

Form E6-3. Model Statute: Patents and Technology Derived from Non-Human Intelligence

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Use. [Issue E6](#) concludes that current law already bars a human from patenting a design conceived by a non-human intelligence, but that the rule depends on classified facts, invites a filing race before disclosure, and says nothing about public access to technology the government has studied. This model provision (1) requires a sworn provenance statement modeled on the Atomic Energy Act's patent provision (42 U.S.C. §2182), (2) codifies the bar on patents for NHI-derived subject matter while preserving patents on human improvements, (3) gives the government a closed procedure to object, (4) dedicates released NHI technology to the public with compulsory licensing for blocking patents, and (5) requires reporting to Congress.

When to use. Legislators drafting patent rules for NHI-derived technology. **Not for:** Individual applications ([Form E6-1](#)).

Deadlines. None.

[]TH CONGRESS
[] SESSION

H. R. []

To amend title 35, United States Code, to provide for the treatment of inventions
derived from non-human intelligence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

[MONTH DAY], [YEAR]

[MR./MS.] (for [himself/herself and]) introduced the
following bill; which was referred to the Committee on []

A BILL

To amend title 35, United States Code, to provide for the
treatment of inventions derived from non-human
intelligence, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the
2 United States of America in Congress assembled,

3 **CHAPTER 19. TECHNOLOGY DERIVED FROM NON-HUMAN**
4 **INTELLIGENCE**

5 **§ 191. DEFINITIONS.**

6 In this chapter:

7 (1) NON-HUMAN INTELLIGENCE.—The term “non-human
8 intelligence” means any sentient intelligent non-human lifeform
9 regardless of nature or ultimate origin that may be presumed
10 responsible for unidentified anomalous phenomena or of which the
11 Federal Government has become aware.

12 (2) TECHNOLOGY OF UNKNOWN ORIGIN.—The term
13 “technology of unknown origin” means any materials or meta-
14 materials, ejecta, crash debris, mechanisms, machinery, equipment,
15 assemblies or sub-assemblies, engineering models or processes,
16 damaged or intact aerospace vehicles, and damaged or intact ocean-
17 surface and undersea craft associated with unidentified anomalous
18 phenomena or incorporating science and technology that lacks prosaic
19 attribution or known means of human manufacture.

20 (3) NHI-DERIVED SUBJECT MATTER.—The term “NHI-
21 derived subject matter” means subject matter that is embodied in a
22 technology of unknown origin, or was learned from a technology of
23 unknown origin or from a record describing one, or is attributed by the
24 applicant or an inventor to communication from a non-human
25 intelligence, to the extent that the subject matter was not conceived by
26 a named inventor.

1 (4) HUMAN IMPROVEMENT.—The term “human
2 improvement” means subject matter conceived by one or more natural
3 persons named as inventors, including a new use, method of
4 manufacture, or combination, whether or not those persons studied or
5 used a technology of unknown origin in conceiving it.

6 **§ 192. PROVENANCE STATEMENT.**

7 (a) REQUIREMENT.—No patent shall issue on an application that
8 claims subject matter in a class designated by the Director under subsection
9 (c) unless the applicant files, with the application or within 30 days after the
10 Director’s request, a statement under oath setting forth the full facts
11 surrounding the conception of each claimed invention, including whether any
12 inventor had access to a technology of unknown origin or to a record
13 describing one, and whether any claimed subject matter is attributed to
14 communication from a non-human intelligence.

15 (b) CLASSIFIED FACTS.—A statement that would require classified
16 information shall be filed through the procedure the Director and the
17 Secretary of Defense establish under section 181, and shall be available to
18 the examiner and to the Government agencies specified in that procedure.

19 (c) DESIGNATED CLASSES.—The Director, in consultation with the
20 Secretary of Defense, the Secretary of Energy, the Administrator of the
21 National Aeronautics and Space Administration, and the Director of National
22 Intelligence, shall designate by notice in the Federal Register the patent
23 classes to which subsection (a) applies, and shall review the designations
24 annually.

25 (d) PENALTIES.—A willful false statement under this section is
26 punishable under section 1001 of title 18.

1 **§ 193. NHI-DERIVED SUBJECT MATTER NOT PATENTABLE.**

2 (a) BAR.—A claim is not patentable, and a patent claim is invalid, to
3 the extent that it claims NHI-derived subject matter.

4 (b) HUMAN IMPROVEMENTS.—Subsection (a) does not bar a claim
5 limited to a human improvement. The applicant has the burden of showing,
6 by a preponderance of the evidence, that each limitation relied on for
7 patentability is a human improvement.

8 (c) NO CORRECTION.—Section 256 does not apply to cure invalidity
9 under subsection (a).

10 (d) DEFENSE.—Invalidity under this section is a defense under
11 section 282(b) and a ground for post-grant review under section 321 and inter
12 partes review under section 311.

13 **§ 194. GOVERNMENT OBJECTION.**

14 (a) OBJECTION.—The head of any department or agency that holds or
15 has studied a technology of unknown origin may file with the Director, at any
16 time before issuance or within two years after issuance, an objection that an
17 application or patent claims NHI-derived subject matter.

18 (b) PROCEEDING.—The Director shall decide the objection on the
19 record, which may include classified information reviewed ex parte by an
20 administrative patent judge holding the necessary clearance. The applicant
21 or patent owner shall receive an unclassified summary sufficient to respond
22 and may be represented by counsel holding a clearance at the appropriate
23 level.

24 (c) REVIEW.—A decision under this section is reviewable by the
25 United States Court of Appeals for the Federal Circuit, which may review
26 classified portions of the record ex parte and in camera.

1 **§ 195. PUBLIC DEDICATION AND LICENSING.**

2 (a) DEDICATION.—NHI-derived subject matter that the Federal
3 Government discloses to the public under any provision of law is dedicated to
4 the public and may be practiced by any person, subject to export control and
5 safety laws.

6 (b) COMPULSORY LICENSE.—If a patent on a human improvement
7 prevents the practice of dedicated subject matter for the production of energy
8 or for the prevention or treatment of disease, the Director, on petition and
9 after notice and hearing, may grant a nonexclusive license to practice the
10 patented improvement for those purposes on terms that provide reasonable
11 compensation to the patent owner.

12 (c) GOVERNMENT LICENSE.—The United States shall have a
13 nonexclusive, nontransferable, irrevocable, paid-up license to practice any
14 human improvement conceived through access to a technology of unknown
15 origin held by or for the Federal Government.

16 **§ 196. SECRECY ORDERS AND REPORTS.**

17 (a) REPORTS.—The Director shall report to the congressional defense
18 and intelligence committees and the Committees on the Judiciary, not later
19 than 90 days after the end of each fiscal year, the number of applications in
20 classes designated under section 192(c), the number subject to secrecy orders
21 under section 181, the number of objections under section 194 and their
22 disposition, and the number of licenses granted under section 195.

23 (b) FORM.—The report shall be submitted in unclassified form, which
24 may include a classified annex.

1 **§ 197. RELATION TO OTHER LAW.**

2 Nothing in this chapter limits sections 181 through 188 of this title,
3 section 1498 of title 28, chapter 18 of title 35, section 20135 of title 51, or
4 sections 151 and 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2181, 2182).

Drafting notes

- **Model.** Section 192 follows 42 U.S.C. §2182, which since 1954 has required “a statement under oath setting forth the full facts surrounding the making or conception” of inventions useful in atomic energy. Section 193 follows the structure of §2181(a), which bars patents on inventions useful solely in atomic weapons, but is narrower: it bars only what the human did not conceive.
- **Burden in §193(b).** Current law presumes validity and requires a challenger to prove invalidity by clear and convincing evidence (35 U.S.C. §282(a)). Shifting the burden for designated classes responds to the fact that the evidence of provenance is usually in the applicant’s or the government’s hands.
- **Definitions.** Paragraphs (1) and (2) of §191 track H.R. 8800 (EH) §1773. Confirm the final enacted definitions if a UAP disclosure act passes.
- **Due process in §194.** The ex parte classified procedure is modeled on CIPA and the protective orders discussed in [Issue A1](#). Expect challenges; the unclassified-summary and cleared-counsel provisions are included to answer them.
- **Takings.** Applying §193 to already-issued patents could be argued to take property. Patents are public franchises subject to administrative review (*Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 584 U.S. 325 (2018)), and §193 codifies a rule that existing law already applies ([Issue E6](#), §2), which reduces the risk.
- Related: [Issue E6](#), E1, E2, D6, A3; Forms E6-1, E6-2, D6-1.