Making Effective Use Of DOD's 'Patent Holiday' Program

By **Michael Nathanson and Graham Phero** (March 2, 2026)

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In January, the U.S. Department of Defense announced a defense patent holiday program, offering free commercial licenses to patented technologies from multiple branches and agencies including, for example, the Air Force Research Laboratory, the Naval Undersea Warfare Center and the U.S. Army's DEVCOM C5ISR Center.[1]

Hopeful licensees can apply through TechLink, the official national technology transfer partner, by July 22. Awardees will receive a free two-year license to evaluate the patented technology and progress toward commercialization.

The DOD hopes to accelerate commercialization of otherwise latent patented technology by allowing companies to experiment. Licensees can explore technical feasibility, prototype development and market fit without paying the typical up-front licensing fees or royalties.

Companies that pursue the patent holiday program should carefully review the license requirements, particularly with respect to ownership of data and improvements, complete due diligence to avoid infringing nongovernment patents, and proactively ensure compliance with export controls.

A Licensing Experiment

Typically, federal agencies rely on technology transfer programs to convert government-developed technology into commercial revenue. These programs are similar to technology transfer programs at universities throughout the U.S.

Prospective licensees usually negotiate up-front fees, running royalties, performance milestones and field-of-use limitations. However, this procedure may deter early-stage ventures, particularly nontraditional defense contractors, i.e., companies that primarily operate in the commercial market, that are unwilling to risk capital before determining commercial viability.

As a result, the DOD identified that many inventions developed in renowned U.S. laboratories are shelved without a serious effort to implement the technology, whether for the commercial market or to support the military.

The defense patent holiday reflects a deliberate pivot to maximizing commercialization. The DOD acknowledged that patent licensing revenue represents a small fraction of its overall research and development budget.

Therefore, it is willing to trade that revenue for increased private development. If the technology is promising, the licensee may obtain a paid license or a follow-on procurement contract. If not, the company can walk away without losing licensing fees.

Through the patent holiday, the DOD lowers the barrier to developing military or dual-use technology. Indeed, bringing more players into the defense-technology ecosystem directly

aligns with the department's overall mission to accelerate procurement, avoid vendor lock and ensure soldiers are equipped with the latest and greatest technologies, particularly in communications and safety.

Patent Holiday Scope

The program launched with a curated set of roughly 400 patents. These patents span four primary fields: energetics, materials, micro-electronics and munitions. Additional patents cover technologies related to autonomy, space situational awareness and critical minerals.

Each patent is summarized and organized into groups on the patent holiday webpage.[2] The DOD aims to further increase accessibility through a new AI-augmented patent and tech-research database.[3] The DOD has signaled that this is only a starting point and that it is continuing to review potential patents for inclusion.

The no-fee commercial evaluation license provides selected companies with up to two years to assess the patented technology. The licensee may test, prototype and evaluate the invention's commercial potential without paying royalties. The license, however, is generally limited to evaluation and does not necessarily provide an ongoing right to use the invention beyond the license term.

Strategic Considerations for Patent Holiday Participants

Companies interested in applying for a license should understand that "no fee," does not mean "no risk." However, companies that proactively manage risks related to licensing defense technology can ensure they maximize this unique shortcut to access cutting-edge innovations.

First, prospective licensees should carefully evaluate the license requirements and conditions against their own business development goals. Clauses that, for example, limit private ownership after the patent holiday term ends may be ideal for the government, but may leave licensees without recourse if the government passes their development to a different contractor.

Companies should specifically consider how the license implicates data rights and downstream improvements, and whether they can obtain their own independent patent protection for related technology developed during the evaluation period.

The government understands that obtaining the best technology often requires a tailored balance of government rights and providing incentives for private development.

Therefore, to the extent allowed under the patent holiday program, prospective licensees should be willing to negotiate license conditions concerning IP ownership.

Further, patentability and infringement are distinct issues. A government license to use a patent does not create a license to use all related patents. Rather, a third party may have intellectual property rights to an improvement or specific implementation.

Prior to investing a year or more of internal research and development funding in developing and testing a product based on a government-owned patent, prospective licensees should consider reviewing other third-party patent rights. For example, prospective licensees might consider conducting a patent freedom-to-operate search and analysis.

Licensees might also identify and monitor pending patent applications that could pose an infringement concern, depending on the claim scope ultimately allowed by the U.S. Patent and Trademark Office. This approach can mitigate risk to ensure licensees under the Defense Patent Holiday develop technology with commercial viability after the holiday ends.

Improper export controls create another risk that can be mitigated through appropriate awareness and proactive management. Although mainstay defense contractors are familiar with and have robust internal teams to address the complexity of the International Traffic in Arms Regulations and Export Administration Regulations compliance, nontraditional defense technology firms may be unfamiliar with these unforgiving export requirements.

Fundamentally, the ITAR and EAR restrict the export and disclosure of technical data associated with designated technologies, including many of those covered under the patent holiday program.

Violating export control laws by, for example, sending an email with computer-aided design drawings to a foreign manufacturer, or sharing technical specifications with an employee classified as a foreign person,[4] can subject companies to severe fines and even criminal liability.

Critically, information disclosed in a published patent application or issued patent is exempt from control by the ITAR and EAR.[5] However, that protection is limited to the information disclosed in the patent and might not extend to unpublished improvements, implementation details, source code, etc.

Patent holiday participants should therefore create and actively implement an export control plan to ensure compliance with regulatory export requirements.

For example, companies should train employees on compliance with the ITAR and EAR, maintain records identifying technical data based on ITAR and EAR classifications, and limit access to controlled technical data.

Laying a foundation for export control compliance, coupled with continuing process refinement, can mitigate unforeseen consequences for companies hoping to leverage the patent holiday to enter the defense-technology market.

Using the Patent Holiday Effectively

When used strategically, this defense patent holiday can serve as a gateway for both established and nontraditional defense contractors to enter new technical domains and markets.

Companies that successfully incorporate the covered patented technologies into real-world solutions, while managing the risks outlined above, are well-positioned to benefit from this distinctive opportunity with the DOD.

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[1]https://www.cto.mil/no-fee-cel/.

[2] https://info.techlinkcenter.org/defense-patent-holiday.

[3] https://breakingdefense.com/2026/02/dod-expects-ai-powered-database-of-patents-ready-for-industry-by-years-end/.

[4] Only U.S. persons can access ITAR controlled material. A U.S. person is U.S. citizen, lawful permanent resident (Green Card holder), or an otherwise protected individual. 22 C.F.R. § 120.62.

[5] 22 CFR §§ 120.33(b), 120.34(a)(5); 15 CFR § 734.3(b)(3)(iv).