakes to accord similar treatment to a corresponding patent application filed in that country.

3.1.4. When privately owned technical information is released by one government to the other and the recipient government uses or discloses the information, the owner shall, subject to the extent that the owner may be entitled thereto under the applicable law and subject to arrangements between the contracting governments regarding the assumption as between them or liability for compensation, receive prompt, just and effective compensation for such use and for any damages resulting from such use or disclosure.

3.1.5. Each government is entitled to use for defense purposes without cost any invention which the other government (including government corporations) owns or to that it has the right to grant, a license to use, except to the extent that there may be liability to any private owner of an interest in the invention.

3.2. Each of these agreements establishes a Technical Property Committee, consisting of a representative of each contracting government, whose function it is to

consider and make recommendations to the contracting governments on all matters relating to the subject of the agreement and to assist where appropriate in the negotiation of commercial or other agreements for the use of patent rights and technical information in the military assistance program.

3.2.1. The Patent Advisor assigned to the Defense Staff of the U.S. Mission to the North Atlantic Treaty Organization and European Regional Organizations (USRO), Paris, France, is the United States representative to the Technical Property Committees in Europe. The J-4, Hq, United States Forces Japan, Tokyo, Japan, is the United States representative to the United States-Japanese Technical Property Committee. A member of the Office or Assistant General Counsel, International Affairs, Office or the Secretary of Defense, is the United States representative to the United States-Australian Technical Property Committee. The appropriate representative should be consulted on all problems dealing with patent rights, technical information and related matters under the agreements.

3.2.2. These representatives receive policy guidance from the Department of Defense. The Assistant Secretary of Defense for International Security Affairs is responsible within the Department of Defense for transmitting such policy guidance through appropriate channels. Guidance transmitted for the United States representative in Europe shall be forwarded to the Defense Advisor, USRO; guidance transmitted for the United States representative in Japan shall be transmitted to the Commanding General, United States Forces *Japan*.

3.3. Department of Defense problems arising in the United States in connection with the interchange of patent rights and privately owned technical information should be referred to the patent activity of the appropriate Military Department.

4. POLICY

It is the policy of the Department of Defense to encourage and facilitate international interchanges of patent rights and technical information to further the common defense of the United States and friendly nations. In achieving this purpose, the following principles shall be observed.

4.1. Classified military information shall be released only through Government channels and only when consistent with the National Disclosure Policy, or when approved as an exception to that Policy.

4.2. In accordance with the Congressional policy prescribed by reference (c), and pursuant to the bilateral agreements referred to in section 3., above, commercial relationships shall be utilized whenever appropriate and to the maximum extent feasible in order to encourage the participation of private enterprise in the Mutual Security Program, to relieve the Department of Defense of administrative burdens, and to reduce the costs to the United States of such interchanges.

4.3. In accordance with reference (d), the utilization of commercial channels for the exportation of unclassified privately owned technical information relating to articles designated as arms, ammunition, and implements of war in the United States Munitions List shall be subject to the regulations issued by the Secretary of State pursuant to reference (d) (Title 22 Code of Federal Regulations, Chapter 1, Subchapter M). (The term "technical data" is used in those regulations to describe technical information relating to such articles.)

4.4. Technical information that might be privately owned may be released under subparagraphs 4.5.1. or 4.5.2. by DoD Agencies to foreign governments if any one of the following conditions are met:

4.4.1. The owner expressly consents to the proposed release;

4.4.2. The United States, by contract or otherwise, has acquired or is entitled to acquire, the information under circumstances that permit the proposed release; or

4.4.3. The Secretary of the Military Department concerned, or his designee, determines, under the authority of the Mutual Security Act of 1954, as amended, that -

4.4.3.1. The exigencies of the requirement for release to further the common defense do not allow sufficient time to obtain the consent of the owner; or

4.4.3.2. The owner refuses consent and the best interests of the United States would be served by the release.

4.5. In accordance with the provisions of the agreements referred to in section 3., above, the release to foreign governments by DoD Agencies of technical information that might be privately owned shall normally be in accord with the following two-step procedure:

4.5.1. Release for information only.

4.5.2. Permission for manufacture, or use, for defense purposes.

4.6. All technical information, whether privately owned or Government owned, released to a foreign government by DoD Agencies shall be marked with the following restrictions:

"1. This information is accepted for defense purposes only.

"2. This information shall be accorded substantially the same degree of security protection as such information has in the United States.

"3. This information shall not be disclosed to another country without the consent of the United States."

4.7. When technical information that might be privately owned is released for information only, the restrictive marking shall also contain these additional notations:

"4. This information is accepted upon the understanding that it might be privately owned.

"5. This information is accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient government shall use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.

"6. The recipient government shall obtain the consent of the United States if it desires that this information be made available for manufacture, or use, for defense."

4.8. When technical information that might be privately owned is released under the procedures set forth herein, the owner, if known, shall be furnished:

4.8.1. Notice of the release;

4.8.2. The identity of the recipient, if not contrary to security regulations;

4.8.3. Notice that the recipient has been advised that the information might be privately owned; and

4.8.4. Notice of the restrictions to which the release is subject.

5. CLAIMS FOR COMPENSATION

5.1. With respect to interchanges in furtherance of the purposes of the Mutual Security Act of 1954, as amended, reference (b) provides the exclusive remedy for compensation for infringement within the United States of a patent issued by the United States and for damage resulting from the disclosure by the United States of privately owned technical information.

5.2. The Secretaries of the Military Departments are hereby authorized to exercise the power and authority conferred by reference (b) to enter into agreements with claimants in full settlement and compromise of any claim against the United States thereunder, subject to such rules and regulations, if any, as the Secretary of Defense may promulgate from time to time. The Secretaries of the Military Departments are authorized to make successive redelegations in writing of this power and authority to any officer, employee, board or agent of their respective Departments.

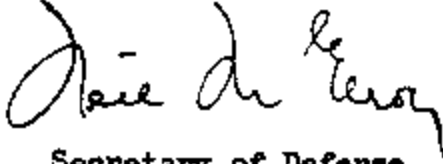
5.3. Funds appropriated for military assistance pursuant to the Mutual Security Act of 1954, as amended, which have been made available to a Military Department may be used to settle claims under reference (b). In addition, in those cases where the provisions of 10 U.S.C. 2386 are applicable, funds appropriated for a Military Department available for making or procuring supplies may be used to settle such claims.

6. IMPLEMENTATION

Copies of implementing instructions issued by the Military Departments shall be furnished to the Assistant Secretary of Defense, International Security Affairs, within 30 days after the effective date of this Directive. Any subsequent modifications of such instructions are also to be furnished to the Assistant Secretary of Defense, International Security Affairs, within 30 days after issuance.

7. EFFECTIVE DATE

This Directive is effective immediately.



Secretary of Defense

Enclosures - 1

E1. Pertinent Provisions of the Mutual Security Act of 1954, as amended

E1. ENCLOSURE 1

PERTINENT PROVISIONS OF THE MUTUAL SECURITY ACT OF 1954, AS
AMENDED

PERTINENT PROVISIONS OF THE MUTUAL SECURITY ACT
OF 1954, AS AMENDED

SEC. 506. PATENTS AND TECHNICAL INFORMATION-

(a) As used in this section -

(1) the term "invention" means an invention or discovery covered by a patent issued by the United States; and

(2) the term "information" means information originated by or peculiarly within the knowledge of the owner thereof and those in privity with him, which is not available to the public and is subject to protection as property under recognized legal principles.

(b) Whenever, in connection with the furnishing of any assistance in furtherance of the purposes of this Act -

(1) use within the United States, without authorization by the owner, shall be made of an invention; or

(2) damage to the owner shall result from the disclosure of information by reason of acts of the United States or its officers or employees,

the exclusive remedy of the owner of such invention or information shall be by suit against the United States in the Court of Claims or in the District Court of the United States for the district in which such owner is a resident for reasonable and entire compensation for unauthorized use or disclosure. In any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by any defendant in a like action.

(c) Before such suit against the United States has been instituted, the head of the appropriate United States Government agency, which has furnished any assistance in furtherance of the purposes of this Act, is authorized and empowered to enter into an agreement with the claimant, in full settlement and compromise of any claim against the United States hereunder.

(d) The provisions of the last sentence of section 1498 of title 28 of the United States Code shall apply to inventions and information covered by this section.

(e) Except as otherwise provided by law, no recovery shall be had for any infringement of a patent committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt by the Government of a written claim under subsection (c) above for compensation for infringement of a patent and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the six years, unless suit is brought before the last-mentioned date.

SEC. 413. ENCOURAGEMENT OF FREE ENTERPRISE AND PRIVATE PARTICIPATION.

(a) The Congress recognizes the vital role of free enterprise in achieving rising levels of production and standards of living essential to the economic progress and defensive strength of the free world. Accordingly, it is declared to be the policy of the United States to encourage the efforts of other free nations to increase the flow of international trade, to foster private initiative and competition, to discourage monopolistic practices, to improve the technical efficiency of their industry, agriculture and commerce, and to strengthen free labor unions; and to encourage the contribution of United States enterprise toward economic strength of other free nations, through private trade and investment abroad, private participation in the programs carried out under this Act (including the use of private trade channels to the maximum extent practicable in carrying out such programs), and exchange of ideas and technical information on the matters covered by this section.

SEC. 414. MUNITIONS CONTROL.

(a) The President is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the export and import of arms, ammunition, and implements of war, including technical data relating thereto, other than by a United States Government agency. The President is authorized to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, for the purposes of this section.

(b) As prescribed in regulations issued under this section, every person who engages in the business of manufacturing, exporting, or importing any arms, ammunition, or implements of war, including technical data relating thereto, designated by the President under subsection (a) shall register with the United States Government agency charged with the administration of this section and in addition, shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance program of the United States, whether or not advanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(c) Any person who willfully violates any provision of this section or any rule or regulation issued under this section, or who willfully, in a registration or license application, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$25,000 or imprisoned not more than two years, or both.