

NORTH ATLANTIC TREATY ORGANIZATION



NATO AGREEMENT

**FOR THE
MUTUAL SAFEGUARDING
OF SECRECY OF INVENTIONS
RELATING TO DEFENCE AND
FOR WHICH APPLICATIONS
FOR PATENTS HAVE BEEN MADE**



UPDATED EDITION - BRUSSELS-SEPTEMBER 1977

**NATO AGREEMENT FOR THE MUTUAL SAFEGUARDING OF SECURITY
OF INVENTIONS RELATING TO DEFENCE AND FOR WHICH
APPLICATIONS FOR PATENTS HAVE BEEN MADE**

**IMPLEMENTING PROCEDURES FOR THE NATO AGREEMENT FOR THE
MUTUAL SAFEGUARDING OF SECURITY OF INVENTIONS RELATING TO DEFENCE
AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE**

*FOR ADMINISTRATIVE PURPOSES THIS AGREEMENT
MAY BE REFERRED TO AS :*

NATO SECURITY OF INVENTIONS AGREEMENT

TABLE OF CONTENTS

	Pages
A. INTRODUCTION	5
B. NATO AGREEMENT FOR THE MUTUAL SAFEGUARDING OF SECURITY OF INVENTIONS RELATING TO DEFENCE AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE	7 - 10
C. IMPLEMENTING PROCEDURES FOR THE NATO AGREEMENT FOR THE MUTUAL SAFEGUARDING OF SECURITY OF INVENTIONS RELATING TO DEFENCE AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE	11 - 23
D. DATES OF THE ENTERING INTO FORCE OF THE AGREEMENT AND ITS IMPLEMENTING PROCEDURES FOR EACH SIGNATORY PARTY	25

A. INTRODUCTION

1. Before the existence of the "NATO Agreement on the Mutual Safeguarding of Secrecy of Inventions relating to Defence and for which applications for patents have been made", the imposition of secrecy on an invention relating to defence in one of the NATO countries for which a patent application had been made usually entailed the prohibition of application for a patent for the same invention in other NATO countries. By adopting the Agreement, NATO countries removed this prohibition which had constituted a serious obstacle to the reciprocal communication of inventions relating to defence and had adversely affected the promotion of collaboration in the framework of the Alliance in the research, development and production of military equipment.

2. The "NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions relating to Defence and for which applications for patents have been made" was prepared by the experts of the Working Group on Industrial Property (AC/94). The Agreement was approved by the NATO Council on 16th July, 1959 (C-R(59)27, C-M(59)67), and signed by the NATO Permanent Representatives on 21st September, 1960. It entered into force on 12th January, 1961 following deposit of the instruments of ratification by the first two countries (the United States and Norway). The original text of the Agreement, as signed by Permanent Representatives, is deposited in the archives of the Government of the United States of America. This Agreement has received number 396 UNTS 3 in the "United Nations Treaty Series".

3. The Agreement is complemented by Implementing Procedures which provide ways and means of operating under the articles of the Agreement. These Procedures, which were also prepared by the Working Group on Industrial Property, contain in Appendices 1 and 2 useful information for those governmental services employing them. As this information might be subject to changes, it will be constantly kept up to date and recipients of the present edition will receive corrigenda as necessary. On the other hand, the Procedures might be revised in accordance with their Section F. Any modifications resulting from such revision will also be circulated to recipients.

- 7 -

**B. NATO AGREEMENT FOR THE MUTUAL SAFEGUARDING OF SECRECY
OF INVENTIONS RELATING TO DEFENCE AND FOR WHICH
APPLICATIONS FOR PATENTS HAVE BEEN MADE**

The Governments of Belgium, Canada, Denmark, France, The Federal Republic of Germany, Greece, Italy, Luxembourg, The Netherlands, Norway, Portugal, Turkey, The United Kingdom and The United States of America,

Parties to the North Atlantic Treaty signed in Washington on 4th April, 1949;

desirous of encouraging economic collaboration between any or all of their Governments, as agreed in Article 2 of the Treaty;

mindful of the undertaking they have entered into under the terms of Article 3, to maintain and develop, by means of continuous and effective self-help, their individual and collective capacity to resist armed attack;

considering that the imposition of secrecy on an invention relating to defence in one of the North Atlantic Treaty Organization countries has generally as its corollary, when a patent has been applied for, or granted, the prohibition to apply for a patent for the same invention in other countries, including North Atlantic Treaty Organization countries;

considering that the territorial limitation resulting from this prohibition may cause prejudice to the applicants for patents and consequently adversely affect economic collaboration between North Atlantic Treaty Organization countries;

considering that mutual assistance makes desirable reciprocal communication of inventions relating to defence and that in some cases such communication may be obstructed by this prohibition;

considering that if the Government originating the prohibition is prepared to authorise the filing of an application for a patent in one or more of the other North Atlantic Treaty Organization countries, provided that the Governments of these countries also impose secrecy on the invention, the latter should not be free to refuse to impose secrecy;

considering that provision has been made between the Governments of the Parties to the North Atlantic Treaty for the mutual protection and safeguarding of the classified information they may interchange;

Have agreed as follows :

- 7 -

- 8 -

ARTICLE I

The Governments Parties to this Agreement shall safeguard and cause to be safeguarded the secrecy of inventions for which applications for patents have been received under agreed procedures whenever the secrecy has been imposed on such inventions in the interests of national defence by the 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 one or more of the other Governments Parties to this Agreement.

The Governments Parties to this Agreement agree to develop such operational procedures as may be required to effectuate this Article.

ARTICLE II

The provisions of Article I 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 he has received authorisation from that Government to file his application for a secret patent in the country in question.

ARTICLE III

The Government called upon to safeguard the secrecy of an invention under the terms of Article I 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 IV

The secrecy measures imposed under Article I shall be removed only on the request of the originating Government. This Government shall give the other Governments concerned six weeks' notice of its intention to remove its own measures.

The originating Government shall take into account as far as possible, having due regard to the security of the North Atlantic Treaty Organization, the representations made by other Governments within the said six weeks' period.

- 8 -

- 9 -

ARTICLE V

This Agreement shall not prevent the signatory Governments from entering into bilateral agreements for the same purpose. Existing bilateral agreements shall remain unaffected.

ARTICLE VI

The instruments of ratification or approval of this Agreement shall be deposited as soon as possible with the Government of the United States of America which will inform each signatory Government of the date of deposit of each instrument.

This Agreement shall enter into force 30 days after deposit by two signatory Parties of their instruments of ratification or approval. It shall enter into force for each of the other signatory Parties 30 days after the deposit of its instrument of ratification or approval.

ARTICLE VII

This Agreement may be denounced by any contracting Party by written notice of denunciation given to the Government of the United States of America which will inform all the other signatory Parties of such notice. Denunciation shall take effect one year after receipt of notification by the Government of the United States of America but shall not affect obligations already contracted and the rights or prerogatives previously acquired by the signatory Parties under the provisions of this Agreement.

In witness whereof the undersigned Representatives duly authorised thereto, have signed this Agreement.

Done in PARIS this 21st day of September, 1960 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the United States of America which will transmit a duly certified copy to the Governments of the other signatory Parties.

For the Kingdom of Belgium :

André de Staercke

For Canada

Jules Léger

For the Kingdom of Denmark :

M.A. Wassard

- 9 -

For France :	Pierre de Leusse
For the Federal Republic of Germany :	Gebhardt von Walther
For the Kingdom of Greece	M.C. Mélas
For Italy :	A. Alessandrini
For the Grand Duchy of Luxembourg :	Paul Reuter
For the Kingdom of the Netherlands :	J.A. de Ranitz (pour le Royaume tout entier)
For the Kingdom of Norway	Jens Boyesen
For Portugal	A. de Faria
For Turkey :	M. Nuri Birgi
For the United Kingdom of Great Britain and Northern Ireland :	Frank K. Roberts
For the United States of America :	Joseph J. Wolf

- 11 -

**C. IMPLEMENTING PROCEDURES FOR THE NATO AGREEMENT FOR THE
MUTUAL SAFEGUARDING OF SECRECY OF INVENTIONS RELATING TO DEFENCE
AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE (1)**

1. The following procedures have been formulated in accordance with the undertaking in Article 1 of the NATO Agreement for the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made, signed in Paris on 21st September, 1960, hereinafter referred to as the NATO Agreement and in conformity with NATO security requirements.

2. The procedures can be implemented only if :

(a) the government of the country of origin and the government of the receiving country each has legal authority to impose secrecy within its own jurisdiction on inventions, disclosure of which might prejudice its national security and to prohibit any such disclosure ;

(b) the legal authority to which reference is made in sub-paragraph (a) above (including any enabling and enforcement means) and the arrangements for physical security are adequate and sufficient to safeguard all aspects of the security of the subject matter of the inventions concerned, to a standard not inferior to NATO security requirements from the time when the subject matter of the inventions is received officially by the government of the receiving country until its release from secrecy by the government of the country of origin and

(c) adequate measures are available to the government of the country of origin to prohibit the unauthorised filing abroad of applications for patents in respect of inventions, disclosure of which might prejudice national security, and to authorise within its discretion the filing abroad of applications for patents in respect of inventions subject to secrecy restrictions.

PROCEDURES

A. GENERAL CONDITIONS AND REQUIREMENTS

Applications for patents received in one NATO country from another with a request that they be placed in secrecy under the provisions of the NATO Agreement shall be placed in secrecy in the receiving country and shall be accorded a degree of security classification at least equal to the degree of security classification given to them by the country of origin (2), provided that

(1) *The present text incorporates the amendments made to the original text as a result of the first revision of the Implementing Procedures, which was approved by the NATO Council on 15th March, 1967*

(2) *In this Section, reference should be made to the comparative table at Appendix 3.*

- 11 -

- 12 -

- (1) the request for secrecy of the patent application is received from or on behalf of a Defence Agency of the government of the originating country or from the Applicant accompanied by a permit from or on behalf of the Defence Agency;
 - (2) a certificate is furnished by or on behalf of a Defence Agency of the government of the country of origin that the invention, the subject of the patent application, has been placed in secrecy for defence purposes and specifying the security classification assigned by that country;
 - (3) all documents, papers and correspondence relevant to the filing of the patent application are received in the Patent Office (1) of the receiving country solely through officially recognised adequately secure communication channels.
 - (a) A Defence Agency of the government of the country of origin shall ensure that all documents relevant to the application are transmitted to that government's Embassy in the receiving country, through diplomatic channels.
 - (b) If the Applicant wishes to be represented or must be represented by a Patent Agent, Attorney or other representative the Embassy will ascertain from the appropriate Agency of the receiving country whether such Patent Agent, Attorney or other representative is duly authorised
 - (i) to have access to classified subject matter and
 - (ii) as being able to provide adequate physical security therefore.
 - (c) If the appropriate Agency advises that the Patent Agent, Attorney or other representative is duly authorised in accordance with paragraph 3(b) above the Embassy shall transmit the documents in accordance with the security regulations and practices of the receiving country.
 - (d) If the appointed Patent Agent, Attorney or other representative is not duly authorised and if it is considered that he cannot be duly authorised within the time available for filing the application, the Embassy shall so inform the Defence authority of the Applicant's government, who shall invite the Applicant to select another Patent Agent, Attorney or other representative to be appointed in place of the one formerly appointed.
 - (e) After another Patent Agent, Attorney or other representative duly authorised in accordance with paragraph 3(b) above, has been selected the Embassy shall transmit the documents in accordance with the security regulations and practices of the receiving country.
 - (f) The selected Patent Agent, Attorney or other representative can then file the application in the Patent Office of the receiving country in accordance with the security regulations and practices of that country.
- (1) *Wherever it appears in these procedures "Patent Office" means the official national agency in each country, provided for in Article 12 of the Union Convention of Paris, dated 20th March, 1883, for the protection of industrial property, which accepts and processes applications for patents for inventions in accordance with the national laws and regulations of the country concerned.*

- 12 -

- 13 -

- (g) The foregoing provisions do not exclude the possibility of an Applicant making application without employing the services of a Patent Agent, Attorney or other representative in any country where national legislation and regulations permit. The transmission of the relevant documents within the receiving country must be in accordance with the security regulations and practices of that country.
- (4) To assist in evaluating the invention for defence interests, an appropriate Defence Agency of the receiving government is furnished, in accordance with the security regulations and practices of the receiving country, with a copy of the specification and any drawings annexed thereto, and of the resumé and claims included in the patent application filed in the Patent Office of the receiving country and the filing date and serial number of the patent application. This copy is furnished for information only and without prejudice to any rights of the Applicant.
- (5) If the receiving government so requires, the Applicant shall furnish to the government of origin, with a view to its being transmitted to the appropriate Agency of the receiving government in accordance with Article III of the NATO Agreement, a waiver in writing of any claim to compensation for loss or damage due solely to the imposition of secrecy on the invention by the receiving government when imposed under provisions of the NATO Agreement.

B. CORRESPONDENCE RELATING TO THE APPLICATION

All correspondence relating to the application under these procedures shall pass only through the same secure channels as specified for the original patent application, excepting correspondence exclusively relating to payments of taxes and fees provided that such correspondence contains no information pertaining to the invention, the subject of the application. Other unclassified formal notification (such as extension of time limits or similar notices) may be sent by the foreign Patent Office at its discretion directly to the Applicant or his authorised representative without any special security arrangements.

C. REMOVAL OF SECFY

The notice of the government of the country of origin of its intention to remove its own measures of secrecy in accordance with Article IV of the NATO Agreement shall be addressed to the appropriate Defence Agency of the governments of the receiving countries. If after the six weeks period provided for in the above agreement the government of the country of origin removes secrecy it will immediately so inform the appropriate Defence Agency of the governments of the receiving countries, which governments will then remove secrecy measures. The titles and addresses of the national agencies of the receiving countries to which the announcement concerning the removal of secrecy should be forwarded are listed in Appendix 2(c).

- 13 -

- 14 -

D. NATIONAL PARTICULARS

Any national rules of procedure which may be formulated in amplification of the procedures contained herein must be compatible with these procedures.

Appropriate national laws and regulations are listed in Appendix 1 and titles and addresses are furnished in Appendix 2(a) and (b) of the appropriate Defence Authorities and Patent Offices, and their special departments for handling inventions and patent applications subject to secrecy measures.

All governments will notify the other governments and the International Staff of NATO promptly of any change in their laws and regulations on which the foregoing procedures are based pointing out the effect of the changes on these procedures and any changes in the titles and addresses in Appendix 2.

E. APPLICATION

When a government party to the NATO Agreement is able to implement the procedures and intends to apply them, it will so inform the Secretary General of NATO who will notify immediately all other government parties. These procedures shall be applicable at the date of this notification between this government and any of the other governments for which the Secretary General has already given such notification.

F. REVISIONS

These procedures shall be examined by the relevant Working Group of the North Atlantic Treaty Organization for possible revisions once every two years from the date of approval by the North Atlantic Council or whenever specifically requested by one of the participating governments.

G. APPROVAL

These procedures were approved by the North Atlantic Council on 7th March, 1962, in the English and French languages, both texts being equally authentic. (1)

(1) See footnote to the title of these procedures.

- 14 -

APPENDIX 1 to
THE IMPLEMENTING PROCEDURES

NATIONAL LAWS AND REGULATIONS RELATING TO INVENTIONS AND
PATENT APPLICATIONS SUBJECT TO SECRECY RESTRICTIONS

BELGIUM (1)	Act of 10th January, 1955
CANADA	Patent Act, Sections 20 and 21 (1952), Patent Rules 91, 92, 93 (1970), Atomic energy regulations Official Secrets Act.
DENMARK	Act No. 18 of 27th January, 1960, as amended by Act No. 215 of 31st May, 1968, Royal Ordinance of 30th January, 1960, Orders of the Ministry of Commerce Nos. 22 and 23 of 30th January, 1960.
FRANCE (1)	Act No. 68-1 of 2nd January, 1968, Articles 24 to 27 and 61, and Decree No. 68-1100 of 5th December, 1968, Articles 14 to 20, Code of Criminal Law, modified by Ordinance No. 60-529 of 4th June, 1960, especially Article 77.
FEDERAL REPUBLIC OF GERMANY (1)	Criminal Code, Article 93 et seq. Article 353c; Patent Act, Article 30a to 30g.
GREECE	Act No. 4325 of 27th September, 1963 concerning inventions relating to the national defence of the country and modifying the Patent Act No. 2527/ 1920, Decision No. 562, 19th October, 1964 of the Ministers of Defence and Commerce concerning the implementation of Act No. 4325, 1963.
ITALY	Patent Act (Royal Decree No. 1127 of 29th June, 1939); Amendments to above Act Act No. 514 of 1st July, 1959 and Presidential Decree of 26th February, 1968.
LUXEMBOURG	Act of 8th July, 1967 Regulation of 18th September, 1969.
NETHERLANDS (1)	Patent Act, Article 29A to 29F;
NORWAY	Act of 26th June, 1953 as amended by Law No. 9 dated 15th December, 1967. Decree of the Crown Prince Regent of 25th November, 1955 containing special regulations on the handling of inventions which are of importance for the defence of the country.
PORTUGAL	Decree Law No. 42201 of 2nd April, 1959

(1) Countries normally requiring a waiver of any claim to compensation for loss or damage due solely to the imposition of secrecy measures on inventions when imposed under the provisions of the NATO Agreement.

- 16 -

TURKEY (1)	(a) Patent Act of 23rd March, 1879 (b) Ordinance on the Trade Marks of the manufactured products and of the commercial materials of 11th May, 1888; (c) Act of 13th May, 1955, granting the government the necessary power, in order to have the patent applications examined by the International Patent Institute at The Hague; (d) Regulations for the implementation of the Industrial Property legislation.
UNITED KINGDOM (1)	Patents Act, 1949, Sec. 18 and 93 Official Secrets Act, 1911 to 1939 Atomic Energy Act, 1946, Sec. 12, 13 and 14 as amended by Patents & Designs Act 1949 (Sect. 32) and Patents Act 1949 (Sect. 106(3)).
UNITED STATES (1)	35 United States Code - Sec. 181 to 188 inclusive, Code of Federal Regulations Title 37, part 5.

(1) Countries normally requiring a waiver of any claim to compensation for loss or damage due solely to the imposition of secrecy measures on inventions when imposed under the provisions of the NATO Agreement.