

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5475  
OFFERED BY MR. FITZGERALD OF WISCONSIN**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Prohibiting Adversarial  
3 Patents Act of 2023”.

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

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

12       “(d) DISCLOSURES REGARDING TIES TO FOREIGN  
13 ADVERSARIES.—

14           “(1) DISCLOSURE.—The Director shall require  
15 each person submitting an application for patent  
16 under subsection (a), or a provisional application for  
17 a patent under subsection (b), to disclose in the ap-  
18 plication the identity of each person with an owner-

1 ship interest in the invention being claimed that in  
2 the five years before submitting such application re-  
3 ceived funding from—

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

6 “(B) a talent recruitment program associ-  
7 ated with a foreign adversary.

8 “(2) REQUEST FOR TRUE COPIES.—

9 “(A) IN GENERAL.—After reviewing any  
10 disclosure made by an applicant in accordance  
11 with paragraph (1), the Director may (as the  
12 Director determines appropriate) request such  
13 applicant provide true copies of any contractual  
14 or financial obligation or other agreement spe-  
15 cific to such disclosure.

16 “(B) CONFIDENTIALITY.—Any true copy  
17 provided to the Director under subparagraph  
18 (A) may be kept confidential and separate from  
19 the file wrapper of the patent application.

20 “(3) EXEMPTION.—Any applicant who is a  
21 small business concern and is subject to disclosures  
22 pursuant to subsection (g) or (o) of section 9 of the  
23 Small Business Act (15 U.S.C. 638) shall be exempt  
24 from making the disclosure required by paragraph  
25 (1).

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

3 “(A) the People’s Republic of China, in-  
4 cluding all Special Administrative Regions;

5 “(B) the Republic of Cuba;

6 “(C) the Islamic Republic of Iran;

7 “(D) the Democratic People’s Republic of  
8 Korea;

9 “(E) the Russian Federation; and

10 “(F) the Bolivarian Republic of Venezuela  
11 during any period of time during which  
12 Nicolás Maduro is President of the Republic.”.

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

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

18 “§ 106. Patent bar for persons who pose a threat to  
19 national security.

20 “Notwithstanding any other provision of law—

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

1           “(A) is identified, pursuant to section  
2           744.16 of title 15, Code of Federal Regulations  
3           (or any successor regulation), as a person rea-  
4           sonably believed to be involved, or to pose a sig-  
5           nificant risk of being or becoming involved, in  
6           activities contrary to the national security or  
7           foreign policy interests of the United States;

8           “(B) is an entity on the Non-SDN Chinese  
9           Military-Industrial Complex Companies List  
10          (NS–CMIC List) maintained by the Office of  
11          Foreign Assets Control of the Department of  
12          the Treasury under Executive Order 14032 (86  
13          Fed. Reg. 30145; relating to addressing the  
14          threat from securities investments that finance  
15          certain companies of the People’s Republic of  
16          China), or any successor order;

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

23          “(D) produces or provides communications  
24          equipment or service on the list published by  
25          the Federal Communications Commission under

1 section 2(a) of the Secure and Trusted Commu-  
2 nications Networks Act of 2019 (47 U.S.C.  
3 1601(a)); and

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

7 (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions for chapter 10 of title 35, United States Code,  
9 is amended by inserting after the item relating to  
10 section 105 the following:

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

