COMMISSION REGULATION (EEC) No 2349/84

of 23 July 1984

on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices [1], as last amended by the Act of Accession of Greece, and in particular Article 1 thereof,

Having published a draft of this Regulation [2],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 85 (3) of the Treaty by Regulation to certain categories of agreements and concerted practices falling within the scope of Article 85 (1) to which only two undertakings are party and which include restrictions imposed in relation to the acquisition or use of industrial property rights, in particular patents, utility models, designs or trade marks, or to the rights arising out of contracts for assignment of, or the right to use, a method of manufacture or knowledge relating to the use or application of industrial processes.

(2) Patent licensing agreements are agreements whereby one undertaking, the holder of a patent (the licensor), permits another undertaking (the licensee) to exploit the patented invention by one or more of the means of exploitation afforded by patent law, in particular manufacture, use or putting on the market.

(3) In the light of experience acquired so far, it is possible to define a category of patent licensing agreements which are capable of falling within the scope of Article 85 (1), but which can normally be regarded as satisfying the conditions laid down in Article 85 (3). To the extent that patent licensing agreements to which undertakings in only one Member State are party and which concern only one or more patents for that Member State are capable of affecting trade between Member States, it is appropriate to include them in the exempted category.

(4) The present Regulation applies to licences issued in respect of national patents of the Member States, Community patents [3], or European patents [4] granted for Member States, licences in respect of utility models or 'certificats d'utilité' issued in the Member States, and licences in respect of inventions for which a patent application is made within one year. Where such patent licensing agreements contain obligations relating not only to territories within the common market but also obligations relating to non-member countries, the presence of the latter does not prevent the present Regulation from applying to the obligations relating to territories within the common market.

(5) However, where licensing agreements for non-member countries or for territories which extend beyond the frontiers of the Community have effects within the common market which may fall within the scope of Article 85 (1), such agreements should be covered by the Regulation to the same extent as would agreements for territories within the common market.

(6) The Regulation should also apply to agreements concerning the assignment and acquisition of the rights referred to in point 4 above where the risk associated with exploitation remains with the

[1] OJ No 36, 6. 3. 1965, p. 533/65.
[2] OJ No C 58, 3. 3. 1979, p. 12.
[3] Convention for the European patent for the common market (Community Patent Convention) of 15 December 1975 (OJ No L 17, 26. 1. 1976, p. 1).
[4] Convention on the grant of European patents of 5 October 1973.

assignor, patent licensing agreements in which the licensor is not the patentee but is authorized by the patentee to grant the licence (as in the case of sub-licences) and patent licensing agreements in which the parties' rights or obligations are assumed by connected undertakings.

(7) The Regulation does not apply to agreements concerning sales alone, which are governed by the provisions of Commission Regulation (EEC) No 1983/83 of 22 June 1983 concerning the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements [1].

(8) Since the experience so far acquired is inadequate, it is not appropriate to include within the scope of the Regulation patent pools, licensing agreements entered into in connection with joint ventures, reciprocal licensing or distribution agreements, or licensing agreements in respect of plant breeder's rights. Reciprocal agreements which do not involve any territorial restrictions within the common market should, however, be so included.

(9) On the other hand, it is appropriate to extend the scope of the Regulation to patent licensing agreements which also contain provisions assigning, or granting the right to use, non-patented technical knowledge, since such mixed agreements are commonly concluded in order to allow the transfer of a complex technology containing both patented and non-patented elements. Such agreements can only be regarded as fulfilling the conditions of Article 85 (3) for the purposes of this Regulation where the communicated technical knowledge is secret and permits a better exploitation of the licensed patents (know-how). Provisions concerning the provision of know-how are covered by the Regulation only in so far as the licensed patents are necessary for achieving the objects of the licensed technology and as long as at least one of the licensed patents remains in force.

(10) It is also appropriate to extend the scope of the Regulation to patent licensing agreements containing ancillary provisions relating to trade marks, subject to ensuring that the trade-mark licence is not used to extend the effects of the patent licence beyond the life of the patents. For this purpose it is necessary to allow the licensee to identify himself within the 'licensed territory', i.e. the territory covering all or part of the common market where the licensor holds patents which the licensee is authorized to exploit, as the manufacturer of the 'licensed product', i.e. the product which is the subject matter of the licensed patent or which has been obtained directly from the process which is the subject matter of the licensed patent, to avoid his having to enter into a new trade-mark agreement with the licensor when the licensed patents expire in order not to lose the goodwill attaching to the licensed product.

(11) Exclusive licensing agreements, i.e. agreements in which the licensor undertakes not to exploit the 'licensed invention', i.e. the licensed patented invention and any know-how communicated to the licensee, in the licensed territory himself or to grant further licences there, are not in themselves incompatible with Article 85 (1) where they are concerned with the introduction and protection of a new technology in the licensed territory, by reason of the scale of the research which has been undertaken and of the risk that is involved in manufacturing and marketing a product which is unfamiliar to users in the licensed territory at the time the agreement is made. This may also be the case where the agreements are concerned with the introduction and protection of a new process for manufacturing a product which is already known. In so far as in other cases agreements of this kind may fall within the scope of Article 85 (1), it is useful for the purposes of legal certainty to include them in Article 1, in order that they may also benefit from the exemption. However, the exemption of exclusive licensing agreements and certain export bans imposed on the licensor and his licensees is without prejudice to subsequent developments in the case law of the Court of Justice regarding the status of such agreements under Article 85 (1).

(12) The obligations listed in Article 1 generally contribute to improving the production of goods and to promoting technical progress; they make

[1] OJ No L 173, 30. 6. 1983, p. 1.

patentees more willing to grant licences and licensees more inclined to undertake the investment required to manufacture, use and put on the market a new product or to use a new process, so that undertakings other than the patentee acquire the possibility of manufacturing their products with the aid of the latest techniques and of developing those techniques further. The result is that the number of production facilities and the quantity and quality of goods produced in the common market are increased. This is true, in particular, of obligations on the licensor and on the licensee not to exploit the licensed invention in, and in particular not to export the licensed product into, the licensed territory in the case of the licensor and the 'territories reserved for the licensor', that is to say, territories within the common market in which the licensor has patent protection and has not granted any licences, in the case of the licensee. This is also true both of the obligation of the licensee not to conduct an active policy of putting the product on the market (i.e. a prohibition of active competition as defined in Article 1 (1) (5)) in the territories of other licensees for a period which may equal the duration of the licence and also the obligation of the licensee not to put the licensed product on the market in the territories of other licensees for a limited period of a few years (i.e. a prohibition not only of active competition but also of 'passive competition' whereby the licensee of a territory simply responds to requests which he has not solicited from users or resellers established in the territories of other licensees — Article 1 (1) (6)). However, such obligations may be permitted under the Regulation only in respect of territories in which the licensed product is protected by 'parallel patents', that is to say, patents covering the same invention, within the meaning of the case law of the Court of Justice, and as long as the patents remain in force.

(13) Consumers will as a rule be allowed a fair share of the benefit resulting from this improvement in the supply of goods on the market. To safeguard this effect, however, it is right to exclude from the application of Article 1 cases where the parties agree to refuse to meet demand from users or resellers within their respective territories who would resell for export, or to take other steps to impede parallel imports, or where the licensee is obliged to refuse to meet unsolicited demand from the territory of other licensees (passive sales). The same applies where such action is the result of a concerted practice between the licensor and the licensee.

(14) The obligations referred to above thus do not impose restrictions which are not indispensable to the attainment of the abovementioned objectives.

(15) Competition at the distribution stage is safeguarded by the possibility of parallel imports and passive sales. The exclusivity obligations covered by the Regulation thus do not normally entail the possibility of eliminating competition in respect of a substantial part of the products in question. This is so even in the case of agreements which grant exclusive licences for a territory covering the whole of the common market.

(16) To the extent that in their agreements the parties undertake obligations of the type referred to in Articles 1 and 2 but which are of more limited scope and thus less restrictive of competition than is permitted by those Articles, it is appropriate that these obligations should also benefit under the exemptions provided for in the Regulation.

(17) If in a particular case an agreement covered by this Regulation is found to have effects which are incompatible with the provisions of Article 85 (3) of the Treaty, the Commission may withdraw the benefit of the block exemption from the undertakings concerned, in accordance with Article 7 of Regulation No 19/65/EEC.

(18) It is not necessary expressly to exclude from the category defined in the Regulation agreements which do not fulfil the conditions of Article 85 (1). Nevertheless it is advisable, in the interests of legal certainty for the undertakings concerned, to list in Article 2 a number of obligations which are not normally restrictive of competition, so that these also may benefit from the exemption in the event that, because of particular economic or legal circumstances, they should exceptionally fall within the scope of Article 85 (1). The list of such obligations given in Article 2 is not exhaustive.

(19) The Regulation must also specify what restrictions or provisions may not be included in patent licensing agreements if these are to benefit from the block exemption. The restrictions listed in Article 3 may fall under the prohibition of Article 85 (1); in these cases there can be no general

presumption that they will lead to the positive effects required by Article 85 (3), as would be necessary for the granting of a block exemption.

(20) Such restrictions include those which deny the licensee the right enjoyed by any third party to challenge the validity of the patent or which automatically prolong the agreement by the life of any new patent granted during the life of the licensed patents which are in existence at the time the agreement is entered into. Nevertheless, the parties are free to extend their contractual relationship by entering into new agreements concerning such new patents, or to agree the payment of royalties for as long as the licensee continues to use know-how communicated by the licensor which has not entered into the public domain, regardless of the duration of the original patents and of any new patents that are licensed.

(21) They also include restrictions on the freedom of one party to compete with the other and in particular to involve himself in techniques other than those licensed, since such restrictions impede technical and economic progress. The prohibition of such restrictions should however be reconciled with the legitimate interest of the licensor in having his patented invention exploited to the full and to this end to require the licensee to use his best endeavours to manufacture and market the licensed product.

(22) Such restrictions include, further, an obligation on the licensee to continue to pay royalties after all the licensed patents have expired and the communicated know-how has entered into the public domain, since such an obligation would place the licensee at a disadvantage by comparison with his competitors, unless it is established that this obligation results from arrangements for spreading payments in respect of previous use of the licensed invention.

(23) They also include restrictions imposed on the parties regarding prices, customers or marketing of the licensed products or regarding the quantities to be manufactured or sold, especially since restrictions of the latter type may have the same effect as export bans.

(24) Finally, they include restrictions to which the licensee submits at the time the agreement is made because he wishes to obtain the licence, but which give the licensor an unjustified competitive advantage, such as an obligation to assign to the licensor any improvements the licensee may make to the invention, or to accept other licences or goods and services that the licensee does not want from the licensor.

(25) It is appropriate to offer to parties to patent licensing agreements containing obligations which do not come within the terms of Articles 1 and 2 and yet do not entail any of the effects restrictive of competition referred to in Article 3 a simplified means of benefiting, upon notification, from the legal certainty provided by the block exemption (Article 4). This procedure should at the same time allow the Commission to ensure effective supervision as well as simplifying the administrative control of agreements.

(26) The Regulation should apply with retroactive effect to patent licensing agreements in existence when the Regulation comes into force where such agreements already fulfil the conditions for application of the Regulation or are modified to do so (Articles 6 to 8). Under Article 4 (3) of Regulation No 19/65/EEC, the benefit of these provisions may not be claimed in actions pending at the date of entry into force of this Regulation, nor may it be relied on as grounds for claims for damages against third parties.

(27) Agreements which come within the terms of Articles 1 and 2 and which have neither the object nor the effect of restricting competition in any other way need no longer be notified. Nevertheless, undertakings will still have the right to apply in individual cases for negative clearance under Article 2 of Council Regulation No 17 [1] or for exemption under Article 85 (3),

HAS ADOPTED THIS REGULATION:

Article 1

1. Pursuant to Article 85 (3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared

[1] OJ No 13, 21. 2. 1962, p. 204/62.

that Article 85 (1) of the Treaty shall not apply to patent licensing agreements, and agreements combining the licensing of patents and the communication of know-how, to which only two undertakings are party and which include one or more of the following obligations:

1. an obligation on the licensor not to license other undertakings to exploit the licensed invention in the licensed territory, covering all or part of the common market, in so far and as long as one of the licensed patents remains in force;

2. an obligation on the licensor not to exploit the licensed invention in the licensed territory himself in so far and as long as one of the licensed patents remains in force;

3. an obligation on the licensee not to exploit the licensed invention in territories within the common market which are reserved for the licensor, in so far and as long as the patented product is protected in those territories by parallel patents;

4. an obligation on the licensee not to manufacture or use the licensed product, or use the patented process or the communicated know-how, in territories within the common market which are licensed to other licensees, in so far and as long as the licensed product is protected in those territories by parallel patents;

5. an obligation on the licensee not to pursue an active policy of putting the licensed product on the market in the territories within the common market which are licensed to other licensees, and in particular not to engage in advertising specifically aimed at those territories or to establish any branch or maintain any distribution depot there, in so far and as long as the licensed product is protected in those territories by parallel patents;

6. an obligation on the licensee not to put the licensed product on the market in the territories licensed to other licensees within the common market for a period not exceeding five years from the date when the product is first put on the market within the common market by the licensor or one of his licensees, in so far as and for as long as the product is protected in these territories by parallel patents;

7. an obligation on the licensee to use only the licensor's trade mark or the get-up determined by the licensor to distinguish the licensed product, provided that the licensee is not prevented from identifying himself as the manufacturer of the licensed product.

2. The exemption of restrictions on putting the licensed product on the market resulting from the obligations referred to in paragraph 1 (2), (3), (5) and (6) shall apply only if the licensee manufactures the licensed product himself or has it manufactured by a connected undertaking or by a subcontractor.

3. The exemption provided for in paragraph 1 shall also apply where in a particular agreement the parties undertake obligations of the types referred to in that paragraph but with a more limited scope than is permitted by the paragraph.

Article 2

1. Article 1 shall apply notwithstanding the presence in particular of any of the following obligations, which are generally not restrictive of competition:

1. an obligation on the licensee to procure goods or services from the licensor or from an undertaking designated by the licensor, in so far as such products or services are necessary for a technically satisfactory exploitation of the licensed invention;

2. an obligation on the licensee to pay a minimum royalty or to produce a minimum quantity of the licensed product or to carry out a minimum number of operations exploiting the licensed invention;

3. an obligation on the licensee to restrict his exploitation of the licensed invention to one or more technical fields of application covered by the licensed patent;

4. an obligation on the licensee not to exploit the patent after termination of the agreement in so far as the patent is still in force;

5. an obligation on the licensee not to grant sub-licences or assign the licence;

6. an obligation on the licensee to mark the licensed product with an indication of the patentee's name,

the licensed patent or the patent licensing agreement;

7. an obligation on the licensee not to divulge know-how communicated by the licensor; the licensee may be held to this obligation after the agreement has expired;

8. obligations:

   (a) to inform the licensor of infringements of the patent,

   (b) to take legal action against an infringer,

   (c) to assist the licensor in any legal action against an infringer,

   provided that these obligations are without prejudice to the licensee's right to challenge the validity of the licensed patent;

9. an obligation on the licensee to observe specifications concerning the minimum quality of the licensed product, provided that such specifications are necessary for a technically satisfactory exploitation of the licensed invention, and to allow the licensor to carry out related checks;

10. an obligation on the parties to communicate to one another any experience gained in exploiting the licensed invention and to grant one another a licence in respect of inventions relating to improvements and new applications, provided that such communication or licence is non-exclusive;

11. an obligation on the licensor to grant the licensee any more favourable terms that the licensor may grant to another undertaking after the agreement is entered into.

2. In the event that, because of particular circumstances, the obligations referred to in paragraph 1 fall within the scope of Article 85 (1), they shall also be exempted even if they are not accompanied by any of the obligations exempted by Article 1.

The exemption provided for in this paragraph shall also apply where in an agreement the parties undertake obligations of the types referred to in paragraph 1 but with a more limited scope than is permitted by that paragraph.

Article 3

Articles 1 and 2 (2) shall not apply where:

1. the licensee is prohibited from challenging the validity of licensed patents or other industrial or commercial property rights within the common market belonging to the licensor or undertakings connected with him, without prejudice to the right of the licensor to terminate the licensing agreement in the event of such a challenge;

2. the duration of the licensing agreement is automatically prolonged beyond the expiry of the licensed patents existing at the time the agreement was entered into by the inclusion in it of any new patent obtained by the licensor, unless the agreement provides each party with the right to terminate the agreement at least annually after the expiry of the licensed patents existing at the time the agreement was entered into, without prejudice to the right of the licensor to charge royalties for the full period during which the licensee continues to use know-how communicated by the licensor which has not entered into the public domain, even if that period exceeds the life of the patents;

3. one party is restricted from competing with the other party, with undertakings connected with the other party or with other undertakings within the common market in respect of research and development, manufacture, use or sales, save as provided in Article 1 and without prejudice to an obligation on the licensee to use his best endeavours to exploit the licensed invention;

4. the licensee is charged royalties on products which are not entirely or partially patented or manufactured by means of a patented process, or for the use of know-how which has entered into the public domain otherwise than by the fault of the licensee or an undertaking connected with him, without prejudice to arrangements whereby, in order to facilitate payment by the licensee, the royalty payments for the use of a licensed invention are spread over a period extending beyond the life of the licensed patents or the entry of the know-how into the public domain;

5. the quantity of licensed products one party may manufacture or sell or the number of operations exploiting the licensed invention he may carry out are subject to limitations;

6. one party is restricted in the determination of prices, components of prices or discounts for the licensed products;

7. one party is restricted as to the customers he may serve, in particular by being prohibited from supplying certain classes of user, employing certain forms of distribution or, with the aim of sharing customers, using certain types of packaging for the products, save as provided in Article 1 (1) (7) and Article 2 (1) (3);

8. the licensee is obliged to assign wholly or in part to the licensor rights in or to patents for improvements or for new applications of the licensed patents;

9. the licensee is induced at the time the agreement is entered into to accept further licences which he does not want or to agree to use patents, goods or services which he does not want, unless such patents, products or services are necessary for a technically satisfactory exploitation of the licensed invention;

10. without prejudice to Article 1 (1) (5), the licensee is required, for a period exceeding that permitted under Article 1 (1) (6), not to put the licensed product on the market in territories licensed to other licensees within the common market or does not do so as a result of a concerted practice between the parties;

11. one or both of the parties are required:

(a) to refuse without any objectively justified reason to meet demand from users or resellers in their respective territories who would market products in other territories within the common market;

(b) to make it difficult for users or resellers to obtain the products from other resellers within the common market, and in particular to exercise industrial or commercial property rights or take measures so as to prevent users or resellers from obtaining outside, or from putting on the market in, the licensed territory products which have been lawfully put on the market within the common market by the patentee or with his consent;

or do so as a result of a concerted practice between them.

Article 4

1. The exemption provided for in Articles 1 and 2 shall also apply to agreements containing obligations restrictive of competition which are not covered by those Articles and do not fall within the scope of Article 3, on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27 [1], as last amended by Regulation (EEC) No 1699/75 [2], and that the Commission does not oppose such exemption within a period of six months.

2. The period of six months shall run from the date on which the notification is received by the Commission. Where, however, the notification is made by registered post, the period shall run from the date shown on the postmark of the place of posting.

3. Paragraph 1 shall apply only if:

(a) express reference is made to this Article in the notification or in a communication accompanying it; and

(b) the information furnished with the notification is complete and in accordance with the facts.

4. The benefit of paragraph 1 may be claimed for agreements notified before the entry into force of this Regulation by submitting a communication to the Commission referring expressly to this Article and to the notification. Paragraphs 2 and 3 (b) shall apply *mutatis mutandis*.

5. The Commission may oppose the exemption. It shall oppose exemption if it receives a request to do so from a Member State within three months of the transmission to the Member State of the notification referred to in paragraph 1 or of the communication referred to in paragraph 4. This request must be justified on the basis of considerations relating to the competition rules of the Treaty.

6. The Commission may withdraw the opposition to the exemption at any time. However, where the opposition was raised at the request of a Member State and this request is maintained, it may be withdrawn only after consultation of the Advisory Committee on Restrictive Practices and Dominant Positions.

7. If the opposition is withdrawn because the undertakings concerned have shown that the conditions

(1) OJ No 35, 10. 5. 1962, p. 1118/62.
(2) OJ No L 172, 3. 7. 1975, p. 11.

of Article 85 (3) are fulfilled, the exemption shall apply from the date of notification.

8. If the opposition is withdrawn because the undertakings concerned have amended the agreement so that the conditions of Article 85 (3) are fulfilled, the exemption shall apply from the date on which the amendments take effect.

9. If the Commission opposes exemption and the opposition is not withdrawn, the effects of the notification shall be governed by the provisions of Regulation No 17.

Article 5

1. This Regulation shall not apply:

1. to agreements between members of a patent pool which relate to the pooled patents;

2. to patent licensing agreements between competitors who hold interests in a joint venture or between one of them and the joint venture, if the licensing agreements relate to the activities of the joint venture;

3. to agreements under which the parties, albeit in separate agreements or through connected undertakings, grant each other reciprocal patent or trade-mark licences or reciprocal sales rights for unprotected products or exchange know-how, where the parties are competitors in relation to the products covered by those agreements;

4. to licensing agreements in respect of plant breeder's rights.

2. However, this Regulation shall apply to reciprocal licences of the types referred to in paragraph 1 (3) where the parties are not subject to any territorial restriction within the common market on the manufacture, use or putting on the market of the products covered by these agreements or on the use of the licensed processes.

Article 6

1. As regards agreements existing on 13 March 1962 and notified before 1 February 1963 and agreements, whether notified or not, to which Article 4 (2) (2) (b) of Regulation No 17 applies, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall have retroactive effect from the time at which the conditions for application of this Regulation were fulfilled.

2. As regards all other agreements notified before this Regulation entered into force, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall have retroactive effect from the time at which the conditions for application of this Regulation were fulfilled, or from the date of notification, whichever is the later.

Article 7

If agreements existing on 13 March 1962 and notified before 1 February 1963 or agreements to which Article 4 (2) (2) (b) of Regulation No 17 applies and notified before 1 January 1967 are amended before 1 April 1985 so as to fulfil the conditions for application of this Regulation, and if the amendment is communicated to the Commission before 1 July 1985 the prohibition in Article 85 (1) of the Treaty shall not apply in respect of the period prior to the amendment. The communication shall take effect from the time of its receipt by the Commission. Where the communication is sent by registered post, it shall take effect from the date shown on the postmark of the place of posting.

Article 8

1. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of the United Kingdom, Ireland and Denmark, Articles 6 and 7 shall apply except that the relevant dates shall be 1 January 1973 instead of 13 March 1962 and 1 July 1973 instead of 1 February 1963 and 1 January 1967.

2. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Greece, Articles 6 and 7 shall apply except that the relevant dates shall be 1 January 1981 instead of 13 March 1962 and 1 July 1981 instead of 1 February 1963 and 1 January 1967.

Article 9

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds in a particular case that an agreement exempted by this Regulation nevertheless has

certain effects which are incompatible with the conditions laid down in Article 85 (3) of the Treaty, and in particular where:

1. such effects arise from an arbitration award;

2. the licensed products or the services provided using a licensed process are not exposed to effective competition in the licensed territory from identical products or services or products or services considered by users as equivalent in view of their characteristics, price and intended use;

3. the licensor does not have the right to terminate the exclusivity granted to the licensee at the latest five years from the date the agreement was entered into and at least annually thereafter if, without legitimate reason, the licensee fails to exploit the patent or to do so adequately;

4. without prejudice to Article 1 (1) (6), the licensee refuses, without objectively valid reason, to meet unsolicited demand from users or resellers in the territory of other licensees;

5. one or both of the parties:

(a) without any objectively justified reason, refuse to meet demand from users or resellers in their respective territories who would market the products in other territories within the common market; or

(b) make it difficult for users or resellers to obtain the products from other resellers within the common market, and in particular where they exercise industrial or commercial property rights or take measures so as to prevent resellers or users from obtaining outside, or from putting on the market in, the licensed territory products which have been lawfully put on the market within the common market by the patentee or with his consent.

Article 10

1. This Regulation shall apply to:

(a) patent applications;

(b) utility models;

(c) applications for registration of utility models;

(d) 'certificats d'utilité' and 'certificats d'addition' under French law; and

(e) applications for 'certificats d'utilité' and 'certificats d'addition' under French law;

equally as it applies to patents.

2. This Regulation shall also apply to agreements relating to the exploitation of an invention if an application within the meaning of paragraph 1 is made in respect of the invention for the licensed territory within one year from the date when the agreement was entered into.

Article 11

This Regulation shall also apply to:

1. patent licensing agreements where the licensor is not the patentee but is authorized by the patentee to grant a licence or a sub-licence;

2. assignments of a patent or of a right to a patent where the sum payable in consideration of the assignment is dependent upon the turnover attained by the assignee in respect of the patented products, the quantity of such products manufactured or the number of operations carried out employing the patented invention;

3. patent licensing agreements in which rights or obligations of the licensor or the licensee are assumed by undertakings connected with them.

Article 12

1. 'Connected undertakings' for the purposes of this Regulation means:

(a) undertakings in which a party to the agreement, directly or indirectly:

— owns more than half the capital or business assets, or

— has the power to exercise more than half the voting rights, or

— has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking, or

— has the right to manage the affairs of the undertaking;

(b) undertakings which directly or indirectly have in or over a party to the agreement the rights or powers listed in (a);

(c) undertakings in which an undertaking referred to in (b) directly or indirectly has the rights or powers listed in (a).

2. Undertakings in which the parties to the agreement or undertakings connected with them jointly have the rights or powers set out in paragraph 1 (a) shall be considered to be connected with each of the parties to the agreement.

Article 13

1. Information acquired pursuant to Article 4 shall be used only for the purposes of this Regulation.

2. The Commission and the authorities of the Member States, their officials and other servants shall not disclose information acquired by them pursuant to this Regulation of the kind covered by the obligation of professional secrecy.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 14

This Regulation shall enter into force on 1 January 1985.

It shall apply until 31 December 1994.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 July 1984.

For the Comission

Frans ANDRIESSEN

Member of the Commission