

The Manufacturing Policy Project

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To: SecrecyOrder.Comments@USPTO.gov.

Attached is a paper titled, "Foreign Filing Licensing and Patent Application Publication: A Risk to National Economic Security? It is submitted in response to the Notice of Request for comments on secrecy orders and national economic security issues.

In the tradition of George F. Kennan's Article X in the July 1947 edition of **Foreign Affairs**, this paper is attributed to "Anonymous." The back story to this paper is that in 2008 with the shift of Administration's I asked a well-known high-tech company to sponsor research that became this paper. Anonymous is in reality several co-authors, all of whom were senior ex-officials of the U.S. Patent Office. Neither the sponsor nor the authors wished to be identified, just as George Kennan wished to remain anonymous in 1947.

As Kennan had something important to say on a vital national policy, so too does Anonymous. The authors' key point is:

Especially in these times of economic crisis, our economic security is just as vitally important as our national security. The protection of this country's innovations from unfair foreign exploitation must be of paramount importance to the incoming Administration.

One step in better protecting our country's innovations is to fix a material weakness in our system of controlling the export of technology. The USPTO should evaluate its procedures and legal authority that protect our country's innovations, especially the USPTO's practices and procedures in the granting licenses to file patent applications abroad and in the publishing of patent applications for technologies subject to export controls.

Anonymous makes five recommendations in this paper:

1. The USPTO and the agencies involved in screening patent applications for national security risks should create a comprehensive, unified package of criteria used to evaluate the national security implications of patentable technologies. A declassified version of the criteria should be made publicly available.
2. The USPTO and the agencies involved in controlling exports should create a comprehensive, unified package of criteria to evaluate the economic security implications of patentable technologies. A declassified version of the criteria should be made publicly available.
3. The USPTO should evaluate its procedures and legal authority to screen applications for foreign filing licenses that implicate economic security concerns.
4. The USPTO should propose legislation and should promulgate rules that would modify the screening and publication of patent applications to better protect our economic security.
5. The USPTO should make more transparent its processes of screening patent applications for national security and economic security concerns, including publishing statistics on secrecy orders and foreign filing licenses.

The current patent publication policies of the USPTO, which are mandated by Congress, have created a fundamental, and almost totally unexamined, threat to U.S. national and economic security. Correcting this flaw in the system merits oversight and guidance from the Committees of Congress charged with appropriations and national security responsibilities.

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