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Description of document: List of petitions filed with the United States Patent and Trademark Office (USPTO) for rescission or removal of a patent secrecy order, 2005-2010

Requested date: 24-September-2012

Released date: 18-October-2012

Posted date: 17-December-2012

Title of document: Petitions to Rescind from calendar year 2005 to 2010

Source of document: USPTO FOIA Officer
United States Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450
Email: efoia@uspto.gov

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UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

October 18, 2012

VIA U.S. MAIL

RE: *Freedom of Information Act Request No. F-12-00235*

The United States Patent and Trademark Office (USPTO) FOIA Office is in receipt of your e-mail received September 24, 2012, in which you requested, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, copies of:

Each petition filed with the USPTO from calendar years 2005 through 2010, inclusive, for rescission or removal of a patent secrecy order.

The USPTO has identified documents that are responsive to your request. However, some of the responsive records are not releasable as they pertain to unpublished patent information. For the records that are releasable, we have enclosed a one page document listing the file numbers and filing dates for petitions to rescind secrecy orders filed during the time period you requested. Copies of these petitions are retrievable in our Patent Application Information Retrieval (PAIR) system. Please visit <http://portal.uspto.gov/external/portal/pair> to retrieve the petitions. If, for any reason, you cannot access this information in PAIR, you can order the files by calling the Patent Electronic Business Center at 1-866-217-9197.

Some petitions responsive to your request are withheld in full pursuant to Exemption (b)(3) of the FOIA. Exemption (b)(3) directs that FOIA does not apply to any records specifically exempted from disclosure by a separate statute. 5 U.S.C. § 552(b)(3). The USPTO is unable to release information regarding particular unpublished patents that may be responsive to your request pursuant to the Patent Act. See 35 U.S.C. § 122. Under the Patent Act:

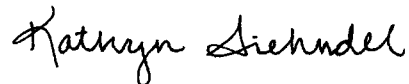
[Unpublished] applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be 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 Irons & Sears v. Dann, 606 F.2d 1215, 1220 (D.C. Cir. 1979), cert. denied, 444 U.S. 1075 (1980); Leeds v. Quigg, 720 F. Supp. 193, 194 (D.D.C. 1989), aff'd mem., No. 89-5062 (D.C. Cir. Oct. 24, 1989). Accordingly, information concerning unpublished patents is exempt from release under the FOIA. If and when these applications are made public, the petitions for rescission or removal will be available in the public PAIR file wrapper.

The processing fee for this FOIA request has been waived. See 37 C.F.R. § 102.11(c)(1)(iv).

The withholding under Exemption (b)(3) constitutes a partial denial of your request for records under the FOIA. The undersigned is the denying official. You have the right to appeal this initial decision to the 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 cursive script that reads "Kathryn Siehndel".

Kathryn Siehndel
USPTO FOIA Officer
Office of General Law

Enclosure

Petitions to Rescind from calendar year 2005 to 2010

Petitions Available (published or patented)

<u>Serial #</u>	<u>Date Petition filed</u>	<u>Pat/Pub number</u>
11228247	09/13/06	Patent 7391356
11869676	11/17/06	Patent 7386026
PCT/US06/027416 07/17/07		
11454091	12/13/07	PGpub 20110070460
11425663	12/20/07	PGpub 20080093418
09545407	1/25/08	Patent 7952511
07683016	06/23/08	Patent 8132494
09954126	10/2/09	Patent 7849695
11713012	4/21/10	PGPub 20120017754
11787423	05/24/10	Patent 8004816