

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF SWEDEN

AND

THE MINISTRY OF DEFENCE OF THE KINGDOM OF

SPAIN

FOR THE MUTUAL SAFEGUARDING OF SECRECY OF

INVENTIONS OF IMPORTANCE TO THE DEFENCE

AND FOR WHICH APPLICATIONS FOR PATENTS

HAVE BEEN MADE

The Government of the Kingdom of Sweden and the Ministry of Defence of the Kingdom of Spain:

Considering Article 43 of the Framework Agreement, signed at Farnborough on 27 July 2000;

Recognising the intention of the Framework Agreement to remove, as far as possible, barriers to the operation of transnational defence companies operating in the Participants' territories and to promote interdependency;

Considering the existing prohibition in both Countries to file abroad a patent

application which contains classified information;

Considering that such a prohibition may cause prejudice to the applicants for patents and obstruct reciprocal communication of inventions relating to Defence;

Have agreed as follows:

Section I

The Government of the Kingdom of Sweden and the Ministry of Defence of the Kingdom of Spain shall safeguard and cause to be safeguarded the secrecy of inventions for which applications for patents have been made in one of the two Countries, when the secrecy has been imposed on such inventions in the interests of the defence of the Country, hereinafter referred to as the 'originating Country', and for which applications for patents have been made in the other Country ('the receiving Country') under procedures agreed to by the two Participants.

However this provision shall not prejudice the right of the originating Country to prohibit the filing of a patent application in the other Country.

Section II

The provision of Section I, 1st paragraph, shall be applied at the request either of the originating Participant, or of the applicant for the patent, provided that the latter produces evidence that secrecy has been imposed by the originating Participant and that he has received permission from that Participant to file his application in the other Country on the condition that it is placed under secrecy.

Section III

The Participant called upon to safeguard the secrecy of an invention in accordance with Section I, 1st paragraph (the receiving Participant) shall as a condition prerequisite for such safeguard be entitled to demand from the applicant for the patent a waiver in writing of any claim to compensation directed to said Participant for loss or damage due solely to

the imposition of secrecy on the invention in the receiving Country.

Section IV

The secrecy measures imposed under Section I shall be removed only on the request of the originating Participant; this Participant shall give the other Participant six weeks' notice of its intention to remove its own measures.

The originating Participant shall take into account, as far as possible, having due regard to the security national law, the representations made by the other Participant within the said six weeks' period.

The receiving Participant shall remove its secrecy measures that are based on this Agreement after receipt of information from the originating Participant that the secrecy has been removed in the originating Country.

Section V

The execution of this Agreement shall be in accordance with the Implementing Arrangements in the Annex to this Agreement; the Annex shall form an integral part of the Agreement.

Section VI

Amendments to this Agreement may be entered to by mutual written consent of the Participants that will bind themselves to communicate to each other any changes in the national laws and regulations that might affect this Agreement or the Implementing Arrangements in the Annex thereto.

Section VII

This Agreement shall enter into force on the date of signature. It will terminate if a request of termination is made in writing by one of the two Participant, and the termination will take effect six months after the receipt of such notification.

However the request of termination shall not affect obligations already undertaken and the rights previously acquired by the two Participants under the provisions of this Agreement.

In witness thereof, the undersigned Representatives, being duly authorized thereto by their respective Participant, have signed this Agreement.

Done at _____, on _____, in two originals, each in the Spanish, Swedish and English languages, all texts being equally authentic. In case of any divergence on interpretation, the English text shall prevail.

For the Government of the Kingdom of Sweden

On behalf of the Defence Minister of Spain

Signature:



Name:

Location:

Date:

Position: (in our case our NAD)



Implementing Arrangements

Formulated in accordance with Section V of the Agreement between the Government of the Kingdom of Sweden and the Ministry of Defence of the Kingdom of Spain for the mutual safeguarding of secrecy of inventions of importance to the Defence and for which applications for patents have been made.

General conditions and requirements.

Section 1

The equivalent security classifications in the two Countries are the following:

SPAIN	SWEDEN
Reservado	Hemlig/Secret
Confidencial	Hemlig/Confidential
Difusion limitada	Hemlig/Restricted

However, for the purpose of this Agreement, the inventions originating from Spain shall in Sweden be classified 'Hemlig/Secret'. In Spain the inventions originating from Sweden shall be classified 'Reservado'.

Section 2

The request for secrecy of the patent application shall be received from the Competent Authority of the originating Country (Försvarets Materielverk, Patentenheten for Sweden; Ministerio de Defensa for Spain), or from the applicant accompanied by a permit from the Participant or the Competent Authority of the originating Country giving permission to the filing of the patent application in the receiving Country.

Section 3

A certificate shall be furnished by the Competent Authority of the originating Country that the invention, the subject of the patent application, has been placed under secrecy in the interests of the Defence, and specifying the security classification assigned by that Country.

Section 4

The applicant shall furnish, with the patent application documents, a waiver in writing of any claim to compensation from the receiving Participant for loss or damage due solely to the imposition of secrecy on the invention in the receiving Country.

Filing patent applications

Section 5

All documents relevant to the filing of the patent application including permit (Section 2), certificate (Section 3) and waiver (Section 4) shall be received in the Special Facility or Patent Office of the receiving Country solely through officially recognised adequately secure communication channels:

- a) The Competent Authority of the originating Country shall ensure that all documents relevant to the application are transmitted to its Embassy in the receiving Country through diplomatic channels.
- b) The Embassy shall ascertain from the Competent Authority of the receiving Country, mentioned in Section 2, whether the patent attorney or other representative appointed by the applicant is duly authorized:
 - to have access to classified subject matter, and
 - as being able to provide adequate physical security therefore.
- c) If the Competent Authority of the receiving Country advises that the appointed patent attorney or other representative is duly authorized, the Embassy shall transmit the documents to the Competent Authority and ask the Competent Authority to forward the documents to the patent attorney or other representative, or the Embassy shall in accordance with instructions given by the Competent Authority transmit the documents directly to the patent attorney or other representative.
- d) If the appointed patent attorney or other representative is not duly authorized and if it is considered that he cannot become duly authorized within the time available for filing the patent application, the Embassy shall so inform the Competent Authority

of the originating Country, who shall invite the applicant to appoint another patent attorney or other representative.

- e) If applicant appoints another patent attorney or other representative who is duly authorized in accordance with Section 5 (b), the Embassy shall transmit the documents to the Competent Authority of the receiving Country to be forwarded to the duly authorized patent attorney or other representative in accordance with Section 5 (c).
- f) The appointed and duly authorized patent attorney or other representative shall then file the patent application in the Special Facility or Patent Office of the receiving Country, in accordance with the security regulations and practices of that Country.

Section 6

To assist in evaluating the invention for defence purposes, the Competent Authority of the receiving Country shall be furnished, in accordance with the security regulations and practices of that Country, with a copy of the specification and any drawings annexed thereto, and of the abstract and claims included in the patent application filed, and the filing date and serial number of the patent application as well as the filing date and serial number of any corresponding patent application or applications filed in the originating Country. This copy shall be furnished for information only and without prejudice to any rights of the applicant.

However the applicant may claim compensation for loss or damage, in accordance with the national law of the receiving Country, for unduly use or unauthorized disclosure of the invention for which a patent application was made.

Correspondence relating to a classified patent application

Section 7

All correspondence relating to a patent application held in secrecy shall pass only through the same secure channels as specified for the patent application documents to be filed in the Special Facility or Patent Office (Section 5), excepting correspondence exclusively relating to payments of taxes and fees, and other unclassified documents.

Removal of secrecy

Section 8

The notification of the Participant of the originating Country of its intention to remove its own measures of secrecy in accordance with Section *IV* of the Agreement shall be addressed to the Competent Authority of the receiving Country, mentioned in Section 2.

If the Participant of the originating Country removes the secrecy, it shall immediately so inform the Competent Authority of the receiving Country.