Intellectual Property in UAP-Derived Technology: Secrecy Orders, Government Use, and Patentability

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Key points

- The Invention Secrecy Act lets defense agencies keep patent applications secret, renewable yearly; 6,543 orders were in effect at the end of FY2025.
- Inventors may claim compensation for damage caused by an order and for government use (35 U.S.C. §183), but must prove damage tied to the order itself (*Linick*), and classified-use claims face the state secrets privilege (*Clift*).
- The government may use any patented invention, with compensation in the Court of Federal Claims (28 U.S.C. §1498); classified-use cases can end on privilege grounds (*Geospatial*).
- Secrecy-order delay extends the patent term (35 U.S.C. §154(b)(1)(C)(ii)); unlicensed foreign filing can cost the U.S. patent.
- Whether NHI-derived technology can be patented at all is treated in Issue E6.

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1. Summary

Patent law intersects with UAP matters in four ways:

1. **Secrecy orders.** Under the Invention Secrecy Act, 35 U.S.C. §§181-188, the Patent and Trademark Office must withhold a patent and order an application kept secret when a defense agency determines publication would be detrimental to national security. Orders last one year and are renewable. According to PTO figures compiled by the Federation of American Scientists, 6,543 orders were in effect at the end of FY2025 (up from 5,976 at the end of FY2021); 102 new orders were imposed in FY2025 after an unusual 356 in FY2024, and 18 of the FY2025 orders were "John Doe" orders on private inventors. Applications on advanced propulsion, energy, materials, and sensing are the kinds most likely to be ordered secret.
2. **Compensation.** An applicant whose application is placed under secrecy may claim compensation for damage caused by the order and for government use of the invention, first from the agency and then in the Court of Federal Claims (or a district court for some

claims). 35 U.S.C. §183. Recoveries have been modest, and claims involving classified technology face the state secrets privilege. *Clift v. United States*, 808 F. Supp. 101 (D. Conn. 1991) (claim by holder of a cryptographic device patent dismissed because the privilege barred discovery of the government's devices).

3. **Government use.** The United States may use any patented invention; the patent owner's remedy is "reasonable and entire compensation" in the Court of Federal Claims, 28 U.S.C. §1498. Litigation over classified uses may be dismissed on privilege grounds: *Geospatial Technology Associates v. United States*, 2026 WL 2253842 (Fed. Cl. 2026), appeal filed (Fed. Cir. Sept. 14, 2026) (dismissed after ten years because the government could not defend obviousness without privileged information).

4. **Patentability of NHI-derived technology.** Reverse-engineered features of a non-human artifact raise questions of inventorship (only natural persons are inventors, *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022)), prior art (is an existing artifact "available to the public"?), and enablement.

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2. Secrecy orders

- **Process.** The USPTO refers applications to defense agencies (DoD, DOE, and others) under 35 U.S.C. §181; if an agency head determines disclosure would be detrimental to national security, the Commissioner orders the invention kept secret and withholds the patent for one year, renewable. Orders bar publication and filing abroad (§184 foreign filing license); violation can result in abandonment and criminal penalties (§§182, 186).
- **Who is affected.** Orders reach privately funded inventions; FAS reports dozens of "John Doe" orders on private inventors each year.
- **Review.** The applicant may petition the Secretary of Commerce for rescission or modification (37 C.F.R. §5.4: the petition, in duplicate, must recite facts rendering the order ineffectual or futile (for example, prior publications or patents, with copies), and identify any government contract under which the subject matter was developed; appeal lies to the Secretary of Commerce).
- **Compensation (§183).** The owner may apply to the agency that caused the order for compensation for damage caused by the order and for government use, within the statutory period (from the notice of allowability or until six years after the patent issues); if dissatisfied, sue in the Court of Federal Claims; the right to compensation for use begins on first government use. Federal employees who made the invention while employed are excluded. The case law:
  - *Constant v. United States*, 617 F.2d 239 (Ct. Cl. 1980): an inventor whose application was under a secrecy order for a time may sue even though the patent later issued without delay caused by the order; an allegation that the order kept the inventor from financing or marketing the invention states a claim; and the inventor need not first ask the Commissioner for permission to disclose to prospective partners.

- *Hornback v. United States*, 601 F.3d 1382 (Fed. Cir. 2010): the Act gives no cause of action for government use after the patent issues; that claim lies, if at all, under 28 U.S.C. §1498.
- *Linick v. United States*, 104 Fed. Cl. 319 (2012): on a $2.5 million claim arising from secrecy orders on three munitions applications, the court held that the owner had failed to establish damages caused by the orders. The case shows the proof problem: lost licensing or sales must be tied to the order itself.
- *Damnjanovic v. U.S. Dep't of the Air Force*, 135 F. Supp. 3d 601 (E.D. Mich. 2015): inventors stated a claim for compensation under the Act; a secrecy order is not a Fifth Amendment taking; the inventors lacked standing for a First Amendment declaration; and the government need not issue separate regulations to implement the compensation provision.
- *Juliet Marine Systems, Inc. v. United States*, 2017 WL 1193702 (Fed. Cl. Mar. 31, 2017) (order): because §183 lets the government plead any defense available under §1498, it may assert patent invalidity in a secrecy-order damages case, at least as bearing on the invention's value; the court doubted invalidity could be a complete defense, since damages may accrue before a patent issues.
- *Halpern v. United States*, 258 F.2d 36 (2d Cir. 1958): an inventor's suit for compensation under the Act could proceed, with the court using in camera procedures to protect the secret subject matter. It is the oldest model for trying a secrecy-order case without disclosing the invention.

- **Patent term.** If issuance of a patent is delayed by a secrecy order, the term is extended day for day for the delay (35 U.S.C. §154(b)(1)(C)(ii)), so the order does not consume the patent's life.
- **Foreign filing.** An applicant who files abroad without a foreign filing license risks the U.S. patent (35 U.S.C. §185). A filing made through error and without deceptive intent can be cured by a petition for a retroactive license listing each country, the dates, and an explanation of how the error occurred (§184; 37 C.F.R. §5.25). Applicants in UAP-adjacent fields should obtain the license before any foreign filing.
- **State secrets.** *Clift* shows that a compensation claim can be dismissed if proving government use requires classified information about government devices.

3. Government use under §1498

- The United States is liable for "reasonable and entire compensation" when it uses a patented invention or one is used by a contractor "for the Government and with the authorization or consent of the Government." 28 U.S.C. §1498(a). The owner cannot enjoin the use.
- Contractors performing government work are shielded from infringement suits when §1498 applies.
- Classified use cases face privilege-based dismissal (*Geospatial*; see Issue A1).

4. Patenting technology derived from NHI material

Issue E6 now treats this question in full (inventorship, novelty, eligibility, consequences of false claims, ownership, foreign law, and a model statute). The points below are a summary.

- **Inventorship.** Only natural persons can be inventors (*Thaler v. Vidal*). A human who conceives an invention while studying an artifact can be an inventor; a design copied from an artifact may not be the human's conception.
- **Prior art.** A recovered artifact kept secret is not "available to the public" and is not prior art under 35 U.S.C. §102(a)(1). After disclosure, a publicly described artifact could be prior art for later applications, which creates a race to file. Grace periods (§102(b)) apply only to the inventor's own disclosures.
- **Derivation.** If the government or contractor team derived the invention from an artifact, questions of who invented it (and whether the "invention" is simply a description of something found) arise.
- **Enablement and written description** (§112) require the application to teach how to make and use the invention; if the underlying physics is not understood, enablement may fail.
- **Government rights.** Inventions made under government contracts are subject to Bayh-Dole (35 U.S.C. §§200- 212) or the contract's patent rights clause; the government receives at least a license and may take title if the contractor fails to disclose and elect.
- **Trade secrets.** Contractors may protect know-how as trade secrets (Defend Trade Secrets Act, 18 U.S.C. §1836), but classified information cannot be the subject of a private trade secret claim against the government without facing privilege issues, and disclosure statutes (H.R. 8800 §1767) could override private rights subject to compensation (Issue E1).
- **Intellectual property is no title to the being.** A contractor's patents or trade secrets in information learned from a living non-human being give it rights in the information, and none in the being. A claim that the being is the contractor's property, or that holding it protects trade secrets, is the kind of assertion a habeas return must justify (Issue F1; Form F1-2), and the custodian's own filings about what it derived from the being may become evidence of the custody.

4.1 Trade secrets in government hands and whistleblowers

Technical data a contractor gives the government is protected against release by the Trade Secrets Act (18 U.S.C. §1905) and, in FOIA cases, by Exemption 4 (Issue B1). A contractor can sue to block a proposed release (*Chrysler Corp. v. Brown*, 441 U.S. 281 (1979)). On the other side, an employee who reports suspected illegality to a government official or a lawyer, in confidence, is immune from trade secret liability for that disclosure (18 U.S.C. §1833(b); Issue C1), which answers contractor NDAs that treat UAP program information as proprietary.

5. Practice points

- For inventors under secrecy orders: calendar renewal dates; file §183 claims within the statutory period; document damages (lost licensing, foreign filing opportunities); seek rescission when technology becomes public.
- For contractors: review patent rights clauses; disclose subject inventions; consider whether UAP-derived inventions were "subject inventions" under federal funding.
- After disclosure: file promptly on human-conceived improvements; assess prior art created by public disclosure of artifacts.