

IMPLEMENTING ARRANGEMENT

PURSUANT TO ARTICLE 43 OF THE FRAMEWORK AGREEMENT DATED 27 JULY 2000

between

MINISTRY OF DEFENCE OF THE FRENCH REPUBLIC

and

THE FEDERAL MINISTRY OF DEFENCE OF THE FEDERAL REPUBLIC OF GERMANY

and

THE MINISTRY OF DEFENCE OF THE ITALIAN REPUBLIC

and

THE MINISTRY OF DEFENCE OF THE KINGDOM OF SPAIN

and

THE GOVERNMENT OF THE KINGDOM OF SWEDEN REPRESENTED BY THE
MINISTRY OF DEFENCE

and

THE MINISTRY OF DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND

concerning

PATENT APPLICATIONS AND THE LIKE RELEVANT TO DEFENCE

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RECOGNISING Articles 43 and 59 of the Framework Agreement between the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry signed at Farnborough on 27 July 2000 (hereinafter referred to as the "Framework Agreement"),

RECOGNISING the "NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions relating to Defence and for which applications for Patents have been made" (to which Sweden is not a party) signed in Paris on 21 September 1960, and its Implementing Procedures approved by the North Atlantic Council on 7 March 1962,

RECOGNISING the intention of the Framework Agreement to remove, as far as possible, barriers to industries operating across the Participants' territories and to promote interdependency, amongst the Participants,

the Ministry of Defence of the French Republic, the Federal Ministry of Defence of the Federal Republic of Germany, the Ministry of Defence of the Italian Republic, the Ministry of Defence of the Kingdom of Spain, the Government of the Kingdom of Sweden represented by the Ministry of Defence, and the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland (herein referred to as "Participants") have concluded this Implementing Arrangement to implement Article 43 of the Framework Agreement as an international instrument as directed by Article 59 of the Framework Agreement.

SECTION 1 Scope

- (1) The purpose of this Implementing Arrangement is to provide means to safeguard and harmonise provisions within the Participant territories relating to inventions incorporating information which may be classified and for which protection by patent or the like is required and to provide mechanisms for deciding where Applications arising from cross border activities among the Participants should be first filed.
- (2) This Implementing Arrangement aims to establish streamlined procedures for the transmission of documents associated with the filing and prosecution of patent and the like Applications containing classified information.
- (3) This Implementing Arrangement covers inter-alia:

- (a) Applications relating to classified information arising from Contracts placed by one Participant (the Contracting Participant) and executed in the territory of another Participant;
- (b) Applications arising from Contracts placed by International Organisations for at least one Participant;
- (c) Applications arising from Transnational Defence Companies;
- (d) Classified Applications to be filed in the territory of more than one Participant;
- (e) Conditions of Contract to be applied by the Participants to safeguard their interests in Applications that may contain classified information;
- (f) Arrangements to enable International Organisations placing Contracts for at least one Participant to be informed of Applications arising from such Contracts;
- (g) Common standards to be applied to Classified Applications;
- (h) Expedition of correspondence relating to such Classified Applications including elimination of unnecessary controls on unclassified information.

SECTION 2 Common Definitions

Application means an application filed in a Participant's territory for the protection of an invention. The application may, according to the legislation of the Participant, be one for a patent or a utility model.

Classified Application means an Application containing classified information. Where, under the existing legislation of Participants, a Classified Application matures into a Secret Patent, the expression Classified Application includes such a Secret Patent. Classified Application will include any Application identified by an applicant as containing classified information, whether or not the relevant Competent Authority has formally confirmed such classification.

Competent Authority means the organisation appointed by each Participant to carry out, on behalf of the Participants, the administration of this Implementing Arrangement, and including advising the Special Facility in that Participant's territory of the appropriate security marking to be applied to any Application first filed in that Special Facility.

Contracting Participant means a Participant who is placing a Contract or for whom a Contract is placed.

Contract means an agreement or arrangement for Defence Purposes under which work is carried out by a contractor to which a Participant is party or an agreement for Defence Purposes or arrangement that has been entered into by an international body or inter-Government Organisation for one or more of the Participants.

Defence Purposes means the use by or for the armed forces, or the security or intelligence forces of a Contracting Participant in any part of the world and includes but is not limited to study, evaluation, assessment, research, design, development, manufacture, improvement, modification, maintenance, repair, refurbishment, and product acceptance and certification, operation, training, disposal and other post design services and product deployment. This includes the sale, loan or transfer by a Contracting Participant of obsolete or surplus equipment and associated information solely for the support of that equipment, but does not include any other sale, loan or transfer.

Implementation Date means 12 months from the date of this Implementing Arrangement.

Participant of Origin means a Participant in whose Special Facility an Application is filed, where such Application is the first Application anywhere in respect of the subject matter in the Application.

Professional Representative means a person who, in the relevant Participant's territory, may represent others in filing patent applications or the like.

Secret Patent means a patent granted in some jurisdictions following a Classified Application. In this context "Secret" means unpublished and is not the security classification ascribed according to Section 5(2).

Special Facility means a facility in a Participant's territory recognised by that Participant for the receipt and prosecution of Applications that can provide security meeting the requirements of the national security services for handling classified information (this may or may not be the same as the Competent Authority). At the time of signing of this Implementing Arrangement the Competent Authorities and the Special Facilities are as set out in the Annex.

SECTION 3 Implementation

- (1) Participants will update their standard provisions to achieve compliance with this Implementing Arrangement by the Implementation Date.

- (2) The requirement to update standard provisions will not apply to Contracts already placed at the Implementation Date. Nonetheless this Implementation Arrangement will apply to inventions arising from such contracts and Applications made in respect of such inventions.

SECTION 4 Relations with Contractors

- (1) Participants will provide in Contracts, or otherwise, that:
- (a) Applications to protect inventions that may include or illustrate classified information will be treated by contractors as Classified Applications;
 - (b) all Applications relating to classified inventions are filed at a Special Facility determined in accordance with this Implementing Arrangement;
 - (c) in making a Classified Application arising from a Contract contractors will, to their best knowledge and belief, propose a classification according to national regulations to the Classified Application;
 - (d) such proposed classification will be notified to the Special Facility;
 - (e) all documents and papers relating to a Classified Application will be transmitted to the Special Facility in accordance with the relevant national rules and regulations concerning the transmission of classified documents of that proposed classification;
 - (f) contractors that, under Section 7(1), file a Classified Application at a Special Facility that is not that of the Contracting Participant should draw the attention of such Special Facility to the fact that the Classified Application is one arising from a Contract placed by another Participant;
 - (g) in filing an Application, Contractors will provide sufficient bibliographic information to the Special Facility to enable the Competent Authority correctly to identify the Contract concerned to the Contracting Participant;
 - (h) Any filing of a Classified Application must comply with national security regulations relevant to information of that classification.
- (2) In addition, Participants may require in Contracts that all Applications for inventions arising from work of particular sensitivity will be notified to the Participant concerned before any Application is filed. If consent is given the Participant concerned may require special measures to be taken to preserve security.

The Participants will endeavour to apply the principles of Sections 4(1) and 4(2) to arrangements put in place with International Organisations to ensure that Contracts awarded by such organisations give effect to Sections 4(1) and 4(2).

SECTION 5 Applications to Protect Inventions Containing Classified Information

- (1) Participants will have Special Facilities to receive Classified Applications to ensure that the content of any Classified Application will not be published or disclosed.
- (2) Participants will assign a classification according to their national regulations, if necessary, to Applications. If and when it is decided that an Application is a Classified Application, the classification will be communicated promptly to the applicant.
- (3) Applicants and their Professional Representatives will be required to maintain Classified Applications in secure facilities appropriate to its classification.
- (4) Participants will take steps to ensure that no Classified Application is forwarded to WIPO or the European Patent Office.
- (5) A Participant of Origin will take steps to ensure that no Classified Application may be filed outside its territory without its consent.
- (6) Consent under subsection 5(5) will only be given to filing such an Application in countries with whom Participants have arrangements through the present Implementing Arrangement and the NATO Agreement of Paris of 21 September 1960 or any other inter-Government agreement or arrangement that ensures that:
 - (a) the Application will be allocated a security classification in that other country that is at least as high as in that of the Participant of Origin,
 - (b) the Application is retained in facilities appropriate to that classification, and
 - (c) the Application is not released for publication until the Participant of Origin sends a notification under subsection 5(7).
- (7) A Participant of Origin will normally review those Classified Applications that have originated in its territory annually. If such a review determines that such an Application could be declassified, the Participant of Origin will give any Participant in whose territory a Classified Application has been filed with consent under subsection 5(5) ten weeks prior notice of its intention and take into account any representation made in that period. If declassification becomes effective, then the

Participant of Origin will promptly inform the applicant and any other relevant Participant.

- (8) To make it possible for the applicant to file Applications in further countries, a declassified Application will not be published until at least eight weeks have passed from the date of notice to the applicant under subsection 5(7) unless earlier publication is legally requested by the applicant.

SECTION 6 Applications Abroad in the Territories of Other Participants

- (1) All Participants will make their Special Facilities available for the purpose of receiving Applications filed with the consent of a Participant of Origin under subsections 5(5) and 5(6).
- (2) A Participant receiving an Application filed under subsection 5(5) will ascribe at least the classification laid down by international agreement as being equivalent to that given by the Participant who gave permission for the Application to be filed. The level will be sufficient to prevent unauthorised disclosure.
- (3) In accepting an Application under subsection 6(1) to its Special Facility, a Participant may require:
 - (a) a permit to file issued by the Competent Authority of the Participant who gave permission for the Application to be filed stating the classification of the Application;
 - (b) a waiver, signed by the applicant, of all liabilities and claims which might arise under the laws, rules or regulations of the Participant as a result of prohibition of publication of information contained in the Application and failure to grant rights until the Application is declassified;
 - (c) an additional copy of the Application with a declaration of consent to give the copy to the Competent Authority of the Participant for defence information purposes.
- (4) A copy of any Application received in a Special Facility under subsection 6(1) may be passed by that Special Facility to the Competent Authority of the Participant concerned for review. If that Participant has funded any part of the work leading to the Application and it promptly declares an independent interest in the classification then that independent interest will be taken into account by the Participant of Origin.

- (5) Where an independent interest in the classification of a Classified Application has been declared under subsection 6(4) the Participants concerned will consult together to reach agreement on the appropriate classification or before proposed declassification of that Classified Application. Declassification itself will be handled in accordance with subsection 5(7).

SECTION 7 Transnational Defence Contracts and other Transnational Defence Activities

- (1) Participants will make every possible effort to make sure that Applications concerning inventions which are made entirely or mainly in the territory of one Participant may be first filed in the Special Facility of this Participant, for example by:

- (a) harmonisation of laws or regulations;
- (b) granting general or individual waivers;
- (c) giving general guidelines for the interpretation of national law.

Participants will notify each other within 1 year after the signing of this Implementing Arrangement how this subsection 7(1) is to be implemented within the respective national system.

- (2) If as a result of the operation of subsection 6(1), an Application is filed in the territory of a Participant (the Participant of Origin) who did not place the relevant Contract, that Participant will notify the Contracting Participant when considering the appropriate classification and take account of the Contracting Participant's comments. If no response has been received twelve weeks after a notification, the Participant of Origin may classify such an Application on the basis of its own national criteria. The Participant of Origin will, however, endeavour to take account of any late response.
- (3) A Participant of Origin will grant permission under subsections 5(5) and (6) to file an Application in the territory of the Contracting Participant.
- (4) Nothing in a Participant's rules and regulations concerning the handling and treatment of Classified Applications will prevent a contractor meeting its obligations
 - (a) to provide bibliographic information and to send copies of a Classified Application to the Contracting Participant as required by a Contract, or

- (b) to consult with or seek permission from a Contracting Participant prior to filing a Classified Application.
- (5) It will not be a breach of any Participant's law or regulations concerning the filing and prosecution of Classified Applications, to comply with the provisions of this Implementing Arrangement especially by:
- (a) drawing the attention of the Participant of Origin to the fact that a Classified Application is one arising from a Contract placed by another Participant;
 - (b) providing sufficient bibliographic information to enable the Participant of Origin concerned to identify correctly the Contract concerned to the other Participant;
 - (c) providing other persons or organisations within the organisation of a contractor with sufficient bibliographic information to decide where to file an Application containing classified information and to give notifications required by a Contract or under this Implementing Arrangement;
 - (d) consulting with or seeking permission from the Contracting Participant(s) prior to filing a Classified Application;
 - (e) filing Classified Applications at the Special Facilities;
 - (f) providing bibliographic information and sending copies of a Classified Application to relevant Contracting Participant(s) as required under a Contract;
 - (g) supplying a copy of the Classified Application to the Participant (or International Organisation) that placed the Contract concerned, or permitting inspection of Classified Applications by an International Organisation that placed the Contract concerned.

SECTION 8 Professional Representatives

- (1) Any Professional Representative engaged in the handling of a Classified Application or prosecuting such an Application should have appropriate security clearance and storage facilities acceptable to the Security Authorities of the Participant concerned. Participants will prohibit the use by contractors of Professional Representatives not meeting these requirements and will not deal with such a Professional Representative in respect of a Classified Application.
- (2) Participants will require that applicants use only Professional Representatives meeting requirements of subsection 8(1) as a condition of their consent under

subsection 5(5). For this purpose the Participants are entitled to rely on one another's advice on the security status of any Professional Representative in a Participant's territory.

- (3) To facilitate the operation of subsection 8(2) Participants will upon request exchange in confidence names, addresses and like information of Professional Representatives in their territory who have the necessary clearances and facilities to handle Classified Applications. This does not relieve a requirement to check the current security status of the Professional Representative at the time of filing.
- (4) If a Participant withdraws the security clearance of a Professional Representative, it will promptly inform all other Participants who have permitted Classified Applications to be filed through that Professional Representative, and will facilitate the prompt transfer of any such Classified Applications to an alternative Professional Representative having the requisite clearance.
- (5) Communication with any appointed Professional Representative at his last known address would discharge a Participant's obligations to provide applicants with information under subsection 5(7). If no Professional Representative has been appointed or any such appointment has been rescinded then notification to the applicant's last given address for service will suffice.

SECTION 9 Transmission of Papers

- (1) Noting Articles 19 to 27 and 59 of the Framework Agreement and the relevant implementing documents and subject to subsection 9(2) all papers relating to Classified Applications will be transmitted in accordance with the procedures agreed between the Participants for the transmittal of classified documents.
- (2) In order that the Competent Authorities have records of Classified Applications to which this Implementing Arrangement applies, documents relating to Classified Applications must be sent via the Competent Authorities of both the transmitting and receiving Participants. Any Participant is free to declare that it does not require unclassified documents concerning a Classified Application to be sent via the Competent Authority.

SECTION 10 – Amendment, Termination and Withdrawal.

- (1) This Implementing Arrangement may be amended at any time upon the written approval of all of the Participants. These modifications will come into effect fourteen (14) days from the date of the written approval of all the Participants.
- (2) Any Participant may withdraw from this Implementing Arrangement on written notice to the other Participants.
- (3) Neither termination nor withdrawal will affect obligations already undertaken and the rights and prerogatives previously acquired by the Participants under the provision of this Implementing Arrangement and/or any provision in force binding the Participants.

SECTION 11 – Signature

- (1) The foregoing represents the understandings of the Ministry of Defence of the French Republic, the Federal Ministry of Defence of the Federal Republic of Germany, the Ministry of Defence of the Italian Republic, the Ministry of Defence of the Kingdom of Spain, the Government of the Kingdom of Sweden represented by the Ministry of Defence, and the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland on matters referred to therein.

Signed in English, French, German, Italian, Spanish and Swedish, each text being equally valid.

For the Ministry of Defence of the French Republic

Signature

Name

Franois Lereau

Title

Délégué général pour l'Armement

Location

Paris

Date

23 avril 2007

For the Federal Ministry of Defence of the Federal Republic of Germany

Signature

Name

Dr. Jörg Kaempf

Title

Ministerialdirektor

Location

Bonn

Date

04 April 2006

For the Ministry of Defence of the Italian Republic

Signature

Name

LT. GEN. GIANMI BOTONDI

Title

Roma

Location

Date

27 Luglio 2007

For the Ministry of Defence of the Kingdom of Spain

Signature

Name

JULIO RODRIGUEZ

Title

DIRECCION GENERAL DE A. Y MATERIALES

Location

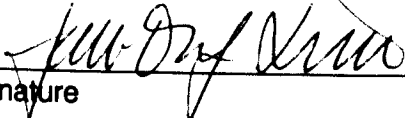
MADRID


Date

29 DIC 07

For the Government of the Kingdom of Sweden represented by the Ministry of Defence

For the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland


Signature


Signature

JAN-OLOF LIND

SIR PETER SPENCER

Name

Name

NATIONAL ARMAMENTS DIRECTOR
Title

CHIEF OF DEFENCE PROCUREMENT
AND NATIONAL ARMAMENTS DIRECTOR
Title

STOCKHOLM
Location

BUSBY
Location

9 / OCTOBER / 2007
Date

16 March 2006
Date

ANNEX

SPECIAL FACILITIES AND COMPETENT AUTHORITIES

	Special Facility	Competent Authority
France	INPI, 26 bis Rue St Petersburg, 75008 PARIS, France.	DGA, Bureau de la Propriété Intellectuelle, 16 bis avenue Prieur de la Côte d'Or, 94114 ARCUEIL Cedex, France.
Germany	Deutsches Patent- und Markenamt, Geheimschutzbeauftragter, 80297 MÜNCHEN, Germany.	Bundesministerium der Verteidigung, Referat RÜ II 5, Postfach 13 28, 53003 BONN, Germany.
Italy	Segretariato Generale Della Difesa - V Reparto, Servizio Militate Brevetti, Via Molise,2, 00187 ROMA, Italy.	Segretariato Generale Della Difesa - V Reparto, Via XX Settembre, 00187 ROMA, Italy.
Spain	Oficina Española de Patentes y Marcas, C/ Panamá 1, 28071 MADRID, Spain.	Ministerio de Defensa del Reino de España, Dirección General de Armamento y Material, Paseo de Castellana 109, 28071 MADRID, Spain.
Sweden	Granskningsnämnden för försvarsuppfinningar, Patent- och registreringsverket, Box 5055, SE 102 42 STOCKHOLM, Sweden.	Försvarets materielverk Patentenheten, SE 115 88 STOCKHOLM, Sweden.
United Kingdom of Great Britain and Northern Ireland	The Patent Office, Concept House, Room GR070, Cardiff Road, NEWPORT, South Wales, NP10 8QQ, UK.	Defence Procurement Agency, IPR-SU, MoD Abbey Wood #2218, BRISTOL, BS34 8JH, UK.