

Calendar No. 617117TH CONGRESS
2^D SESSION**S. 4902****[Report No. 117-239]**

To address the preference for United States industry with respect to patent rights in inventions made with Department of Homeland Security research assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2022

Mr. PORTMAN (for himself and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 12, 2022

Reported by Mr. PETERS, without amendment

A BILL

To address the preference for United States industry with respect to patent rights in inventions made with Department of Homeland Security research assistance, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Invent Here, Make
3 Here for Homeland Security Act”.

4 **SEC. 2. PREFERENCE FOR UNITED STATES INDUSTRY.**

5 Section 308 of the Homeland Security Act of 2002
6 (6 U.S.C. 188) is amended by adding at the end the fol-
7 lowing:

8 “(d) PREFERENCE FOR UNITED STATES INDUS-
9 TRY.—

10 “(1) DEFINITIONS.—In this subsection:

11 “(A) COUNTRY OF CONCERN.—The term
12 ‘country of concern’ means a country that—

13 “(i) is a covered nation, as that term
14 is defined in section 4872(d) of title 10,
15 United States Code; or

16 “(ii) the Secretary determines is en-
17 gaged in conduct that is detrimental to the
18 national security of the United States.

19 “(B) FUNDING AGREEMENT; NONPROFIT
20 ORGANIZATION; SUBJECT INVENTION.—The
21 terms ‘funding agreement’, ‘nonprofit organiza-
22 tion’, and ‘subject invention’ have the meanings
23 given those terms in section 201 of title 35,
24 United States Code.

1 “(C) RELEVANT CONGRESSIONAL COMMIT-
2 TEES.—The term ‘relevant congressional com-
3 mittees’ means—

4 “(i) the Committee on Homeland Se-
5 curity and Governmental Affairs of the
6 Senate; and

7 “(ii) the Committee on Homeland Se-
8 curity of the House of Representatives.

9 “(2) PREFERENCE.—Subject to the other provi-
10 sions of this subsection, no firm or nonprofit organi-
11 zation which receives title to any subject invention
12 developed under a funding agreement entered into
13 with the Department and no assignee of any such
14 firm or nonprofit organization shall grant to any
15 person the exclusive right to use or sell any subject
16 invention unless such person agrees that any prod-
17 ucts embodying the subject invention or produced
18 through the use of the subject invention will be man-
19 ufactured substantially in the United States.

20 “(3) WAIVERS.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), in individual cases, the requirement
23 for an agreement described in paragraph (2)
24 may be waived by the Secretary upon a showing
25 by the firm, nonprofit organization, or assignee

1 that reasonable but unsuccessful efforts have
2 been made to grant licenses on similar terms to
3 potential licensees that would be likely to manu-
4 facture substantially in the United States or
5 that under the circumstances domestic manu-
6 facture is not commercially feasible.

7 “(B) CONDITIONS ON WAIVERS GRANTED
8 BY DEPARTMENT.—

9 “(i) BEFORE GRANT OF WAIVER.—Be-
10 fore granting a waiver under subparagraph
11 (A), the Secretary shall—

12 “(I) consult with the relevant
13 congressional committees regarding
14 the decision of the Secretary to grant
15 the waiver; and

16 “(II) comply with the procedures
17 developed and implemented pursuant
18 to section 70923(b)(2) of the Build
19 America, Buy America Act (subtitle A
20 of title IX of division G of Public Law
21 117–58).

22 “(ii) PROHIBITION ON GRANTING CER-
23 TAIN WAIVERS.—The Secretary may not
24 grant a waiver under subparagraph (A) if,
25 as a result of the waiver, products embody-

1 ing the applicable subject invention, or pro-
2 duced through the use of the applicable
3 subject invention, will be manufactured
4 substantially in a country of concern.”.

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