



AMERICAN INSTITUTE IN TAIWAN

1700 N. Moore Street
Suite 1700
Arlington, Virginia 22209
Tel: (703) 525-8474
Fax: (703) 841-1385

Corrected Copy

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE AMERICAN INSTITUTE IN TAIWAN
AND
THE TAIPEI ECONOMIC AND CULTURAL
REPRESENTATIVE OFFICE IN THE UNITED STATES

The American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) (separately "Party," and together "Parties") enter into this Memorandum of Understanding in order to ensure that natural and juridical persons of the territory represented by AIT enjoy full protection under the patent and trademark laws of the territory represented by TECRO, and that the same is true with respect to natural and juridical persons of the territory represented by TECRO in the territory represented by AIT.

The 1946 "Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of China" (the "1946 FCN Treaty") obligates each Party to provide the natural and juridical persons of the other Party with effective protection of, among other things, patents and trademarks, based on the concept of national and most-favored-nations treatment.

In keeping with the 1946 FCN treaty, the patent and trademark laws of the territory represented by AIT already provide natural and juridical persons of the territory represented by TECRO with national treatment in all areas, except in the area of priority filing rights. In addition, the authorities represented by AIT agree to extend on a reciprocal basis to natural and juridical persons of the territory represented by TECRO priority filing benefits for both patent and trademark applications.

The Patent Law of the territory represented by TECRO, which became effective on January 23, 1994 (the "Patent Law"), and the Trademark Law thereof, which became effective on December 24, 1993 (the "Trademark Law"), contain provisions which base rights and benefits for foreign nationals on reciprocity. These rights and benefits are provided to natural and juridical persons of the territory represented by AIT on a reciprocal basis as set forth in this Memorandum. In the Patent Law, these include general patent protection (Article 4); patent protection for microorganisms (Article 21); priority filing benefits for invention, utility model and design patents (Articles 24, 105 and 122); and the availability of patent term extensions (Article 51). The trademark Law also bases priority filing benefits for trademark registration applications on reciprocity (Article 4).

In light of these considerations, the Parties agree as follows:

Article 1

The authorities represented by AIT and those represented by TECRO are obligated under 1946 FCN Treaty to provide natural and juridical persons of the territory represented by TECRO and of the territory represented by AIT effective protection of intellectual property rights. In light of these obligations, the requirement of a treaty or agreement on the reciprocal protection of intellectual property rights in Articles 4, 21 and 51 of the Patent Law has been fulfilled, and natural and juridical persons of the territory represented by AIT have been entitled to full protection under the Patent Law since it became effective, except with respect to priority filing benefits.

Article 2

Natural and juridical persons of either the territory represented by AIT or the territory represented by TECRO who have duly filed with the authorities of either the territory represented by AIT or the territory represented by TECRO, on or after the date on which this Memorandum of Understanding takes effect, an application for a patent of invention, for a utility model patent or for a design patent, shall enjoy on a reciprocal basis, for the purposes of filing with the authorities of the other, a right of priority based on such earlier filing, during the period provided for in the relevant laws and regulations of the place in which the second of such filings is made. The right of priority claimed in an application for a patent of invention filed in either the territory represented by AIT or the territory represented by TECRO may be based on the filing in the other of an application for a utility model patent, and vice versa.

Article 3

Natural and juridical persons of either the territory represented by AIT or the territory represented by TECRO who have duly filed in either the territory represented by AIT or the territory represented by TECRO, on or after December 24, 1993, an application for a registration of a trademark, service mark, collective mark or certification mark, shall enjoy on a reciprocal basis, for the purposes of filing with the authorities of the other, a right of priority based on such earlier filing for the registration of the same mark, during the period provided for in the relevant laws and regulations of the place in which the second of such filings is made.

Article 4

The obligations under Articles 1, 2 and 3 above do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition and maintenance of intellectual property rights.

Article 5

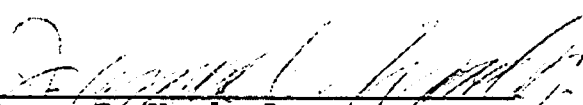
This Memorandum of Understanding shall take effect on the date of its signature by the Parties, or if not signed on the same date, on the date of its signature by the second Party and shall be valid until terminated by one Party upon notification to the other Party in writing at least six (6) months before the termination is to take effect.


Article 6

In witness thereof the Parties hereto have hereby set their hands by their duly authorized representatives and have caused this Memorandum of Understanding to be signed and effective the date of the last signature hereafter. Done in duplicate in the Chinese and English languages, both texts being equally authentic.

For
the American Institute
in Taiwan

For
the Taipei Economic and Cultural
Representative Office in
the United States


James C. Wood, Jr.
Chairman of the Board and
Managing Director


Benjamin Lu
Representative

Date: 

Date: 

美國在台協會與駐美國台北經濟文化代表處瞭解備忘錄

美國在台協會與駐美國台北經濟文化代表處雙方（以下分稱「締約一方」，合稱「締約雙方」）為確保美國在台協會所代表之領域之自然人與法人，受駐美國台北經濟文化代表處所代表之領域之專利法與商標法充分之保護，及駐美國台北經濟文化代表處所代表之領域之自然人及法人，受美國在台協會所代表之領域之專利法與商標法充分之保護，爰簽署本瞭解備忘錄。

一九四六年所簽署之美利堅合眾國、中華民國友好通商航海條約規定，締約雙方應基於國民待遇與最惠國待遇之原則，提供對方之自然人與法人有效之專利與商標等之保護。

為遵守一九四六年美利堅合眾國、中華民國友好通商航海條約，美國在台協會所代表之領域之專利法及商標法業在優先權利利益外之全部範圍賦與駐美國台北經濟文化代表處所代表之領域之自然人與法人國民待遇。此外，美

國在台協會所代表當局同意在互惠基礎上，提供駐美國台北經濟文化代表處所代表之領域之自然人及法人專利與商標申請案優先權利。

駐美國台北經濟文化代表處所代表之領域於一九九四年一月二十三日生效之專利法（以下簡稱「專利法」），及於一九九三年十二月二十四日生效之商標法（以下簡稱「商標法」）規定，外國國民之權利與利益以互惠為基礎，該等權利與利益將照本備忘錄之規定，以互惠為基礎提供予美國在台協會所代表之領域之自然人及法人。依據專利法規定，該等權利及利益包括一般專利保護（第四條）、微生物新品種之專利保護（第二十一條）、發明專利、新型專利及新式樣專利之優先權利（第二十四條、第一百零五條及第一百二十二條）及專利權期間之延長（第五十一條）。商標法亦以互惠原則，規定申請商標註冊之優先權利（第四條）。

基於以上之考量，締約雙方約定如下：

第一條

依一九四六年美利堅合眾國、中華民國友好通商航海條約，美國在台協會所代表當局及駐美國台北經濟文化代表處所代表當局有義務互相提供對方自然人及法人有效之智慧財產權保護。基於該項義務，專利法第四條、第二十一條及第五十一條所規定訂定條約或協定互惠保護智慧財產權之要求，業已實現，且美國在台協會所代表之領域之自然人及法人自專利法生效後，除優先權利外，即受該專利法充分之保護。

第二條

凡美國在台協會所代表之領域或駐美國台北經濟文化代表處所代表之領域之自然人及法人，自本備忘錄生效日起，向締約任一方當局合法提出之發明、新型或新式樣專利之申請案，基於互惠保護原則，得以該申請對較晚在締約另一方提出之同樣申請案主張優先權，惟較晚提出之申請案應在申請當地法令所規定之期間內提出。在美國在台協會所代表之領域或駐美國台北經濟文化代表處所代表之領域申請發明專利時，得以在另一方先申請之新型專

利主張優先權，反之亦同。

第三條

凡美國在台協會所代表之領域或駐美國台北經濟文化代表處所代表之領域之自然人及法人，自一九九三年十二月二十四日起，向締約任一方提出之商標、服務標章、團體標章或證明標章之申請案，基於互惠保護原則，得以該申請對較晚在締約另一方提出之同一商標申請案主張優先權，惟較晚提出之申請案應在申請當地法令所規定之期間內提出。

第四條

第一條、第二條及第三條所規定之義務，不適用於在世界智慧財產權組織監督下，針對智慧財產權之取得與維持所締結之多邊協定有關程序之規定。

第五條

本瞭解備忘錄應自締約雙方簽署之日起生效。倘非於同日完成簽署，自締約任一方較晚簽署之日起生效。締約任一方得於至少六個月之前，以書面

通知他方終止本瞭解備忘錄。

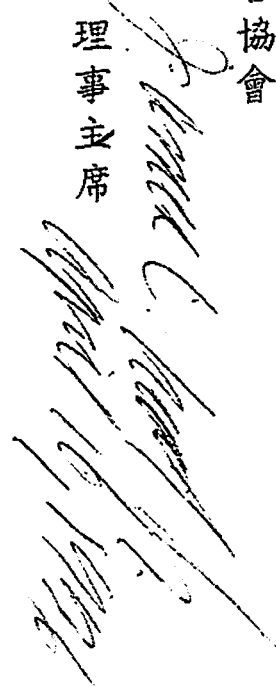
第六條

本瞭解備忘錄自最後簽署之日起生效，為此，經合法授權之雙方代表爰於本備忘錄簽字以昭信守。本瞭解備忘錄以中文及英文各繕製兩份，兩種文字之約本同一作準。

美國在台協會

簽署人：

職稱：理事主席



駐美國台北經濟文化代表處

簽署人：

職稱：代表



一九九六年四月十日

國在台協會所代表當局同意在互惠基礎上，提供駐美國台北經濟文化代表處所代表之領域之自然人及法人專利與商標申請案優先權利。

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第一條