CHAPTER 1

The Patent That Disappeared

"The owner of any patent application on which a secrecy order has been imposed shall have a right to compensation for the damage caused by reason of the order of secrecy."

35 U.S.C. § 183

On a quiet morning in La Jolla, California, Budimir Damnjanović stood at a worktable covered in schematics. A Serbian American engineer who had spent decades thinking carefully about how machines fail and how they might be saved, he was working through a problem that had troubled aviation security experts for years: what happens when a commercial aircraft, carrying hundreds of ordinary passengers, becomes the target of a shoulder-fired heat-seeking missile? The existing answers — flares, lasers, electronic countermeasures — all had weaknesses. Budimir thought he had found something better. Beside him, his wife Desanka reviewed the diagrams. Outside, the Pacific light fell across the California hills. Inside, an idea was becoming an invention.

That invention would eventually be recognized by the United States Patent and Trademark Office as technically sound, legally valid, and worthy of a patent. It would also be seized by the federal government,

sealed from public view, and locked inside a classified administrative process for six years — during which time the technology aged, the market moved on, and the Damnjanovićs found themselves trapped inside a legal paradox that Congress had created in 1951 and never meaningfully reformed. Their story is not a story of failure. It is a story of what happens when the machinery of national security meets the ambitions of private inventors — and the machinery wins.

This chapter tells that story in full. It begins with an invention, moves through a government secrecy order, confronts the legal trap that made compensation nearly impossible, examines the constitutional questions the case raised, and ends where most such stories end: in silence. But it also asks the question that the silence cannot answer — how many stories like this one remain hidden, filed under numbers no one can look up, classified in the name of a security that is never explained?

I. THE SPARK

In the summer of 2007, against the backdrop of mounting concern over shoulder-fired missile attacks on commercial aircraft, Budimir Damnjanović and his wife Desanka were refining an idea that was at once simple and radical: a system capable of spraying a specialized fluid from an aircraft's tail, designed to interfere mechanically with the infrared seekers of incoming heat-seeking missiles.

The concept did not rely on electronic warfare. It did not depend on flares that could misfire or lasers that required precise calibration. Instead, it proposed a high-pressure discharge of non-freezing liquid that would coat and distort a missile's plastic dome seeker head, disrupting its infrared guidance system at the point of detection. The

elegance of the idea lay in its independence. It did not compete with existing countermeasures; it bypassed them.[1]

The Damnjanovićs took the step that defines American inventive ambition: they filed U.S. Patent Application No. 11/881,492 with the United States Patent and Trademark Office on July 28, 2007. Filing required more than inspiration. Fees were paid. Claims were drafted with precision. Diagrams were formalized. Commercialization was envisioned.[2]

The invention, they believed, was not limited to military jets. Its application to commercial aviation — where vulnerability had long been debated but rarely resolved — offered the possibility of broader civilian protection. Investors expressed interest. Conversations began. Foreign patent filings were contemplated to preserve international rights before statutory deadlines elapsed.

For a brief period, the trajectory resembled a familiar national narrative: invent, protect, prosper.

Then scrutiny began.

Under 35 U.S.C. § 181, the United States Patent and Trademark Office routinely screens patent applications for potential national security implications. Applications deemed sensitive may be referred to defense agencies, including branches of the armed forces, for evaluation.[3] The Damnjanović filing — because of its dual-use potential in both military and civilian aircraft — drew such attention.

There was no adversarial hearing. No opportunity to respond to security concerns at that stage. The process operated internally.

Quietly. The application had entered a different channel — one governed not by market forces, but by national security review.

II. THE ORDER

On January 22, 2009 — less than two years after the application had been filed — the United States Patent and Trademark Office issued a secrecy order.

The notice arrived without ceremony. There was no hearing. No opportunity to contest the determination at the moment of issuance. No public explanation accompanied it. The patent application, once part of the ordinary administrative stream of examination, was withdrawn from public view and sealed under the Invention Secrecy Act.

From that point forward, disclosure was no longer a commercial decision. It was a criminal risk.

Under 35 U.S.C. § 186, willful violation of a secrecy order carries penalties of up to $10,000 in fines or two years' imprisonment.[4] What had begun as an inventive enterprise now carried potential penal consequences if discussed beyond authorized channels.

The order did not accuse. It did not explain. It simply restricted.

For years, nothing changed. The application remained in administrative suspension. The marketplace moved. The defense sector evolved. Conversations that might have matured into licensing agreements could not lawfully proceed.

Then, on November 21, 2011 — two years after the secrecy order had been imposed — the USPTO issued a Notice of Allowability. The invention, despite the restrictions, had satisfied the statutory requirements for patentability.[5]

The technical merits were not the obstacle.

Under 35 U.S.C. § 183, this development triggered a statutory pathway. When an invention is withheld under secrecy and later determined patentable, the inventor may seek compensation for damages sustained as a result of the order. In June or July 2012, the Damnjanovićs submitted an administrative claim to the Air Force.[6]

The claim was denied.

In November 2013 — six years after the original filing and four years into the secrecy period — the Air Force renewed the secrecy order for an additional year.[7] The restriction remained in place even as patentability had already been confirmed.

Meanwhile, the external world did not pause. Missile-defense technologies advanced. Infrared countermeasure systems increasingly incorporated adaptive and AI-assisted guidance disruption. What had been a cutting-edge mechanical countermeasure concept in 2007 faced a shifting technological landscape by 2013. The invention did not fail in the marketplace. It waited outside of it.

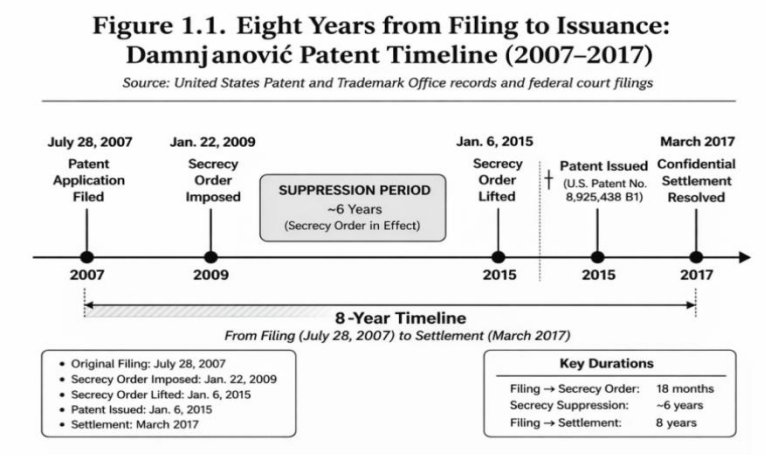

Figure 1.1 — *Eight Years from Filing to Issuance: Damnjanović Patent Timeline (2007–2017).* ***Source:*** *USPTO records and federal court filings.* ***Note:*** *The secrecy order was imposed January 22, 2009 and lifted January 6, 2015 — a suppression period of approximately six years. The full timeline spans eight years from original filing (July 28, 2007) to confidential settlement (March 2017).*

III. THE TRAP

By June 2012, when the Damnjanovićs submitted their administrative claim, the legal terrain revealed a deeper difficulty.

Under 35 U.S.C. § 183, an inventor seeking compensation must demonstrate either governmental use of the invention or measurable economic harm resulting from the secrecy order. The statute contemplates a remedy. It does not presume one.

Ordinarily, establishing economic harm requires evidence: documented licensing negotiations, investor correspondence, foreign filing activity, partnership agreements that failed to materialize.

But the secrecy order itself prohibited disclosure of the invention to potential licensees, foreign patent offices, or commercial partners. The evidentiary pathway required to prove damages depended upon conduct that the order criminalized.

Proving harm required exposure. Exposure was forbidden.

This was not merely administrative inconvenience. It was structural tension embedded within the statutory framework.

Hattem A. Beydoun, Esq., who has represented inventors in secrecy disputes, described the dilemma as a procedural Catch-22. In correspondence dated October 20, 2025, he explained:

"To prove economic loss, you would normally demonstrate commercial value or market interest. But the secrecy order prohibits disclosure to prospective licensees or foreign patent offices. The system demands proof while restricting access to the evidence required to produce it."[8]

On May 14, 2014, the Damnjanovićs filed suit in the United States District Court for the Eastern District of Michigan (Case No. 2:14-cv-11920). Their complaint articulated this contradiction. They alleged that the secrecy orders prevented commercialization while the government "may have benefited from its use or suppression without payment," and they sought just compensation under § 183.[9]

The complaint further alleged that the relevant agencies had failed to promulgate clear procedures governing how damages were to be demonstrated under § 183.[10]

The statute provided a remedy in theory. In practice, access to that remedy proved difficult.

QR Code 1.1 — *Primary legal documents: Damnjanović v. United States Department of the Air Force, Case No. 2:14-cv-11920 (E.D. Mich.). Complaint (May 14, 2014) and Court Opinion on Motion to Dismiss (September 2015). Available in the Evidence Library at breakingsilencepress-web.github.io*

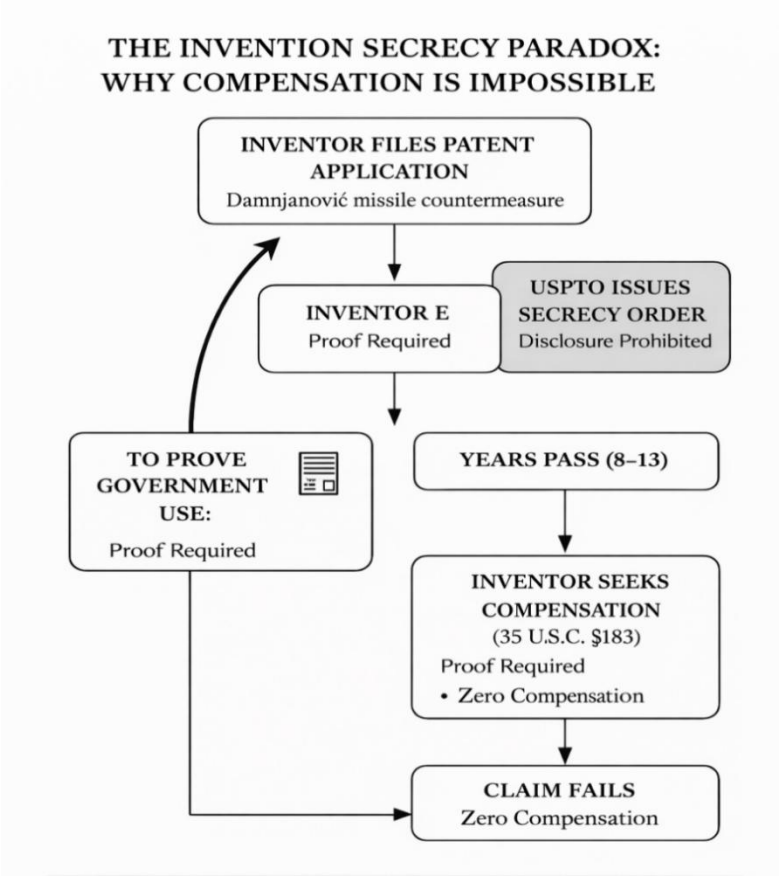

Figure 1.2 — *The Invention Secrecy Catch-22 under 35 U.S.C. § 183.* ***Source:*** *Author's analytical synthesis.* ***Note:*** *Diagram illustrates the structural paradox requiring proof of economic harm while prohibiting disclosure necessary to establish such proof.*

The plaintiffs advanced an additional argument: that the Invention Secrecy Act, as applied in their case, raised constitutional concerns.[11]

IV. THE CONSTITUTIONAL CHALLENGE

At its core, their challenge questioned not only the outcome, but the process.

They alleged that the secrecy order functioned as a prior restraint under the First Amendment. It prohibited disclosure of their own invention at the moment of issuance, without prior judicial review, and attached criminal penalties to any violation. The order required silence first, review later — if review occurred at all.

The plaintiffs also asserted a Fifth Amendment claim. A patent application, they argued, is not merely paperwork; it represents a property interest in a developing innovation. By restricting disclosure and commercialization, the secrecy order effectively deprived them of meaningful economic use during the period of restraint.

In correspondence dated October 20, 2025, Hattem A. Beydoun, Esq., described the constitutional tension in practical terms:

"A secrecy order operates as a government-imposed restriction on speech, backed by criminal penalty, and issued without adversarial process at inception. Unlike voluntary trade secrecy, this is compelled silence."[12]

Regarding property interests, he observed:

"The inventor is prevented from exploiting the invention commercially and, in many cases, from using it privately. The deprivation occurs without a trial or independent adjudication of

necessity. Whether courts ultimately accept this as a taking, the constitutional tension is substantial."[13]

The case did not produce a constitutional ruling. But it exposed a structural question: how far the state may restrict private innovation in the name of national security without contemporaneous judicial oversight.

QR Code 1.2 — *Invention Secrecy Act, 35 U.S.C. §§ 181–188, current statutory text. Federation of American Scientists plain text version and Cornell Law School Legal Information Institute. Available in the Breaking Silence Evidence Library.*

V. THE LITIGATION

The government moved to dismiss, arguing that absent demonstrable governmental use of the invention, no compensation was due.

As litigation progressed, the secrecy order was lifted.

On January 6, 2015 — after approximately six years of suppression — the patent issued as U.S. Patent No. 8,925,438 B1.[14]

QR Code 1.3 — *U.S. Patent No. 8,925,438 B1, Budimir and Desanka Damnjanović, "Countermeasure Technique Using an Appropriate Fluid Spray Against Infrared Heat Seeking Missile," issued January 6, 2015. Available via Google Patents and in the Breaking Silence Evidence Library.*

The issuance marked partial vindication. The invention had satisfied the statutory requirements for patentability. Yet time is not neutral in technology markets.

By 2015, missile-defense systems had evolved. Adaptive and AI-driven countermeasures were increasingly incorporated into defense architecture. No licensing agreements materialized. The lifting of the secrecy order did not restore the years in which commercialization had been foreclosed.

In subsequent correspondence, Mr. Beydoun described the government's procedural posture:

"In our litigation, the government lifted the secrecy order after suit was filed and argued mootness. From the inventor's perspective, the practical harm had already occurred."[15]

In March 2017, the case settled confidentially. The terms were not disclosed. No judicial precedent emerged. The constitutional questions remained unanswered.

VI. WHAT THE SILENCE COSTS

Public records grow sparse after 2016.

The patent remains in the USPTO database — issued, declassified, and uncommercialized. The personal aftermath is less visible.

Mr. Beydoun described the human dimension of secrecy orders in the same correspondence:

"Inventors may invest life savings and years of effort, only to be ordered into silence under threat of criminal penalty. The financial and psychological toll can be profound."[16]

Secrecy orders impose economic constraints that are measurable. Their psychological consequences are harder to quantify. The statute does not account for uncertainty, delay, or reputational erosion. It measures use. It measures compensation. It does not measure time.

VII. THIS IS NOT UNIQUE

The *Damnjanović* case is not isolated.

In Hornback v. United States, the Federal Circuit rejected a claim for compensation under § 183 on statutory grounds.[17] The decision underscored the procedural difficulty of securing relief even when an

inventor alleges economic harm. That case — examined in detail in Chapter 4 — involved thirteen years of suppression and produced the binding precedent that now governs every § 183 claim.

According to data compiled by the Federation of American Scientists, 6,543 secrecy orders were active as of the end of fiscal year 2025, up from 5,976 in FY 2021.[18] Agencies including the Navy and Air Force account for the majority of new orders.

QR Code 1.4 — *Federation of American Scientists, "Invention Secrecy Activity"*

In FY 2024 alone, 356 new secrecy orders were imposed — a 185 percent increase over FY 2023's 125 orders. The agency breakdown: Navy (168), Air Force (113), Army (12), DOE (1), NSA (2), DTSA (46), and NASA/DARPA/Other (14). Type 1 orders (export control) and Type 3 orders dominated the landscape. FY 2025 saw a decline to 102 new orders, yet the Navy (63) and Air Force (24) still accounted for approximately 85 percent of all new impositions.

Figure 1.3 — *New Secrecy Orders by Sponsoring Agency (FY 2024–2025).* ***Source:*** *Federation of American Scientists, "Invention Secrecy Activity."* ***Note:*** *Data compiled from publicly reported secrecy activity statistics.*

For comparison, Sweden maintains approximately 374 total restricted inventions (140 active; 234 inactive) under the Defence Inventions Act (1971:1078).[19] Two metrics frame the comparison. On a per-capita basis, the United States has approximately 19.5 active secrecy orders per million population, while Sweden has approximately 13.3 per million — meaning the United States operates at a higher per-capita rate. On a per-patent basis, however, Sweden applies secrecy to approximately 1 in every 21 patents granted annually, compared to roughly 1 in 50 in the United States — meaning Sweden's suppression is relatively more intensive within its own patent system. Both metrics offer complementary perspectives on secrecy intensity, and neither alone tells the complete story.

Fluctuations in "John Doe" secrecy orders on private inventors — 29 in FY 2021; 1 in FY 2022; 25 in FY 2023; 0 in FY 2024; and 18 in FY 2025 — suggest policy variability that individual inventors cannot anticipate or meaningfully influence.[20]

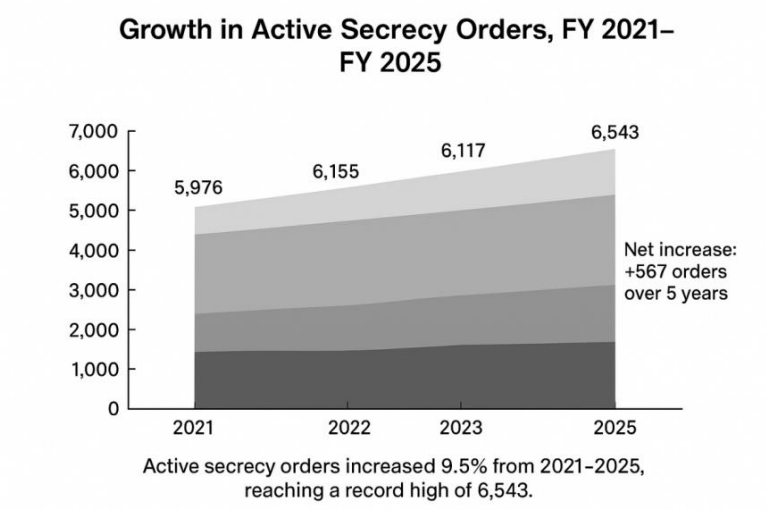

Figure 1.4 — *Growth in Active Invention Secrecy Orders (FY 2021–2025).* ***Source:*** *Federation of American Scientists, "Invention Secrecy Activity," October 2025.* ***Note:*** *Total active orders increased by 567 (9.5 percent) to a record high of 6,543.*

VIII. THE DOUBLE DISAPPEARANCE

The first disappearance was procedural.

The patent was sealed, removed from public records, and placed under the authority of the Invention Secrecy Act.

The second disappearance was informational.

The interagency memoranda, risk assessments, and renewal justifications underlying the secrecy determination remain classified. The actual secrecy order forms are not publicly accessible — even after settlement and patent issuance. Court filings reference them but do not quote or attach them. The Air Force's January 2009 risk assessment? Withheld under 5 U.S.C. § 552(b)(1). The November 2013 renewal rationale? Likewise sealed.[21]

The record reflects a system in which the reasoning for silence is itself silent. An inventor cannot examine the criteria by which their invention was deemed sensitive. Nor can they meaningfully challenge reasoning they cannot access.

This dynamic — secrecy about secrecy — appears not to be uniquely American. Sweden, though restricting far fewer inventions in absolute terms, similarly keeps portions of its evaluation criteria classified under its defense framework.[22] The structural feature is consistent: when national security determinations are invoked, explanatory transparency narrows.

The Damnjanovićs' case illustrates how innovation can vanish twice — first from the marketplace, then from explanation. The law

provides authority. Whether it provides accountability remains a separate question.

How does Cold War-era secrecy doctrine persist into peacetime administration? How does national security law intersect with property rights, free speech, and technological progress? What happens when the system itself becomes invisible, even to those it regulates? The answers require historical perspective — a step back into the moment when secrecy was first weaponized for national defense and the roots of today's meta-secrecy were laid.
That story begins in the shadows of the Cold War. It is the subject of Chapter 2.

QR Code 1.5 — Swedish Defence Inventions Act

English translation and Swedish original both available in the ***Breaking Silence Evidence Library.***

DISCUSSION QUESTIONS

1. **Personal Stakes**: If you invented something valuable, how would you respond to a government order forbidding you from discussing it, without explanation or timeline? What would that silence cost you?
2. **The Catch-22:** The Damnjanovićs had to prove harm to claim damages, but proving harm required describing the invention — which was forbidden. Is there any system of justice where this paradox makes sense? How would you fix it?
3. **Temporal Cost:** The invention took eight years from filing to patent issuance, during which technology evolved beyond it. Is this a "taking" under the Fifth Amendment? If so, what compensation is adequate?
4. **Government Silence:** The government never explained why the Damnjanovićs' invention was deemed a national security threat. Do citizens have a right to know? Where should the line between security and transparency be drawn?
5. **Institutional** Accountability: 6,543 secrecy orders are currently active. How many of these are justified? How would we know? What mechanisms should exist for oversight?

GLOSSARY

35 U.S.C. § 181 — Section 181 of Title 35 (Patents) of the U.S. Code. Authorizes the USPTO to issue secrecy orders on patent applications when the Secretary of a federal agency determines that disclosure "might be detrimental to the national security."

35 U.S.C. § 183 — Section 183 of Title 35. Provides limited statutory relief for inventors subject to secrecy orders, allowing them to seek compensation from the government for damages caused by suppression. Implementation regulations remain incomplete.

35 U.S.C. § 186 — Section 186 of Title 35. Establishes criminal penalties for willful violation of a secrecy order: fines up to $10,000 or imprisonment up to two years, or both.

Architecture of Silence — The network of statutes, administrative rules, agency practices, and institutional reflexes that suppresses disclosure of inventions on national security grounds, often without transparency, appeal mechanisms, or adequate compensation.

Catch-22 — A logical paradox wherein one must satisfy a condition to gain a benefit, but satisfying that condition is prohibited by the rule enforcing the benefit. In this context: proving damages requires disclosure; disclosure is prohibited under penalty of law.

Declassification — The process of removing classified status from a document or invention, making it available to the public. In the

Damnjanović case, the patent was declassified after settlement, but the secrecy order reasoning remained classified.

Dual-Use Technology — Technology with both civilian and military applications. The Damnjanović invention is dual-use, applicable to both commercial and military aircraft.

FOIA Exemption 5 U.S.C. § 552(b)(1) — A provision of the Freedom of Information Act allowing the government to withhold documents classified on national security grounds.

Infrared Seeker — A sensor system in heat-seeking missiles that locks onto the infrared radiation emitted by jet engine exhaust. The Damnjanović invention disrupts these seekers using a fluid spray.

Invention Secrecy Act of 1951 — 35 U.S.C. §§ 181–188. Federal statute authorizing the USPTO to issue secrecy orders on patent applications deemed detrimental to national security, with limited remedies for inventors.

John Doe Order — A secrecy order imposed on a private inventor as opposed to a corporate or institutional applicant, often without advance notice or explanation.

Meta-Secrecy — Secrecy about secrecy — the practice of classifying the reasons, rationales, and justifications for secrecy orders themselves, preventing inventors or the public from understanding why suppression occurred.

Notice of Allowability — A *USPTO* document indicating that a patent application has satisfied examination requirements and is patentable, but issuance is withheld due to a secrecy order.

Prior Restraint — A legal doctrine prohibiting the government from censoring speech before it is expressed. Secrecy orders function as prior restraint on inventors' speech about their inventions.

Secrecy Order — An administrative directive issued by the USPTO under 35 U.S.C. § 181, forbidding an inventor from publishing, disclosing, or filing a patent application abroad without government permission.

Taking *(Fifth Amendment)* — Refers to the government's seizure of private property without just compensation, prohibited by the Fifth Amendment. Secrecy orders may constitute an unconstitutional taking of intellectual property rights.

ENDNOTES

1. U.S. Patent Application Serial No. 11/881,492, filed July 28, 2007, later declassified and issued as U.S. Patent No. 8,925,438 B1 (January 6, 2015).
2. U.S. Patent No. 8,925,438 B1, Abstract (issued January 6, 2015). The invention is described as "a countermeasure process for both military and civil commercial aircraft under attack by an infrared heat-seeking missile," employing a "dispersing liquid substance under high pressure in a spray form" to coat a missile's seeker dome.
3. 35 U.S.C. § 181, authorizing secrecy orders when disclosure "might be detrimental to the national security."
4. 35 U.S.C. § 186, establishing criminal penalties for willful violation of a secrecy order, including fines of up to $10,000 or imprisonment of up to two years.
5. *Damnjanović v. U.S. Department of the Air Forc*e, Complaint, No. 2:14-cv-11920 (E.D. Mich. filed May 14, 2014), at 18 (alleging that the USPTO issued a Notice of Allowability on November 21, 2011, confirming patentability while the secrecy order remained in force).
6. *Damnjanović v. U.S. Department of the Air Forc*e, Complaint, No. 2:14-cv-11920 (E.D. Mich. filed May 14, 2014), at 19–20; see also 35 U.S.C. § 183.
7. *Damnjanović v. U.S. Department of the Air Force*, Complaint, No. 2:14-cv-11920 (E.D. Mich. filed May 14, 2014), at 25.
8. *Hattem A. Beydoun*, Esq., correspondence with the author, October 20, 2025 (draft reviewed by Mr. Beydoun).
9. *Damnjanović v. U.S. Department of the Air Force,* Complaint, No. 2:14-cv-11920 (E.D. Mich. filed May 14, 2014), at 33–34.
10. *Damnjanović v. U.S. Department of the Air Force*, Complaint, No. 2:14-cv-11920 (E.D. Mich. filed May 14, 2014), at 35.

11. *Damnjanović v. U.S. Department of the Air Force*, Complaint, No. 2:14-cv-11920 (E.D. Mich. filed May 14, 2014), at 35–37 (alleging violations of the First and Fifth Amendments).
12. *Hattem A. Beydoun*, Esq., correspondence with the author, October 20, 2025 (draft reviewed by *Mr. Beydoun*).
13. *Hattem A. Beydoun*, Esq., correspondence with the author, October 20, 2025 (draft reviewed by Mr. Beydoun).
14. U.S. Patent No. 8,925,438 B1 (issued January 6, 2015). The period from July 28, 2007 (filing) to January 6, 2015 (issuance) spans approximately eight years. The secrecy order was imposed January 22, 2009 and lifted upon issuance — a suppression period of approximately six years. The case later settled confidentially in March 2017. See *Damnjanović v. U.S. Department of the Air Force*, No. 2:14-cv-11920 (E.D. Mich. 2014).
15. *Hattem A. Beydoun*, Esq., correspondence with the author, October 20, 2025 (draft reviewed by *Mr. Beydoun*).
16. Hattem A. Beydoun, Esq., correspondence with the author, October 20, 2025 (draft reviewed by Mr. Beydoun).
17. *Hornback v. United States*, 405 F.3d 999 (Fed. Cir. 2005), denying compensation under 35 U.S.C. § 183 on statutory-construction grounds.
18. *Federation of American Scientists*, "Invention Secrecy Activity," updated October 23, 2025, https://sgp.fas.org/othergov/invention/stats.html. FY 2025 active secrecy orders: 6,543 (up from 5,976 in FY 2021). FY 2024 new secrecy orders by agency: Navy (168), Air Force (113), Army (12), Department of Energy (1), *National Security Agency* (2), Defense Technology Security Administration (46), and NASA/DARPA/Other (14). Total new orders in FY 2024: 356.
19. Swedish Act on Defence Inventions, Lag (1971:1078) om försvarsuppfinningar. Statistical data confirmed by *Veronica Lindstrand*, Patent Lawyer, Swedish Intellectual Property Office (PRV), email

correspondence with the author, November 7–13, 2025. As of November 2025, Sweden recorded 374 total restricted inventions (140 active; 234 inactive). Per-capita comparison: United States 19.5 active orders per million population; Sweden 13.3 per million. Per-patent comparison: Sweden applies secrecy to approximately 1 in every 21 patents granted annually; the United States to approximately 1 in every 50. Both metrics offer complementary perspectives on secrecy intensity. Key Swedish safeguards include mandatory annual reviews (§ 8), strict statutory deadlines (§§ 6–7), and enforceable compensation for damages (§ 14). Correspondence on file with author.

20. Federation of American Scientists, "Invention Secrecy Activity," updated October 23, 2025. "John Doe" secrecy order fluctuations: FY 2021 (29), FY 2022 (1), FY 2023 (25), FY 2024 (0), FY 2025 (18).
21. 5 U.S.C. § 552(b)(1), Freedom of Information Act exemption for national-security-classified information.
22. Swedish Act on Defence Inventions, Lag (1971:1078) om försvarsuppfinningar. Confirmed by *Veronica Lindstrand*, Patent Lawyer, Swedish Intellectual Property Office (PRV), email correspondence with the author, November 13, 2025: criteria for determining which inventions qualify as defence inventions are not publicly disclosed. Correspondence on file with author.

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