From: Secretary of the Navy

Subj: INVENTIONS MADE BY DEPARTMENT OF THE NAVY EMPLOYEES

Ref: (a) Executive Order 10096
     (b) Executive Order 10930
     (c) Executive Order 10695
     (d) 15 U.S.C. § 3710d
     (e) 18 U.S.C. § 202
     (f) 5 U.S.C. § 1304, §§ 3371-3376
     (g) 29 U.S.C. § 2101(a)(8)
     (h) 37 C.F.R. Part 501
     (i) 10 U.S.C. § 5022
     (j) SECNAVINST 5430.7R CH-1
     (k) DoD Directive 5535.3 of 21 May 1999

1. Purpose. To implement references (a), (b), (c), and (d) to provide for the administration of a uniform patent policy for the Department of the Navy (DON) with respect to the rights in inventions made by DON employees.

2. Cancellation. SECNAVINST 5870.3C.

3. Definitions. The term employee means any officer or employee, civilian or military, of the DON, including any special Government employee as defined in reference (e) or an individual working for the DON pursuant to the Intergovernmental Personnel Act, reference (f), or a part-time consultant or part-time employee as defined in reference (g).

4. Applicability. This instruction is applicable to any invention made by an employee and to any action taken with respect thereto.

5. Policy and Objective

   a. Reference (a), as amended by references (b) and (c), established a uniform patent policy with respect to inventions made by any Government employee. The Government may, under
certain conditions, obtain the entire right, title, and interest to an invention made by an employee. Provision is made for the retention of certain rights by the employee under other conditions.

b. Reference (d) provides that if an agency which has ownership or the right of ownership to an invention under the Federal Technology Transfer Act of 1986, Public Law 99-502, does not intend to file a patent application or otherwise promote commercialization of an invention, the agency shall allow the inventor, if the inventor is an employee or former employee who made the invention during the course of employment with the Government, to obtain or retain title to the invention. A nonexclusive, nontransferable, irrevocable, paid-up license is reserved by the Government.

c. Reference (h) sets forth a uniform patent policy for rights in inventions made by Government employees and prescribes rules and regulations for implementing and effectuating such policy. Agency responsibilities include the determination of invention, the determination of rights in inventions, and the determination of whether patent protection will be sought in the United States and foreign countries. Each Government agency is required to effectuate the order, including the issuance of necessary regulations which shall not be inconsistent with regulations issued by the Director of the National Institute of Standards and Technology.

6. Responsibilities. Under the provisions of references (i), (j), and (k), the Chief of Naval Research (CNR) is responsible for the encouragement, promotion, planning, initiation, and coordination of Naval research and the supervision, administration, and control of activities within or on behalf of the DON relating to patents, inventions, trademarks, copyrights, royalty payments, and matters connected therewith. The CNR is delegated the authority to supervise, administer, and control the DON invention and computer software licensing programs. In carrying out these agency responsibilities for the DON, the CNR is responsible for and, through authorized representatives, will make the determinations required by reference (h).

7. DON Determination of Rights in and to Inventions

a. The DON determination will be made per reference (h).
b. If the CNR determines that the Government is entitled to obtain title to an invention pursuant to paragraph a and the employee does not appeal, no further review is required.

c. A determination to leave title to an invention with the employee under reference (h) is subject to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes. Where the DON’s insufficient interest in the invention is evidenced by its decision:

   (1) Not to file a patent application;

   (2) To discontinue the prosecution of any patent application;

   (3) Not pay any fee required to maintain any patent in force, or;

   (4) Not to otherwise promote commercialization of the invention, the employee may retain title to the invention or request the return of title to the invention, patent application, or patent. The DON may impose on the employee any one or all of the conditions as provided in reference (h).

d. In the case of a determination under either paragraph (b) or (c) of this section, the DON shall promptly provide the employee with:

   (1) A signed and dated statement of the determination and reasons therefore;

   (2) A copy of reference (h);

   (3) A copy of this instruction; and

   (4) In the case of a determination under paragraph c, the DON shall also notify the employee of any conditions imposed under reference (h).

8. Appeals. Any employee who is aggrieved by a determination of the CNR under paragraph 7 may obtain a review of the determination as provided for in reference (h).
9. **Right to Private Counsel.** Attorneys of the DON represent the Government in proceedings under this instruction. Any employee has a right to private counsel at the employee’s own expense in connection with any determination of the Government’s rights to an invention made by the employee.

10. **Foreign Rights.** Whenever an assignment of the domestic rights is required, the DON will also require an option for the Government to acquire the foreign rights in and to the invention from the employee.

11. **Patent Protection.** The DON will follow the procedures of reference (h) in determining whether or not patent protection shall be sought for an invention coming within the scope of reference (h).

12. **Disclosure of Inventions and Submission of Patent Rights Questionnaire.** In order that the DON can comply with the rules and regulations issued as reference (h), all employees must submit to their local DON Office of Counsel a disclosure of each invention made by them while an employee of the DON and information regarding the making of the invention. Secretary of the Navy (SECNAV) 5870/1, Record and Disclosure of Invention, should be used for disclosing inventions. SECNAV 5870/2, Patent Rights Questionnaire, should be used by employees to submit the information on the making of the invention.


14. **Records Management**

   a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page: [https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx](https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx).

   b. For questions concerning the management of records related to this instruction or the records disposition
schedules, please contact your local Records Manager or the DRMD program office.

THOMAS B. MODLY
Under Secretary of the Navy

Distribution:
Electronic only, via Department of the Navy Issuances website
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