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USPTO FOIA Officer
United States Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450
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UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

May 13, 2016

VIA E-MAIL

Re: *Freedom of Information Act (FOIA) Request No. F-16-00166*

This is in response to your letter of Friday, April 15, 2016, in which you requested, under the Freedom of Information Act, 5 U.S.C. § 552, a copy of:

1. The issue dates of current Invention Secrecy Orders (you may omit any subjects, titles, topics, etc.)
2. The filing dates for patent applications under secrecy orders.
3. A copy of any memos or reports or papers or other analysis of the administration of the Patent Secrecy/Invention Secrecy Order Program

The United States Patent and Trademark Office is providing a spreadsheet on secrecy order activity in response to Item 3. With respect to Items 1 and 2, that information is exempt from disclosure pursuant to Exemption 3 of the FOIA. 5 U.S.C. § 552(b)(3).

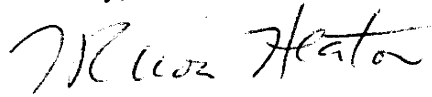
Exemption 3 directs that the FOIA does not apply to any records specifically exempted from disclosure by a separate statute. *Id.* The USPTO is unable to release information regarding unpublished patent applications (and patent applications under secrecy orders are unpublished applications). See 35 U.S.C. § 122. Under the Patent Act:

[Unpublished] applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Director.

35 U.S.C. § 122(a). Section 122(a) has been held to be a statute that exempts information from release to the public under Exemption (b)(3) of the FOIA, 5 U.S.C. § 552(b)(3). See *Leeds v. Quigg*, 720 F. Supp. 193, 194 (D.D.C. 1989), aff'd mem., No. 89-5062 (D.C. Cir. Oct. 24, 1989); *Irons & Sears v. Dann*, 606 F.2d 1215, 1220 (D.C. Cir. 1979), cert. denied, 444 U.S. 1075 (1980). Accordingly, information concerning unpublished patent applications must be withheld under the FOIA.

You have the right to appeal this initial decision to the Deputy General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 30 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons why the information should be made available and why this initial denial is in error. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

Sincerely,

A handwritten signature in black ink that reads "Ricou Heaton". The signature is written in a cursive style with a large initial "R".

Ricou Heaton
USPTO FOIA Officer
Office of General Law

