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Description of document: US Patent and Trademark Office (USPTO) Patent Secrecy/Invention Secrecy Order Program activity, 2005-2015 Requested date: 15-April-2016 Released date: 13-May-2016 Posted date: 02-October-2017 Source of document: **FOIA Request USPTO FOIA Officer** United States Patent and Trademark Office PO Box 1450 Alexandria, VA 22313-1450 Email: FOIARequests@uspto.gov

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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. <u>Id</u>. The USPTO is unable to release information regarding unpublished patent applications (and patent applications under secrecy orders are unpublished applications). <u>See</u> 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[Unpublished] applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the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 Accordingly, information concerning unpublished patent applications must be withheld under the FOIA.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 <u>30</u> calendar days from the date of this letter. <u>See</u> 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,

Million Heaton

Ricou Heaton USPTO FOIA Officer Office of General Law

ACTIVITY	FY05		FY06		FY07		FY08		FY09		FY10		FY11	
New Secrecy Orders	106		108		128		68		103		86			
SO's rescinded	76		81		68		47		45		32			
Total SO's in effect, end of period	4915		4942		5002		5023		5081		5135			
Sponsoring Agencies for new SO's														
ASPAB	23	21.7%	3	2.8%	10	7.8%	10	14.7%	21	20.4%	18	20.9%		0.0%
ARMY	14	13.2%	2	1.9%	22	17.2%	8	11.8%	9	8.7%	12	14.0%		0.0%
NAVY	8	7.5%	36	33.3%	28	21.9%	8	11.8%	39	37.9%	35	40.7%		0.0%
AF	46	43.4%	40	37.0%	45	35.2%	20	29.4%	21	20.4%	13	15.1%		0.0%
DOE	6	5.7%	7	6.5%	0	0.0%	2	2.9%	0	0.0%	1	1.2%		0.0%
NSA	9	8.5%	20	18.5%	21	16.4%	20	29.4%	12	11.7%	6	7.0%		0.0%
DTRA					2	1.6%	0	0.0%	1	1.0%	1	1.2%		0.0%
NIH	0	0.0%	0	0.0%	0	0.0%	0	0.0%		0.0%	0	0.0%		0.0%
New DOD SO's imposed by Type														
DOD Type 1 (export control)	11	10.4%	19	17.6%	15	11.7%	21	30.9%	41	39.8%	31	36.0%		0.0%
DOD Type 2 (classified/classifiable)	42	39.6%	52	48.1%	68	53.1%	25	36.8%	24	23.3%	19	22.1%		0.0%
DOD Type 2 (foreign PSA)	24	22.6%	3	2.8%	11	8.6%	10	14.7%	23	22.3%	19	22.1%		0.0%
DOD Type 3	23	21.7%	27	25.0%	34	26.6%	10	14.7%	15	14.6%	16	18.6%		0.0%
New Non-DOD SO's imposed (DOE,NASA)	6	5.7%	7	6.5%	0	0.0%	2	2.9%		0.0%	1	1.2%		0.0%
John Doe SO's	<u>32</u>		<u>29</u>		<u>53</u>		<u>22</u>		<u>21</u>		<u>26</u>			

ACTIVITY	FY10		FY11		FY12		FY13		FY14		FY15	
New Secrecy Orders	86		143		98		139		97		95	
SO's rescinded	32		37		18		21		22		36	
Total SO's in effect, end of period	5135		5241		5327		5445		5520		5579	
Sponsoring Agencies for new SO's												
Foreign Origin	18	20.9%	33	23.1%	14	14.3%	12	8.6%	5	5.2%	10	10.5%
ARMY	12	14.0%	19	13.3%	33	33.7%	2	1.4%	13	13.4%	5	5.3%
NAVY	35	40.7%	41	28.7%	29	29.6%	68	48.9%	43	44.3%	30	31.6%
AF	13	15.1%	10	7.0%	13	13.3%	11	7.9%	6	6.2%	45	47.4%
DOE	1	1.2%	15	10.5%	0	0.0%	29	20.9%	15	15.5%	0	0.0%
NSA	6	7.0%	25	17.5%	9	9.2%	11	7.9%	6	6.2%	4	4.2%
DTSA	1	1.2%		0.0%	0	0.0%	1	0.7%	6	6.2%	0	0.0%
NASA, DARPA	0	0.0%	0	0.0%	0	0.0%	5	3.6%	3	3.1%	1	1.1%
New DOD SO's imposed by Type												
DOD Type 1 (export control)	31	36.0%	33	23.1%	27	27.6%	66	47.5%	42	43.3%	33	34.7%
DOD Type 2 (classified/classifiable)	19	22.1%	41	28.7%	18	18.4%	21	15.1%	9	9.3%	34	35.8%
DOD Type 2 (foreign PSA)	19	22.1%	33	23.1%	13	13.3%	12	8.6%	11	11.3%	9	9.5%
DOD Type 3	16	18.6%	21	14.7%	40	40.8%	6	4.3%	18	18.6%	19	20.0%
New Non-DOD SO's imposed (DOE,NASA)	1	1.2%	15	10.5%	0	0.0%	34	24.5%	17	17.5%	0	0.0%
John Doe SO's	<u>26</u>		<u>11</u>		<u>11</u>		<u>21</u>		<u>11</u>		<u>15</u>	