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The Invention Secrecy Act of 1951

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Who knows what life changing inventions are being placed in the vault with this act?

Invention Secrecy

The Invention Secrecy Act of 1951 requires the government to impose "secrecy orders" on certain patent applications that contain sensitive information, thereby restricting disclosure of the invention and withholding the grant of a patent. Remarkably, this requirement can be imposed even when the application is generated and entirely owned by a private individual or company without government sponsorship or support.

There are several types of secrecy orders which range in severity from simple prohibitions on export (but allowing other disclosure for legitimate business purposes) up to classification, requiring secure storage of the application and prohibition of all disclosure.

At the end of fiscal year 2011, there were 5,241 secrecy orders in effect.

- Request for Comments on Using Secrecy Orders to Conceal Economically Significant Patents, *Federal Register*, April 20, 2012. "The US Patent and Trademark Office (USPTO) is seeking comments as to whether the United States should identify and bar from publication and issuance certain patent applications as detrimental to the nation's economic security. The USPTO is also seeking comments on the desirability of changes to the existing procedures for reviewing applications that might be detrimental to national security."
- Invention Secrecy Activity, statistics reported by the U.S. Patent and Trademark Office, through FY 2011
- The Invention Secrecy Act of 1951, text of 35 U.S.C. 181-188
- DoD Patent Security Review Process, Department of Defense Directive 5535.02, March 24, 2010

- A List of Patent Application Numbers Subject to a Secrecy Order that has been Rescinded, from October 2005 – September 2006

- Patent Security Category Review List (January 1971 edition)

- Secrecy Order Formsof various kinds issued by the U.S. Patent and Trademark Office (courtesy of Michael Ravnitzky)
- The Secrecy Order Program in the U.S. Patent & Trademark Office, June 1991
- Administration of the Invention Secrecy Act in the Patent & Trademark Office, 1991
- Secrecy of Certain Inventions, implementing regulations from 37 Code of Federal Regulations part 5
- Protecting the Private Inventor Under the Peacetime Provisions of the Invention Secrecy Act by Sabing H. Lee, *Berkeley Technology Law Journal*, 12:2, Fall 1997.
- The Government's Classification of Private Ideas (excerpt), hearings before a subcommittee of the House Committee on Government Operations, Ninety-Sixth Congress, February 28, March 20 and August 21, 1980

- Secret Patenting in the USSR and Russia by John Martens

International Agreements on Defense-Related Patents, Classified Patent Applications and

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Invention Secrecy (courtesy of Michael Ravnitzky)

- US-Australia (1961)
- US-Belgium (1960)
- US-Denmark (1960)
- US-France (1957)
- US-Germany (1956)
- US-Greece (1960)
- US-Italy (1952)
- US-Japan (1956)
- US-Korea (1991)
- NATO Agreement (1977)
- NATO Agreement (1969)
- NATO Agreement (1974)
- NATO Agreement (1960)
- US-Netherlands (1959)
- US-Norway (1960)
- US-Spain (1960)
- US-Sweden (1962)
- US-Turkey (1957)
- US-United Kingdom (1953)

maintained by Steven Aftergood

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Obstacles to use: Sustainable Energy

The obstacles to developing new alternatives for the world's insatiable appetite of limited and environmentally degrading fossil fuels might surprise you. It takes investment capital and engineering skills to bring any new invention or technology to market. It also takes permission from Uncle Sam or your local government. In particular, the United States patent process is fraught with risk, intimidation and close-mindedness by the U.S. Patent and Trademark Office (USPTO).

There are distinct advantages in obtaining a patent. The fundamental benefit is that a patent provides exclusive rights to manufacture and sell a specific invention for a period of 20 years starting from the date the application is submitted. The application must be accompanied by enough detailed information about the invention that anyone skilled in the appropriate field could build a working model of the invention from the data supplied in the patent application. The potential for profit is real, but complicated U.S. patent laws can make the process seem like a leap of faith.

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The "Patent Application Publication Act of 1995" allows for the publication of detailed patent information for a full 18 months after the application is submitted, even if the patent has not been granted. In addition, The Patent Reexamination Reform Act of 1995 permits large, well-funded companies to challenge an individual inventor's patent application prior to granting the patent. The company behind this request for a reexamination can remain secret to the inventor, and it is possible for such a company to request reexaminations repeatedly, therefore delaying the patent grant significantly. These two new laws stand firmly for the interests of corporate America and strongly against the entrepreneurial individual. They also reduce the likelihood that American industry will permit the introduction of potentially competing ideas and inventions against present or future market positions.

Unfortunately for innovators and entrepreneurs who wish to bring energy-saving or energy-reducing inventions to market, the story gets worse. Inventors of new energy technologies in particular have a difficult time obtaining a patent. The USPTO is apparently fundamentally opposed to approving patents for any type of new energy technology that defies the laws of thermodynamics and thereby appears to "endanger (the) oil, coal, and gas industry." Under Section 181 in U.S. Patent Law, once a patent application is submitted, the Commissioner of the USPTO, "the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States" has the power to "withhold the grant of a patent." It seems only one invention has been granted a patent that included claims of producing greater energy output than the apparent energy input. This particular U.S. patent was granted for a cold fusion process that is owned by the CETI Corporation in Texas.

In case an individual is still committed to bringing a revolutionary "green product" to the market, the U.S. government, with its bedfellow corporate America , holds one last trump card. A little-known law called the Invention Secrecy Act of 1951 enables the U.S. Patent Office to block the issuance of a patent when it believes the technology could "be detrimental to the national security." An inventor is sometimes turned down for unknown reasons but nevertheless issued a "secrecy order." If the inventor strays from secrecy, they must swear to secrecy the people they informed, or send the patent office the name, address, and other information of the people they told. There could be a variety of motives at work with this tactic, whether it be that the patent office is confiscating the idea because of its potential governmental importance, sheltering big money-making industries from potential loss, or giving corporations an additional advantage in any legal battles that might arise from competing patents.

An inventor has little chance of recovering any of his or her financial investment once a secrecy order is imposed. It's virtually impossible to determine the full range of inventions that have had or may have a secrecy order imposed under the Invention Secrecy Act of 1951. Once an invention is mandated under the Secrecy Act, the inventor is obligated by law to not even reveal that the invention has been confiscated. An inventor does have the right to go to court in an attempt to have the se ved. If an

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inventor can prove that the invention is public knowledge, then the very notion of keeping it a secret is rendered null and void. However, the strategy for circumventing the potential secrecy order, such as publicizing detailed information about the invention prior to obtaining a patent, opens the door for large corporations to infringe on an invention and can set the stage for costly legal battles.

In the event that a patent is granted , the inventor is vulnerable to expensive legal suits in two basic ways. First, a company can sue the inventor claiming that he or she stole the technology from them. A second course of action for a company is to begin manufacturing and selling the invention using the information supplied in the publicly-published patent application. A company may hire engineers known as “patent busters” who review desirable patented technologies and find ways to make slight changes to the invention or produce the same basic device without infringing on the patent. Even if the company has no intention of producing the product for long (a solar lawn mower for example), it will probably put the original inventor out of business.

In addition to the challenges from the U.S. government, foreign countries that are not legally obligated to abide by the U.S. patent, such as China , are free to manufacture and sell the invention outside the U.S.

Seemingly legitimate inventors and scientists often butt heads with the USPTO and governmental blockade. Pons and Fleischmann were the two scientists that claimed to have proven the validity of the cold fusion process. The media initially embraced their discovery, but within a matter of weeks, the duo found themselves rejected. The media’s turn-about was based on reports that the scientific community was not able to duplicate their experiments. Despite the heated controversy, Toyota was very interested. They contacted the inventors and provided them with $9 million and a facility in Monaco to continue their research. They have also acquired foreign patents for their cold fusion process.

One further example concerns Joseph Newman , who invented a motor that reportedly produced a greater energy output than the apparent energy input. He attempted to patent the device, but it was rejected by the USPTO because his claims appeared to violate the laws of thermodynamics. This unsuccessful fight to obtain a patent lasted for years and cost Newman over $1 million. What’s more, “Better than 30 physicists, nuclear engineers, electrical engineers and electrical technicians have signed Affidavits attesting to their belief in the validity of Newman’s Motor: an electromagnetic motor/generator that could supply every American’s home, farm, business, automobile and appliance with electrical power at a fraction of the present cost.”

It should come as no surprise that special interests like oil companies and countries whose economies are tied to the oil industry have a vested interest in any energy technologies that would compete with fossil fuel. Currently, many foreign countries and corporations are actively engaged in industrial espionage, which creates a situation that can hamper the successful marketing of any new energy technology. In the [illegible] pecial

interests and the general good of the average citizen, it appears that industry still retains the upper hand. The underlying fact is that our current technology, or lack thereof, reflects our global consciousness. Technology and consciousness evolve together, and as long as the more powerful and dominant forces in government and corporations continue to focus on money rather than higher goals for successful sustainable survival, our lack of foresight can only hurt us.

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