

To the office of U.S. Representative Scott Fitzgerald

Re: HR 9143 (119th Congress), Foreign Adversary Patent Disclosure Act • Latest action (2026-06-04): Referred to the House Committee on the Judiciary.

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Secure American Invention Act of 2025

The measure, as described from the official record: To protect U.S. national security and economic competitiveness by requiring patent applicants to disclose any financial or collaborative ties to the People's Republic of China or other foreign adversaries, so that the USPTO can assess and potentially restrict patents that might enable foreign adversaries.

THE PROPOSAL

This Act protects national security and the integrity of U.S. patents by requiring limited, targeted disclosures of foreign government funding and affiliations only where such ties could create a risk of foreign exploitation of U.S. intellectual property.

Section 1. Disclosure Requirement. An applicant for a U.S. patent must file a Disclosure of Foreign Government Interest (DFGI) if, within the five years preceding the filing, the inventor or assignee received any grant, contract, or salary from a government designated by the Secretary of State as a 'covered foreign adversary' (initially the People's Republic of China, the Russian Federation, the Democratic People's Republic of Korea, and the Islamic Republic of Iran). The DFGI must state the amount, duration, and purpose of the funding, and any obligations to share patent rights with the foreign government. The disclosure is limited to direct funding for the specific invention claimed, not general institutional support.

Section 2. Review and Recourse. The USPTO Director shall review each DFGI for potential national security risk. If the Director determines, based on clear and convincing evidence, that the foreign government retains an ownership or exclusive licensing interest that would substantially harm U.S. economic or national security, the Director may suspend the patent term for up to 10 years or require a binding commitment that the patent will be licensed on a nonexclusive basis to any U.S. entity at reasonable royalty terms. The applicant may appeal any suspension or condition to the Court of Appeals for the Federal Circuit.

Section 3. Scope and Limits. This Act applies only to utility patents (35 U.S.C. § 101). It does not apply to design patents, plant patents, or provisional applications. No disclosure is required for funding from universities, research institutes, or private companies unless the funding originates from a covered foreign government and is specifically tied to the claimed invention. The Director shall issue regulations defining 'directly tied' and 'reasonable royalty' within 180 days of enactment.

Section 4. Sunset and Report. This Act expires on the tenth anniversary of its effective date. The USPTO Director shall report to Congress every two years on the number of DFGIs filed, actions

taken, and any evidence of abuse or evasion. The Comptroller General shall audit the program after year five and recommend whether to reauthorize, narrow, or expand it.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Funding Source	Funding from existing USPTO user fees (37 C.F.R. § 1.21 et seq.), specifically a \$50 surcharge on each utility patent application filed by an entity that files a DFGI. If the surcharge revenue exceeds administrative costs by more than 20%, the excess shall be refunded as a pro-rata reduction in filing fees the following fiscal year.
Funding Amount	No new appropriations; costs absorbed by USPTO fee structure. Estimated \$5 million per year for additional examiners and legal review (within current fee budget).
Sunset Years	10 years
Oversight Body	USPTO Deputy Commissioner for Patent Examination Policy, subject to two-year OIG audit and mandatory GAO review at year five.
Enforcement Mechanism	Willful failure to file a DFGI when required shall be punishable by a civil penalty of up to \$250,000 per violation and any patent resulting from the undisclosed application shall be unenforceable against any U.S. entity or person. Knowingly false statements in a DFGI are subject to 18 U.S.C. § 1001 penalties.
Effective Date	365 days after enactment, to give applicants and the USPTO time to prepare regulations and forms.

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 8 (Patent power: 'promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries')
- Fifth Amendment Due Process Clause (clear notice and clear-and-convincing evidence standard)
- Tenth Amendment (defers to states for regulation of intrastate research collaborations not funded by foreign adversaries)
- Article II, Section 2 (President's foreign affairs power via Secretary of State designation)

Concerns with the measure as written:

- The original may reach beyond Congress's enumerated patent power (Article I, Section 8, Clause 8) by imposing nationality-based restrictions not directly tied to the 'progress of science and useful arts'.
 - Fifth Amendment Due Process concerns if vague terms like 'foreign adversary' lead to arbitrary denial of patent rights without clear standards.
 - Tenth Amendment concern if the bill directly regulates private contractual relationships (e.g., university-industry collaborations) that fall under state police powers.
 - Potential First Amendment issues if disclosure requirements chill academic or scientific speech by forcing researchers to self-censor collaborations.
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WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

Democratic priorities: Protects scientific openness by limiting the definition of 'covered foreign adversary' to clear national security threats (initially just four countries) and requiring 'clear and convincing evidence' before any action; excludes design and plant patents that often cover agriculture and consumer goods where foreign cooperatives produce legitimate innovation.

Republican priorities: Strengthens U.S. competitiveness by preventing foreign adversaries from exploiting U.S. patents for economic espionage; imposes penalties for willful non-disclosure and provides for unenforceability of patents, mirroring common GOP calls for IP enforcement; includes a mandatory sunset and cost constraint through user fees.

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