

118TH CONGRESS
1ST SESSION

H. R. 5475

To amend title 35, United State Code, to require the Director of the United States Patent and Trademark Office to require disclosures in patent applications regarding ties to the People’s Republic of China and other foreign adversaries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2023

Mr. FITZGERALD (for himself, Mr. ISSA, Mr. LUETKEMEYER, Mr. GALLAGHER, Mr. LAMBORN, Mr. FRY, and Mr. MORAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 35, United State Code, to require the Director of the United States Patent and Trademark Office to require disclosures in patent applications regarding ties to the People’s Republic of China and other foreign adversaries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prohibiting Adversarial
5 Patents Act of 2023”.

1 **SEC. 2. DISCLOSURES IN PATENT APPLICATIONS REGARD-**
2 **ING TIES TO THE PEOPLE’S REPUBLIC OF**
3 **CHINA AND OTHER FOREIGN ADVERSARIES.**

4 (a) DISCLOSURES IN PATENT APPLICATIONS RE-
5 GARDING TIES TO PEOPLE’S REPUBLIC OF CHINA AND
6 OTHER FOREIGN ADVERSARIES.—Section 111 of title 35,
7 United States Code, is amended by adding at the end the
8 following:

9 “(d) DISCLOSURES REGARDING TIES TO PEOPLE’S
10 REPUBLIC OF CHINA AND OTHER FOREIGN COUN-
11 TRIES.—

12 “(1) DISCLOSURE.—The Director shall require
13 each person submitting an application for patent
14 under subsection (a), or a provisional application for
15 a patent under subsection (b), to disclose in the ap-
16 plication the identity of each person with an owner-
17 ship interest in the invention being claimed that in
18 the five years before submitting such application re-
19 ceived funding from—

20 “(A) a state-affiliated research fund associ-
21 ated with a foreign adversary; or

22 “(B) a talent recruitment program associ-
23 ated with a foreign adversary.

24 “(2) REQUEST FOR TRUE COPIES.—

25 “(A) IN GENERAL.—After reviewing any
26 disclosure made by an applicant in accordance

1 with paragraph (1), the Director may (as the
2 Director determines appropriate) request such
3 applicant provide true copies of any contractual
4 or financial obligation or other agreement specific to such disclosure.
5

6 “(B) CONFIDENTIALITY.—Any true copy
7 provided to the Director under subparagraph
8 (A) may be kept confidential and separate from
9 the file wrapper of the patent application.

10 “(3) EXEMPTION.—Any applicant who is a
11 small business concern and is subject to disclosures
12 pursuant to subsection (g) or (o) of section 9 of the
13 Small Business Act (15 U.S.C. 638) shall be exempt
14 from making the disclosure required by paragraph
15 (1).

16 “(4) FOREIGN ADVERSARY DEFINED.—In this
17 subsection, the term ‘foreign adversary’ means—

18 “(A) the People’s Republic of China, including all Special Administrative Regions;

20 “(B) the Republic of Cuba;

21 “(C) the Islamic Republic of Iran;

22 “(D) the Democratic People’s Republic of
23 Korea;

24 “(E) the Russian Federation; and

1 “(F) the Bolivarian Republic of Venezuela
2 during any period of time during which
3 Nicolás Maduro is President of the Republic.”.

4 (b) PATENT BAR FOR PERSONS WHO POSE A
5 THREAT TO NATIONAL SECURITY.—

6 (1) IN GENERAL.—Chapter 10 of title 35,
7 United States Code, is amended by adding at the
8 end the following:

9 “§ 106. Patent bar for persons who pose a threat to
10 national security.

11 “Notwithstanding any other provision of law—

12 “(1) a person shall not receive a United States
13 patent for an invention if that person (or any sub-
14 sidiary, affiliate, successor, assign, legal representa-
15 tive, or privy of such person)—

16 “(A) is identified, pursuant to section
17 744.16 of title 15, Code of Federal Regulations
18 (or any successor regulation), as a person rea-
19 sonably believed to be involved, or to pose a sig-
20 nificant risk of being or becoming involved, in
21 activities contrary to the national security or
22 foreign policy interests of the United States;

23 “(B) is an entity on the Non-SDN Chinese
24 Military-Industrial Complex Companies List
25 (NS-CMIC List) maintained by the Office of

1 Foreign Assets Control of the Department of
2 the Treasury under Executive Order 14032 (86
3 Fed. Reg. 30145; relating to addressing the
4 threat from securities investments that finance
5 certain companies of the People’s Republic of
6 China), or any successor order;

7 “(C) is identified as a Chinese military
8 company in the most recent annual report sub-
9 mitted pursuant to section 1260H of the Wil-
10 liam M. (Mac) Thornberry National Defense
11 Authorization Act for Fiscal Year 2021 (Public
12 Law 116–283; 10 U.S.C. 113 note); or

13 “(D) produces or provides communications
14 equipment or service on the list published by
15 the Federal Communications Commission under
16 section 2(a) of the Secure and Trusted Commu-
17 nications Networks Act of 2019 (47 U.S.C.
18 1601(a)); and

19 “(2) any United States patent issued to a per-
20 son described under paragraph (1) shall be unen-
21 forceable.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions for chapter 10 of title 35, United States Code,

1 is amended by inserting after the item relating to
2 section 105 the following:

“106. Patent bar for persons who pose a threat to national security.”.

