



Department of Defense

DIRECTIVE

NUMBER 5535.02

March 24, 2010

USD(P)

SUBJECT: DoD Patent Security Review Process

- References:
- (a) DoD Directive 5535.2, "Delegations of Authority to the Secretaries of the Military Departments – Inventions and Patents," October 16, 1980 (hereby cancelled)
 - (b) Sections 181-188 of title 35, United States Code
 - (c) Section 906 of Public Law 105-85, "National Defense Authorization Act for Fiscal Year 1998," November 18, 1997
 - (d) DoD 5200.1-R, "Information Security Program," January 14, 1997

1. PURPOSE. This Directive:

- a. Reissues and retitles Reference (a).
- b. Establishes policy and assigns responsibilities for the DoD patent security review process in accordance with Reference (b).
- c. Delegates authority under sections 181, 182, and 184 of Reference (b) to the Secretaries of the Military Departments and the Director, Defense Technology Security Administration (DTSA).
- d. Implements Reference (c).

2. APPLICABILITY. This Directive applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS. These terms and their definitions are for the purpose of this Directive.

a. disclosure of an invention. The publication of a patent application or other written communication, or the grant of a patent, that describes an invention.

b. patent application. An application for a U.S. patent filed with the U.S. Patent and Trademark Office (USPTO).

c. secrecy order. An order by the Commissioner for Patents, USPTO, requiring an inventor that has filed a patent application with the USPTO to keep the invention described therein secret, where the determination to impose such an order requires the Commissioner for Patents to withhold the publication of the patent application or the grant of a patent therefore while the order remains in effect.

d. U.S. Government property interest. Ownership of all or some rights in the invention by the U.S. Government, including where the U.S. Government is entitled only to the interest of one or more co-inventors.

4. POLICY. It is DoD policy that:

a. Patent security reviews as required by Reference (b) shall be expeditiously and accurately performed by individuals knowledgeable as to whether disclosure of an invention:

(1) Might be detrimental to national security, in cases in which there is a U.S. Government property interest; or

(2) Would be detrimental to national security, in cases in which there is no U.S. Government property interest.

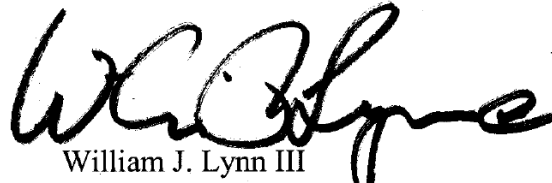
b. The Secretaries of the Military Departments, for patent security reviews assigned to them under the patent security review process, and the Director, DTSA, acting on patent security reviews assigned to the other DoD Components, are delegated the authorities of the Secretary of Defense under sections 181, 182, and 184 of Reference (b) with respect to the secrecy of certain inventions and the withholding of patents.

5. RESPONSIBILITIES. See Enclosure.

6. INFORMATION REQUIREMENTS. Patent applications and other information relating to inventions on which a secrecy order has been imposed shall be evaluated, processed, and handled, as appropriate, in accordance with paragraph C2.6.3 of DoD 5200.1-R (Reference (d)).

7. RELEASABILITY. UNLIMITED. This Directive is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Directive is effective immediately.



William J. Lynn III
Deputy Secretary of Defense

Enclosure
Responsibilities

ENCLOSURE

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P)). The USD(P) shall develop and provide guidance for, and oversee the execution of, the DoD patent security review process.

2. DIRECTOR, DTSA. The Director, DTSA, under the authority, direction, and control of the USD(P), in addition to the responsibilities in section 3 of this enclosure and in accordance with Reference (c), shall:
 - a. Manage the DoD patent security review process.

 - b. Maintain a database management system to facilitate DoD review of patent applications received from the USPTO.

 - c. Coordinate the periodic update of the Patent Security Category Review List, which is the list of technologies for which DoD Components have requested the opportunity to review for secrecy order recommendations.

 - d. In coordination with the Heads of the DoD Components, develop detailed implementation guidance outlining the patent security review process to be followed by the DoD Components.

 - e. Address any related patent security review process issues within the DoD Components or with the USPTO.

 - f. Implement the authority delegated in paragraph 4.b. above the signature of this Directive.

3. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:
 - a. Review patent applications related to their DoD Component. Determine if disclosure of an invention in which the U.S. Government has a property interest might be detrimental to national security. Notify the Commissioner for Patents and the Director, DTSA, of DoD recommendations for the imposition of secrecy orders.

 - b. Review patent applications (made available for inspection by the Commissioner of Patents) in which the U.S. Government does not have a property interest. Determine if the disclosure of inventions described therein would be detrimental to national security. Notify Director, DTSA, of recommendations for the imposition of secrecy orders.

 - c. Establish Component process and procedures for the security review of patent applications.

- d. Assign responsibilities within their Component for implementing the process and procedures for the security review of patent applications.
- e. Allocate adequate Component staff and resources to review patent applications properly.
- f. Ensure Component security reviews are completed in compliance with prescribed timelines.
- g. Manage secrecy orders imposed by the Commissioner for Patents, USPTO, based on the Component's recommendation, including an annual reevaluation of the continued need for those secrecy orders and support for any litigation involving those secrecy orders.
- h. Promptly inform Director, DTSA, of any issues impacting the patent review process.

4. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments, in addition to the responsibilities outlined in section 3 of this enclosure, shall implement the authorities delegated to them in paragraph 4.b. above the signature of this Directive.