IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Frank Joseph TRUNK, III,
Plaintiff,

v.

Raymond E. MABUS, *et al.*,
Defendants.

Civil Action No. 1:14-cv-02139 (KBJ)

PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO AMEND THE COMPLAINT

Plaintiff Frank Joseph Trunk respectfully moves this Court for leave to amend his complaint under Federal Rule of Civil Procedure 15(a). In accordance with Local Civil Rules 7(i) and 15.1, Mr. Trunk has attached the amended complaint as Exhibit A, with a redlined copy showing changes made to the original complaint attached as Exhibit B.

I. Preliminary Matter

On September 11, 2015, counsel for Mr. Trunk contacted Defendants' counsel in good faith to discuss whether there was any opposition to the motion or whether any agreement could be reached. *See* LCvR 7(m). On September 16, 2015, Defendants' counsel stated that they would not oppose this motion, provided that the parties agree to allow Defendants until October 30, 2015, to respond to the amended complaint. Undersigned counsel for Mr. Trunk agreed to this extension.

The Court has set a hearing date of November 17, 2015, for Defendants' Motion to Dismiss (Dkt. No. 9). Should the Court grant Mr. Trunk's motion for leave to file his amended complaint (and grant Defendants the extension they will seek), the parties believe that it may be beneficial and in the interests of judicial efficiency to postpone this hearing until all briefing regarding the amended complaint has concluded.

II. Introduction

Mr. Trunk seeks leave to amend his complaint to include two new counts: relief under the Administrative Procedures Act (APA), and relief on First Amendment grounds.[1] Both counts are tied to Defendants' repeated failure to inform Mr. Trunk accurately as to the classification status of eight of his patent applications, their inconsistent statements about the classification status of these applications, their failure to adhere to proper declassification procedures, and their threats to prosecute or imprison Mr. Trunk should he disclose the subject matter of his own inventions.

Defendants have provided written consent for Mr. Trunk to amend his complaint, and thus this motion should be granted under Federal Rule of Civil Procedure 15(a)(2). In addition, courts "should freely give leave [to amend] when justice so requires," that is, in the absence of some compelling reason—such as undue delay, bad faith, dilatory motive, repeated failures of previously allowed amendments, undue prejudice to the non-moving party, or futility of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). None of these reasons exist here.

III. Brief Statement of Facts

In the early 1990s, Mr. Trunk made a series of fundamental discoveries in material physics. In 1994, he began filing a sequence of eight patent applications with the U.S. Patent and Trademark Office (PTO) describing some of the aspects of his discoveries. Beginning in 2000, these applications were placed under secrecy orders (a mechanism at the PTO that prevents the public from reviewing certain patent applications for one-year periods) at the request of the Department of the Navy's Office of Naval Research (ONR). Documents produced to Mr. Trunk under FOIA requests indicate that also around January 2000, ONR classified Mr. Trunk's patent

[1] The Amended Complaint also includes slight revisions to the final sentence of paragraph 14 to clarify certain alleged facts.

applications as "DoD/Secret/Restricted Data." The PTO reissued secrecy orders on Mr. Trunk's applications each year through 2004.

Around September 30, 2004, the PTO rescinded the secrecy orders for Mr. Trunk's patent applications. When Mr. Trunk learned of this, he requested declassification documentation for his applications so that he could verify that his applications had been declassified and fully exploit the benefits of his inventions without fear of criminal prosecution.

What followed was over a decade of phone calls, letters, and requests to various government agencies in an effort to resolve a single question: to what extent, if any, could Mr. Trunk now disclose the subject matter of his patent applications to interested parties? This lawsuit arises from Defendants' failure to provide a clear answer to that question.

IV. Legal Standard

Federal Rule of Civil Procedure 15(a) permits a party to amend its pleadings with written consent from the opposing parties. Fed. R. Civ. P. 15(a)(2). This rule also directs that courts "should freely give leave [to amend a pleading] when justice so requires." *Id.* Courts should deny leave only where there is an "apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." *Foman*, 371 U.S. at 182. Without a sufficiently compelling reason, such as those cited in *Foman*, a trial court's denial of a motion for leave to amend is an abuse of discretion. *See Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (citing *Foman*, 371 U.S. at 182); *Robinson v. The Detroit News, Inc.*, 211 F. Supp. 2d 101, 114 (D.D.C. 2002).

"An amended complaint is futile if it merely restates the same facts as the original complaint in different terms, reasserts a claim on which the court previously ruled, fails to state a

legal theory[,] or could not withstand a motion to dismiss." *Rumber v. District of Columbia*, 598 F. Supp. 2d 97, 102 (D.D.C. 2009).

V. Analysis

Defendants have given their consent for Mr. Trunk to amend his complaint, and this motion should be granted on this basis alone. Additionally, there is no compelling reason to deny Mr. Trunk's motion for leave to amend and, thus, leave should be freely given.

Mr. Trunk's added claims under the APA and the First Amendment are not made with undue delay, in bad faith, or with a dilatory motive. These counts are based on Mr. Trunk's continuing review of the facts that gave rise to this action, and from the allegations advanced by Defendants' in their motion to dismiss. For example, Defendants now unequivocally deny that the information in Mr. Trunk's patent applications was classified after 2004. (*See* Defs.' Mot. to Dismiss, Dkt. No. 9-1 at 4, 23.) If that is true, then the Government had no basis to suppress Mr. Trunk's freedom of speech in 2005 and 2006 by threatening him with prosecution, fines, and imprisonment and otherwise instructing Mr. Trunk not to disclose the subject matter of his patent application. *See, e.g., Shaffer v. Def. Intelligence Agency*, No. CV 10-2119 (RMC), 2015 WL 1805067, at *6 ("[W]hen a manuscript contains information that is unclassified, wrongly-classified, or derived from public sources, the Government may not censor such material."); (Compl. at ¶¶ 19, 27, 29). Thus, Defendants' denials throughout their motion to dismiss give rise to Mr. Trunk's First Amendment cause of action.

Mr. Trunk's addition of a claim under the APA also arises from averments in Defendants' motion to dismiss. In their motion, Defendants criticize Mr. Trunk's original complaint for allegedly "not identif[ying] an applicable cause of action." (*Id.* at 2.) Mr. Trunk's addition of claims under the APA and the First Amendment address these criticisms by clearly

defining additional forms of relief, even though, as stated in his opposition to Defendants' motion to dismiss, Mr. Trunk believes that his claims are adequate as originally pled.

Because this case is in its infancy, Defendants will suffer no prejudice by allowing Mr. Trunk's amendments. Discovery has not yet begun, and no Defendant has answered the original complaint. This Court has not issued a scheduling order or set a trial date, and the only substantive action in this case after serving the complaint has been the filing of Defendants' motion to dismiss. Granting a motion for leave to amend at this early stage would not prejudice Defendants.

Nor are Mr. Trunk's new claims futile. For example, Defendants have repeatedly refused to provide Mr. Trunk with a consistent position as to the classification status of his patent applications. Defendants have denied that Mr. Trunk's applications were classified, even though their own documents indicate they were in fact classified, yet they have refused to provide declassification documentation to the extent they claim that the classification status was removed. Moreover, Defendants have repeatedly refused to respond to Mr. Trunk's requests, for example, to remove the published application containing classified information from the PTO's website (Compl. at ¶ 28) and to respond completely to Mr. Trunk's FOIA requests for classification and declassification documents sent to ONR and others (*id.* at ¶¶ 35, 46). Accordingly, Defendants' unlawful withholding of information related to the classification and declassification status of Mr. Trunk's patent applications gives rise to a colorable claim under the APA. *See* 5 U.S.C. § 706(1).

Mr. Trunk's First Amendment claim is also not futile. As explained previously, Defendants' steadfast denials that Mr. Trunk's patent applications were classified (if true) means that Defendants' threats to prosecute, fine, or imprison Mr. Trunk for disclosing the subject

matter of his applications unlawfully restricted Mr. Trunk's First Amendment rights to freedom of speech. *See Shaffer*, 2015 WL 1805067, at *6. In addition, if Mr. Trunk's applications were classified, then Defendants' current position (that Mr. Trunk's patent applications never should have been classified) raises serious questions about Defendants' decision to classify Mr. Trunk's applications in the first place. Discovery and further investigation may reveal that Defendants failed to properly follow the process for classifying Mr. Trunk's applications, or failed to follow the proper procedures for declassifying the applications once classified, which amount to a further violation of Mr. Trunk's First Amendment rights. *See Stillman v. Cen. Intelligence Agency*, 319 F.3d 564, 548 (D.C. Cir. 2003). Giving Mr. Trunk leave to amend his complaint to add this count affords him the opportunity to try these issues after discovery and full disclosure by the government.

Finally, the remaining reason under *Foman* for denying leave to amend (repeated failure to cure through previous amendments) is absent here. This is Mr. Trunk's first effort to amend his complaint.

VI. Conclusion

Defendants have consented to Mr. Trunk's amended complaint, and there is no "apparent or declared reason" to withhold leave to amend. Thus, Mr. Trunk respectfully asks this Court to allow leave to file the amended complaint attached at Exhibit A.

Respectfully submitted,

Dated: September 16, 2015

/s/ Gary M. Hnath

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APPENDIX OF EXHIBITS

Exhibit	Description
A	Amended Complaint of Frank Joseph Trunk, III (clean version)
B	Redlined Version of Amended Complaint of Frank Joseph Trunk, III

CERTIFICATE OF SERVICE

I hereby certify that, on September 16, 2015, a copy of the foregoing document was electronically filed with and served on all counsel of record using the Court's CM/ECF system.

/s/ Gary M. Hnath
Gary M. Hnath

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRANK JOSEPH TRUNK, III
7922 Coriander Dr., #204
Gaithersburg, MD 20879

Plaintiff,

v.

RAYMOND E. MABUS
SECRETARY OF THE UNITED STATES NAVY
c/o Department of the Navy
1200 Navy Pentagon
Washington, D.C. 20350-1200

and

DR. ERNEST J. MONIZ
SECRETARY OF ENERGY
c/o U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

and

CHARLES T. HAGEL
SECRETARY OF DEFENSE
c/o U.S. Department of Defense
1000 Air Force Pentagon
Washington, D.C. 20301-1000

and

MICHELLE K. LEE
DEPUTY UNDERSECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND
DEPUTY DIRECTOR OF THE U.S. PATENT &
TRADEMARK OFFICE
c/o U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Defendants.

AMENDED COMPLAINT FOR DECLARATORY RELIEF

C.A. No. 1:14-cv-02139 (KBJ)

PLAINTIFF, FRANK JOSEPH TRUNK, III submits the following Amended Complaint seeking declaratory relief pursuant to 28 U.S.C. § 2201 against Defendants the Secretary of the Navy ("Navy"), the Secretary of Energy ("DOE"), the Secretary of Defense ("DOD"), and the Deputy Director of the Patent & Trademark Office ("PTO").

INTRODUCTION

Beginning in January 2000, the Office of Naval Research ("ONR") submitted a request to place patent applications filed by Mr. Trunk under Secrecy Orders pursuant to 35 U.S.C. §§ 181-188, because of the potential threat to national security if information in those applications were made public. Mr. Trunk's work had been under technical and security reviews by ONR since September 1993. Those applications describe fundamental breakthroughs in physics and material science that according to one senior Navy scientist "are the sort of thing Nobel prizes are made of." On information and belief, Mr. Trunk's patent applications were classified at the DoD 'Secret' level and, according to ONR documentation, under the following three cited classification authorities:

DODINST S5230.29 (Aircraft and ship stealth technology)

OPNAVINST S5513.3B, enclosures 38, 55, 56, and 57 (Ship and submarine stealth technology) ; and

DoD/DoE Topical Classification Guide – "Weapon Science" (TCG – WS – 1) (nuclear weapon design)

Because of the cited Nuclear Weapons Design authority, ONR had to have known that the material was classified as Restricted Data (RD), as defined by the Atomic Energy Act of 1954, as amended (Chapter 2, Section 11(y)). In their communications with Mr. Trunk through 2006, verbal and written, ONR insisted the material had not been formally classified, but was

only 'classifiable'. However, under the provisions of the Atomic Energy Act, the material had to have been classified and technically was classified "from birth."

In September 2004, following complaints filed with the DoD and DoE Inspectors General Hotline Offices in February 2003, the Secrecy Orders were rescinded at the request of ONR, apparently without consultation with the Dept. of Energy or the Dept. of Defense as would have been required by, for example, 42 USC Parts 2162 and 2163; 10 CFR Part 1045 (Subpart B); DoD National Industrial Security Manual 5220.22, Chapter 9 (Sec 1); DoD Information Security Manual 5200.01, Enclosures 4 and 5; DoD Instruction 5210.02, Enclosure 3; and DoD Nuclear Matters Handbook, Appendix H. Given the classification under the Atomic Energy Act, ONR could not have unilaterally declassified the information, and ONR has failed to provide evidence that proper declassification procedures were followed.

Substantial questions exist as to whether or not Mr. Trunk's applications were properly declassified, and as to Mr. Trunk's obligations with respect to that information, questions which ONR has refused to address adequately despite repeated requests by Mr. Trunk. Accordingly, Mr. Trunk submits this Complaint in order to determine whether information that he originally submitted in the form of patent applications remains legally classified, and if so, the level of classification; whether material derived from that classified material and associated with it is likewise classified; and the conditions under which Mr. Trunk can disclose this information. Without a resolution of these critical issues, Mr. Trunk lives under a cloud of uncertainty and is unable to obtain gainful employment.

I. PARTIES

1. Mr. Trunk is an individual currently residing in Gaithersburg, Maryland.

2. The Department of the Navy is located at 1200 Navy Pentagon, Washington, D.C., 20350-1200. Raymond E. Mabus, the Secretary of the Navy, is named in his official capacity.

3. The Department of Energy is located at 1000 Independence Ave., SW, Washington, DC, 20585. Dr. Ernest Moniz is named in his official capacity as Secretary of the Department of Energy.

4. The Department of Defense is located at 1000 Defense, Pentagon, Washington, DC, 20301-1000. Chuck Hagel, Secretary of Defense, is named in his official capacity.

5. The Patent & Trademark Office is located at P.O. Box 1450, Alexandria, Virginia, 22313-1450. Michelle K. Lee is named in her official capacity as Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the U.S. Patent & Trademark Office.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§1331, 1346 and 2201.

7. The Court has personal jurisdiction over the Defendants, each of which is located in the District of Columbia.

8. Venue is proper pursuant to 28 U.S.C. §1391(e).

III. FACTUAL BACKGROUND

9. Beginning around 1993, Mr. Trunk made a series of fundamental discoveries in the fields of physics and material physics that have broad engineering applications. Beginning in 1994, Mr. Trunk proceeded to file a series of patent applications with the U.S. Patent &

Trademark Office ("PTO") describing a portion of what he had discovered, and ONR commenced its security reviews of those applications and the technology disclosed therein.

10. The applications filed by Mr. Trunk show how to solve specific problems in fundamental material physics that relate to a host of engineering design applications, both civilian and military.

11. Secrecy Orders were issued on these applications beginning in January 2000 by the PTO at the request of the Department of the Navy, Office of Naval Research ("ONR"). On information and belief, each of the applications was made subject to a Type 3 Secrecy Order. On information and belief, the applications were classified by ONR beginning in January 2000, and Secrecy Orders were reissued annually through September 2004.

12. On information and belief, Mr. Trunk's patent applications were classified 'DoD/Secret/Restricted Data', although Mr.Trunk was informed by ONR that the documentation was to only be marked DoD/Secret. According to ONR documentation released pursuant to Mr. Trunk's FOIA request, the patent applications were classified under the following three cited classification authorities:

> DODINST S5230.29 (Aircraft and ship stealth technology)
>
> OPNAVINST S5513.3B, enclosures 38, 55, 56, and 57 (Ship and submarine stealth technology) ; and
>
> DoD/DoE Topical Classification Guide – "Weapon Science" (TCG – WS – 1) (nuclear weapon design)

13. On information and belief, the information in Mr. Trunk's patent applications would have been classified only after consultation with program offices from the different agencies that might have an interest in the technology, including the Navy, the Air Force, and the Department of Energy. Under the Atomic Energy Act of 1954 ("AEA"), 42 USC Part 2014(y); 10 CFR Part 1045; and 50 USC Part 2501(10), the cited DoD/DoE nuclear weapons design

classification authority defines and classifies these applications as "Restricted Data," not simply "National Security Information." The above-cited Department of Defense classification authority (DODINST S5230.29) and Department of the Navy classification authority (OPNAVINST S5513.3B) also classify these applications as "National Security Information."

14. Mr. Trunk has never been issued a security clearance by ONR, the Navy, DOD, or DOE, nor has he been granted contractor status or a government contract which would enable him to obtain a security clearance. As a result, Mr. Trunk has been placed under threat of possible criminal violations for possession of classified information without a security clearance. Mr. Trunk was told by law enforcement authorities at DOE that under the law he could be guilty of a criminal offense for possessing classified information, even though he had never intentionally or knowingly committed any offense. Mr. Trunk has been told that as a matter of law, technically he cannot even "think about" or "discuss with myself" the subject matter of the patent applications because of the lack of a security clearance. The DOE General Counsel's Office has even asked (presumably in jest) whether Mr. Trunk is now required to "shoot himself" since he is in possession of classified information without a security clearance. Both the Navy and the FBI have refused to take possession of this classified material. Mr. Trunk was notified by the FBI that the Navy refused to grant the FBI authorization to take possession of the classified material. The Chief of the FBI's National Security Law Branch in Washington, DC notified Mr. Trunk, as well as the Houston FBI field office, that if Mr. Trunk surrendered the classified material, he would be arrested for unauthorized possession

15. In early 2002, Mr. Trunk was advised by a Naval Air System Command (NAVAIR) attorney that NAVAIR had requested the issuance of the Secrecy Orders. This NAVAIR attorney informed Mr. Trunk that he would "never make a penny" from his

technology. He was told that his heirs might make something from it, if the government ever turned it loose, but that he would not. In December 2003, NAVSEA legal counsel advised Mr. Trunk that his applications had made all five of the government's restricted technology lists. He also told Mr. Trunk that ONR had "locked the technology down so tight that you'll probably never get it turned loose."

16. Beginning around April 2000, General Dynamics – Electric Boat Corporation, the Navy's principal contractor for nuclear submarine design, requested access to Mr. Trunk's technology. An NDA was negotiated and signed by Mr. Trunk, and Electric Boat and designated Electric Boat personnel were granted permits by the PTO for access to his patent applications. On information and belief, sometime around late 2000, Electric Boat submitted a request to the Industrial Security Division of DOD-Defense Security Services (DSS) for a ruling as to how the material in Mr. Trunk's patent applications was to be handled at their facility in Groton, Connecticut.

17. On information and belief, Secrecy Orders on all eight patent applications identified above were rescinded on or about September 30, 2004. The Secrecy Orders were rescinded by the PTO at the request of ONR.

18. On information and belief, under authorities such as 42 U.S.C. § 2162 and 10 CFR 1045.14-1045.17, Mr. Trunk's patent applications (and associated other technology) could and can only be downgraded from a status of "Restricted Data" to a status of "Formerly Restricted Data" by the Department of Energy classifiers, and could and can be declassified only after consultation with and approval by the same program offices which would have had ownership of the various classification authorities listed for classification of the applications (DON, DOD, DOE), and the Office of the Deputy Assist. Secretary of Defense for Nuclear

Matters (DoD). There is no evidence that the proper procedures were followed with respect to Mr. Trunk's patent applications.

19. In April 2005, after he became aware that the Secrecy Orders had been rescinded, Mr. Trunk contacted the DOD-IG's office and was told that it might be several more years before his complaint was resolved because his case was "difficult." Mr. Trunk was later told by staff from the DOD-IG's office to "watch your back and cover your ass," "not to worry about anyone else," and to "beware of the industrial military complex." When Mr. Trunk asked if this meant he was being targeted by ONR, he was told to interpret the warning "any way he wanted."

20. In July 2005, Mr. Trunk contacted the Department of State about obtaining a Commodity Jurisdiction Ruling for his patent applications and was informed that he needed to obtain declassification documentation from ONR or DOD.

21. In September 2005, Mr. Trunk requested declassification documentation on all of his applications from DOD, through the Defense Technology Security Administration (DTSA). DTSA forwarded Mr. Trunk's request to the Navy and stated that ONR had to either declassify the applications or reissue Secrecy Orders. On information and belief, ONR failed to respond to DTSA's request.

22. In September 2005, Mr. Trunk also filed a complaint with the Dallas field office of the Naval Criminal Investigative Service ("NCIS"). In the course of the investigation relating to that complaint, the NCIS Special Agent conducting the investigation told Mr. Trunk that ONR had informed him that Mr. Trunk's applications had never been classified and did not require declassification, and that Mr. Trunk was free to do whatever he wanted with the material. In October 2005, the NCIS Special Agent handling the case informed Mr. Trunk that he wanted to confirm this statement with the Navy's ballistic missile submarine security office before closing

down the investigation (N-775 Program Office). Mr. Trunk never heard from NCIS again about the matter and NCIS failed to respond to any of his inquiries.

23. Classified security receipts issued by the PTO in connection with office actions related to the prosecution of Mr. Trunk's patent applications demonstrate that the applications were in fact classified by ONR, that the PTO was well aware of that fact, and that ONR's statements to NCIS were false and a transparent attempt by ONR to cover up its mishandling of Mr. Trunk's patent applications. ONR's purported declassification action in 2010 of the first of Mr. Trunk's applications classified in January 2000 likewise demonstrates that the applications had indeed been classified by ONR beginning in January 2000, contrary to ONR's denials.

24. When Mr. Trunk contacted the PTO after Secrecy Orders were lifted and asked them about the classification issue, he was informed that the material had never been classified by ONR. When he asked about the classified material receipts, he was told none were ever sent. When Mr. Trunk said he was looking at one as they spoke, he was asked to fax a copy to the PTO, which he did. The PTO then refused further comment on the matter.

25. Around March 2006, DOE representatives indicated to Mr. Trunk that they had inspected his applications in the PTO vault and that they had been marked as having been "declassified." However, DOE indicated to Mr. Trunk that the DOE's General Counsel's Office had never received any request for declassification of his applications and that the applications were still legally classified. Mr. Trunk was given verbal instructions by the DOE General Counsel's Office on how he was to handle the unauthorized release of the classified material. Therefore, DOE's office of declassification had not reviewed Mr. Trunk's applications. This was in direct conflict with an earlier statement from the Navy IG to Senator Cornyn's office that DOE had reviewed the material and found it not to be of national security concern.

26. On information and belief, the Secrecy Orders on Mr. Trunk's Applications were lifted without a proper review for declassification. For example, Mr. Trunk was advised that a patent screener under contract with DOE reviewed his applications, totaling hundreds of pages, for approximately 20 minutes before concurring in the decision to lift the Secrecy Orders. Any request for declassification would have to have been processed through the DOE General Counsel's office. This DOE patent screener had no authority to declassify any material classified as Restricted Data. Apparently the DOE patent screener never forwarded the material to DOE's declassification office for a declassification review.

27. On or about March 13, 2006, Mr. Trunk received a letter from John Kinczel, Inspector General of the Department of Defense, Defense Security Service ("DSS"), advising Mr. Trunk in writing that material in his patent applications was still under a secrecy order and that he should continue to handle the material "in such as manner as to preclude access by individuals without the appropriate level of clearance, and the need to know/access the materials" until such time as those Secrecy Orders were properly rescinded.

28. In or about April 2006, Mr. Trunk was advised by DTSA that the publication of Mr. Trunk's patent application was also a direct ITAR violation. Nevertheless, the PTO refused to comply with, or even acknowledge, Mr. Trunk's written request in April 2006 to remove the published application from the PTO's website, even though the PTO knew the information in the applications had been classified and had no reason to believe the information was ever properly declassified.

29. In June 2006, Mr. Trunk was told by the Chief of the Munitions List Division of DOD-DTSA that he needed to file the request as soon as possible to force ONR and the PTO to "clean up their mess." The Chief of the Munitions List Division told Mr. Trunk that he was not

to cause any public disclosure of the information in his patent applications, even though one had been published, or he would face fines, prosecution and imprisonment because the material had not been removed from the Munitions List, and the classification issue was yet to be resolved.

30. In order to resolve the confusion and uncertainty concerning the status of the information in his patent applications, Mr. Trunk filed, on August 28, 2006, a request for a Commodity Jurisdiction Ruling with the U.S. Department of State.

31. On information and belief, in late 2006, after doing a technical evaluation, General Dynamics-Electric Boat Corporation prepared and circulated a White Paper requesting acquisition and/or licensing of Mr. Trunk's technology. The White Paper was supposedly submitted to the Navy's Program Executive Office for Submarines (PEOSUBS). Electric Boat informed Mr. Trunk they had classified the White Paper as "NOFORN" ("Not Releasable to Foreign Nationals"). Northrop Grumman informed Mr. Trunk that they had seconded the request for acquisition in mid-2007.

32. On information and belief, a hearing was held on Mr. Trunk's request for a Commodity Jurisdiction ruling in January 2007. Mr. Trunk was told by the IG of DSS that he was not allowed to attend the meeting because of the classified nature of the information to be discussed and because he held no DOD or DOE security clearance.

33. Mr. Trunk's request for a Commodity Jurisdiction ruling failed to provide any clarity concerning the classification status of his applications. A ruling was issued on or about May 4, 2007, simply stating that the Department of State had no jurisdiction over the information in Mr. Trunk's applications since they dealt with "fundamental research, which is not subject to the licensing jurisdiction of the Department of State." The ruling further advised Mr. Trunk that

he could seek a separate ruling from the Department of Commerce if application of his "theory" to a product or technology produced a defense article or constituted a defense service.

34. Mr. Trunk was advised by a State Department employee, Denzel Tice, his case officer, that ONR had indeed admitted that they had classified his applications but claimed that the classification action was a "mistake." The classification in fact was not a mistake, but on information and belief was done on the direct recommendation of Mr. Gene Remmers, the ONR science officer who conducted the security review in connection with Mr. Trunk's patent applications from 1994 to 2000. In fact, contrary to what ONR informed the Department of State, Mr. Trunk was told around January 2000 by ONR's legal counsel that they had to impose secrecy orders because not to do so could be construed as "criminal negligence."

35. Mr. Trunk has requested, through correspondence and FOIA requests, copies of any paperwork classifying and purportedly declassifying his patent applications, in order to attempt to resolve the issue of what could be disclosed, and to whom. Despite Mr. Trunk's repeated requests, ONR has never provided copies of the classification paperwork for each of his patent applications and, more significantly, has never provided any evidence that his patent applications were declassified by any individuals having the necessary declassification authority.

36. Upon the advice and suggestion of the DSS Inspector General, Mr. Trunk contacted the National Reconnaissance Office (NRO) in late 2007. NRO referred Mr. Trunk to the Navy's security office at Ft. Mead, and they in turn referred Mr. Trunk to the National Security Agency's (NSA) Office of Military Affairs. In the first week of January 2008, Mr. Trunk filed a formal complaint for a security violation through NSA's "security and classification" office. NSA notified NCIS headquarters of the complaint and told Mr. Trunk to "follow NRO's advice." The NRO advised Mr. Trunk he should not disclose information that is

or could be considered derivative of the information in his patent applications until they had a chance to review it and determine whether or not it should be classified.

37. NRO has expressed an interest in Mr. Trunk's work. Around April 2008, Mr. Trunk was contacted by NRO and informed as to how they operate. He was advised by NRO that he should team up with one of NRO's prime contractors and submit an implementation proposal to NRO for their consideration.

38. NASA has also indicated an interest in gaining access to various aspects of Mr. Trunk's work if and when the security issues concerning that work are resolved. In the Fall of 2009, Mr. Trunk was invited by NASA to present his work and discuss a possible consulting agreement. NASA was advised by ONR that the Secrecy Orders with respect to Mr. Trunk's patent applications had been lifted in 2004. ONR did not provide any of the paperwork regarding classification or possible declassification of Mr. Trunk's applications to NASA. In February 2010, Mr. Trunk gave a presentation in response to NASA's invitation to approximately 50 NASA scientists and engineers at the Langley Research Center in Virginia. NASA was particularly interested in Mr. Trunk's work in electromagnetic theory.

39. In late 2013, NASA again contacted Mr. Trunk with another invitation to speak on his work in electromagnetics at NASA's Langley Research Center, as well as present his vision for a long term research program in electromagnetics. Mr. Trunk, however, advised NASA through their prime contractor for this project that he cannot discuss or disclose information in his patent applications, or information related to those applications, until the issues relating to classification have been resolved. As a result, Mr. Trunk has had to forego a possible consulting arrangement with NASA and/or their contractors.

40. In order to attempt to resolve these classification issues, Mr. Trunk's counsel contacted John Forrest, ONR's Patent Counsel, on November 25, 2009. The letter requested details concerning the classification status of Mr. Trunk's patent applications, and also requested copies of documents relating to the classification and possible declassification of those applications.

41. When no response was received from ONR's Patent Counsel, Mr. Trunk's counsel sent a letter to Mr. Forrest citing the classification authorities that Mr. Trunk understood had been used to classify his applications and requesting details concerning the classification and possible declassification of those applications, including related documentation. The letter requested a response by December 3, 2009. No response was received from ONR by December 3, either by telephone or in writing.

42. Mr. Trunk, through counsel, sent a letter to Mr. Forrest on December 4, 2009, again requesting copies of documentation relating to the classification and possible declassification of Mr. Trunk's patent applications. As noted in the letter, the issues were not limited to Mr. Trunk's patent applications, but also related to information which was "derivative of" or related to the information in the applications, and Mr. Trunk's ability to possess his own information without a security clearance.

43. Mr. Trunk's counsel received an auto-reply to the email copy of his December 4, 2010 letter, indicating that Mr. Forrest was out of the office "indefinitely" and that anyone attempting to reach Mr. Forrest should contact Bryan Wood of ONR's legal department. On information and belief, Mr. Wood was at that time the head of ONR's legal department and Mr. Forrest's superior.

44. Mr. Wood sent an email to Mr. Trunk's counsel on December 8, 2009, indicating that Mr. Forrest was out of the office until later that week and would respond "as soon as practicable" after his return. Mr. Trunk's counsel responded later that day, again requesting a substantive response to Mr. Trunk's inquiries, noting that Mr. Trunk had been trying to resolve these issues for several years, and offering to meet with ONR's legal counsel to facilitate a resolution. Mr. Wood responded with an email on December 8 stating that "a meeting will not be productive until we have had a chance to review the issue thoroughly" and that "Mr. Forrest will contact you as soon as practicable."

45. On December 11, 2009, ONR's counsel, Mr. Forrest, sent a letter claiming that Mr. Trunk's applications had never been classified in the first place, that Secrecy Orders had been lifted, and that Mr. Trunk could "do whatever he wanted" with the technology in his applications. This directly contradicted an email from Mr. Forrest to Dennis Bushnell of NASA dated November 6, 2009, stating that the PTO had issued a notice rescinding the secrecy order on one of Mr. Trunk's patent applications and "This means that the Navy no longer considers the patent application to contain classified information," clearly indicating that the patent applications were classified at one time.

46. In a letter dated December 17, 2009, Mr. Trunk's counsel responded that ONR's position was contrary to evidence that Mr. Trunk's applications were indeed classified, and again requested copies of classification/declassification documents to determine whether the applications were properly declassified. ONR refused to provide this documentation and Mr. Forrest responded in a letter dated December 23, 2009 that "A further discussion of your assessment of the processing of these responses will not be engaged."

47. On December 22, 2009, Mr. Trunk's counsel sent a follow-up letter to the Secretaries of the Navy, Energy, the Air Force, Defense and Commerce and the Assistant Commissioner of the PTO and their general counsels, with copies to the Director of National Intelligence and the National Reconnaissance Office and their general counsels. The December 22 letter was followed by numerous communications, orally and in writing, with the general counsels for their respective agencies. Despite these further attempts to resolve this matter, the Defendants failed to provide any substantive response to Mr. Trunk's inquiries, failed to take a position on whether or not Mr. Trunk's work was ever properly classified or should remain classified, and failed to provide any of the requested documents regarding the classification process.

48. Following ONR's refusal to "engage" any further in late 2009, and after receiving the final documentation provided under FOIA requests to ONR and various other Federal agencies, Mr. Trunk commenced a further review of all pertinent correspondence and dialogues since 1998, as well as a detailed review of applicable Federal national security law and associated regulations, in an attempt to determine the appropriate classification status of his patent applications and derivative work. Mr. Trunk was forced to attempt to make this assessment on his own because of the persistent refusal of ONR and other government agencies to provide any clarity on the classification status of his work, and the implications for Mr. Trunk personally if the information was still classified. At the same time, Mr. Trunk sought to attempt to resolve this matter through negotiation with ONR with the assistance of individuals having high stature in the intelligence community, rather than having to go through the formal litigation process, which Mr. Trunk considered to be a last resort, to be commenced only if all other attempts at resolution failed.

49. After this review, a letter dated April 5, 2013, with six supporting enclosures, was sent to the Chief of Naval Research at ONR for action. Specifically mentioned in that letter were the pertinent national security laws which are discussed in the CFR (Code of Federal Regulations), Parts 10, 15, 18, 22, and 27. While there remains some question as to whether Mr. Trunk's patent applications were properly classified and placed under Secrecy Orders in the first place, the above statutes and regulations clearly make it abundantly clear that ONR had no declassification authority whatsoever over Mr. Trunk's patent applications, once again raising the issues of whether proper declassification procedures were followed.

50. A letter dated May 13, 2013 was received from John Forrest, IP counsel of the Navy. It contents were unresponsive. Once again, Mr. Forrest stated that ONR would make no further comments or representations to Mr. Trunk or his legal counsel on these classification and security issues, or attempt to help resolve them.

51. On July 1, 2013, Mr. Trunk's counsel responded to ONR's letter of May 13, 2013 from Mr. Forrest, expressing his disagreement with Mr. Forrest's remarks. Mr. Trunk's counsel indicated, among other things, that "While you stated in your December 23, 2009 that '… ONR considers this matter to be closed…', in fact the matter is not closed. Contrary to your assertions, the information received to date makes it clear that ONR did indeed classify Mr. Trunk's patent applications, and ONR has failed to provide evidence that they were properly declassified."

52. Mr. Trunk's attorney's July 1, 2013 letter continued: "Specifically from the cited classification authorities, and our understanding and interpretation of the law (Atomic Energy Act of 1954, as amended, 10 CFR 1045, EO 133526, DOD and USN Information Security Manuals, etc.), it is clear that Mr. Trunk's patent applications were classified under both national

security and atomic energy classification authorities, and as such were classified as RESTRICTED DATA. It is our further understanding of the law that there is a well-defined statutory process that must be followed for the downgrading of RESTRICTED DATA and its subsequent declassification. From the information provided to us to date we find no evidence, and ONR has provided none, that downgrading and declassification was or has been requested by ONR or that the statutory declassification process was followed."

53. To date there has been no response by ONR to the July 1, 2013 letter.

54. Because of the manner in which Mr. Trunk's patent applications were classified, those applications cannot be declassified without following the statutory declassification procedures as specified by law. There is no evidence that those procedures were followed in this case. Furthermore, ONR has repeatedly refused to provide documentation showing that the required statutory procedures were followed, for both the alleged declassification actions in September 2004, and again in December in 2010. The Defendants' actions have been evasive and contradictory, placing Mr. Trunk in an untenable legal situation, living in fear of criminal prosecution and unable to publish his work, continue his professional career, or gain meaningful employment.

55. On information and belief, ONR and the other Defendants engaged in an improper and unlawful course of conduct in a deliberate and malicious manner in an attempt to gain possession of Mr. Trunk's valuable intellectual property without compensation, and in the process preventing Mr. Trunk from benefiting financially and professionally from his own discoveries, without regard or concern as to how this conduct would affect Mr. Trunk's personal life or his career as an engineer, scientist, and businessman.

56. On information and belief, the Defendants have deliberately refused to resolve Mr. Trunk's situation in order to attempt to avoid responsibility and liability for their improper and unlawful actions, and their willful failure to handle Mr. Trunk's information properly, as stipulated by law.

57. As a result of the Defendants' actions, Mr. Trunk does not know at this time whether or not his patent applications, and derivative or related technology, are still classified; whether they have been properly declassified; or what information concerning his ground-breaking discoveries can be published and discussed publicly. Mr. Trunk faces the risk of possible criminal liability for disclosure of classified information until these issues are resolved. Mr. Trunk's numerous and diligent efforts to resolve these issues informally with the Defendants have been unsuccessful and have been met with hostility. Accordingly, Mr. Trunk is forced to seek declaratory relief from the Court.

IV. FIRST CLAIM FOR DECLARATORY RELIEF

58. Plaintiff incorporates by reference the allegations set forth above in paragraphs 1 through 57.

59. A case or controversy currently exists concerning the classification status of Mr. Trunk's patent applications and material derived from the technology described in those applications. Despite diligent efforts, Mr. Trunk has been unable to obtain any resolution of those issues.

60. Accordingly, Mr. Trunk seeks a declaration as to whether or not his patent applications, and the information in those applications, and derivative works related to the information in those applications, are classified and whether proper declassification procedures have been followed; and if the information is still classified, the level of classification; who, including Mr. Trunk, is permitted to have access to the information; the names of the agencies

that still consider the information to be classified; and to whom, and under what conditions, the information may be disclosed.

V. SECOND CLAIM FOR DECLARATORY RELIEF (RELIEF UNDER THE APA)

61. Mr. Trunk incorporates by reference the allegations set forth above in paragraphs 1 through 60.

62. Despite repeated requests, Defendants have failed to provide Mr. Trunk with accurate information regarding the classification and declassification status of his patent applications. And, despite numerous requests, Defendants have failed to provide information indicating which government agencies, if any, were consulted as part of the decision to lift the Secrecy Orders on Mr. Trunk's patent applications.

63. Defendants' failure to provide Mr. Trunk with accurate information as to his patent applications' classification status is arbitrary, capricious and unreasonable under 5 U.S.C. § 706(1).

64. Moreover, Defendants acted arbitrarily, capriciously and unreasonably under 5 U.S.C. § 706(1) by, for example, improperly and unreasonably designating Mr. Trunk's scientific discoveries as classified material, refusing to provide truthful and accurate information in response to Mr. Trunk's inquiries and FOIA requests related to the classification status of his patent applications; failing to follow proper declassification procedures for Mr. Trunk's applications; failing to provide Mr. Trunk with accurate information about the classification status of his patent applications; and misinforming Mr. Trunk and providing inconsistent statements about the classification status of his applications.

65. Defendants' arbitrary, capricious and unreasonable acts and the uncertainty created about the classification status of Mr. Trunk's applications are contrary to law and have

caused Mr. Trunk to live in fear of prosecution for possessing classified information, resulted in the loss of valuable employment and consulting opportunities, and otherwise interfered with Mr. Trunk's life and career and made it impossible for Mr. Trunk to realize the fruits of his discoveries. A declaration as requested by Mr. Trunk regarding the status of his patent applications is therefore necessary.

VI. THIRD CLAIM FOR DECLARATORY RELIEF (ON FIRST AMENDMENT GROUNDS)

66. Mr. Trunk incorporates by reference the allegations set forth in paragraphs 1 through 65.

67. Defendants suppressed Mr. Trunk's freedom of speech by threatening him with prosecution, fines, and imprisonment and otherwise instructing Mr. Trunk not to disclose the subject matter of his patent applications, either because the subject matter of the applications was never classified (as Defendants aver), was improperly classified, or was never properly declassified.

68. Moreover, Defendants' decision to classify and failure to properly declassify Mr. Trunk's discoveries was improper and amounts to a restriction of his freedom of speech.

69. Defendants' acts in violation of Mr. Trunk's First Amendment rights and the uncertainty created about the classification status of his applications have caused Mr. Trunk to live in fear of prosecution for possessing classified information, resulted in the loss of valuable employment and consulting opportunities, and otherwise interfered with Mr. Trunk's life and career and made it impossible for Mr. Trunk to freely publish and speak about, and otherwise realize, the fruits of his discoveries. A declaration as requested by Mr. Trunk regarding the status of his patent applications is therefore necessary.

VII. PRAYER FOR RELIEF

WHEREFORE, Mr. Trunk requests as relief an order from this Court:

A. Declaring whether Mr. Trunk's patent applications, the information in those applications, and derivative works related to the information in those applications, are classified and whether proper declassification procedures have been followed, and if the information is still classified, the level of classification, who (including Mr. Trunk) is permitted to have access to the information, the names of the agencies that still consider the information to be classified, and to whom and under what conditions the information may be disclosed;

B. Directing Defendants to issue a definitive statement informing Mr. Trunk of the classification status of his patent applications, the information in those applications, and derivative works related to the information in those applications, and if the information is still classified, the level of classification, who (including Mr. Trunk) is permitted to have access to the information, the names of the agencies that still consider the information to be classified, and to whom and under what conditions the information may be disclosed;

C. If Defendants contend that any of Mr. Trunk's patent applications are not classified or were classified but have been properly declassified, declaring that Defendants' cannot prevent Mr. Trunk from disclosing to others his patent applications, the information in those applications, and derivative works related to the information in those applications; and

D. Any other relief that the Court may deem appropriate, as well as reimbursement of all attorneys fees and costs incurred in connection with this litigation.

Respectfully submitted,

Dated: September 16, 2015

/s/ Gary M. Hnath

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FRANK JOSEPH TRUNK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRANK JOSEPH TRUNK, III
7922 Coriander Dr., #204
Gaithersburg, MD 20879

Plaintiff,

v.

RAYMOND E. MABUS
SECRETARY OF THE UNITED STATES NAVY
c/o Department of the Navy
1200 Navy Pentagon
Washington, D.C. 20350-1200

and

DR. ERNEST J. MONIZ
SECRETARY OF ENERGY
c/o U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

and

CHARLES T. HAGEL
SECRETARY OF DEFENSE
c/o U.S. Department of Defense
1000 Air Force Pentagon
Washington, D.C. 20301-1000

and

MICHELLE K. LEE
DEPUTY UNDERSECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND
DEPUTY DIRECTOR OF THE U.S. PATENT &
TRADEMARK OFFICE
c/o U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Defendants.

AMENDED COMPLAINT FOR DECLARATORY RELIEF

C.A. No. 1:14-cv-02139 (KBJ)

~~**FILED UNDER SEAL**~~

PLAINTIFF, FRANK JOSEPH TRUNK, III submits the following Amended Complaint seeking declaratory relief pursuant to 28 U.S.C. § 2201 against Defendants the Secretary of the Navy ("Navy"), the Secretary of Energy ("DOE"), the Secretary of Defense ("DOD"), and the Deputy Director of the Patent & Trademark Office ("PTO").

INTRODUCTION

Beginning in January 2000, the Office of Naval Research ("ONR") submitted a request to place patent applications filed by Mr. Trunk under Secrecy Orders pursuant to 35 U.S.C. §§ 181-188, because of the potential threat to national security if information in those applications were made public. Mr. Trunk's work had been under technical and security reviews by ONR since September 1993. Those applications describe fundamental breakthroughs in physics and material science that according to one senior Navy scientist "are the sort of thing Nobel prizes are made of." On information and belief, Mr. Trunk's patent applications were classified at the DoD 'Secret' level and, according to ONR documentation, under the following three cited classification authorities:

DODINST S5230.29 (Aircraft and ship stealth technology)

OPNAVINST S5513.3B, enclosures 38, 55, 56, and 57 (Ship and submarine stealth technology) ; and

DoD/DoE Topical Classification Guide – "Weapon Science" (TCG – WS – 1) (nuclear weapon design)

Because of the cited Nuclear Weapons Design authority, ONR had to have known that the material was classified as Restricted Data (RD), as defined by the Atomic Energy Act of 1954, as amended (Chapter 2, Section 11(y)). In their communications with Mr. Trunk through 2006, verbal and written, ONR insisted the material had not been formally classified, but was

only 'classifiable'. However, under the provisions of the Atomic Energy Act, the material had to have been classified and technically was classified "from birth."

In September 2004, following complaints filed with the DoD and DoE Inspectors General Hotline Offices in February 2003, the Secrecy Orders were rescinded at the request of ONR, apparently without consultation with the Dept. of Energy or the Dept. of Defense as would have been required by, for example, 42 USC Parts 2162 and 2163; 10 CFR Part 1045 (Subpart B); DoD National Industrial Security Manual 5220.22, Chapter 9 (Sec 1); DoD Information Security Manual 5200.01, Enclosures 4 and 5; DoD Instruction 5210.02, Enclosure 3; and DoD Nuclear Matters Handbook, Appendix H. Given the classification under the Atomic Energy Act, ONR could not have unilaterally declassified the information, and ONR has failed to provide evidence that proper declassification procedures were followed.

Substantial questions exist as to whether or not Mr. Trunk's applications were properly declassified, and as to Mr. Trunk's obligations with respect to that information, questions which ONR has refused to address adequately despite repeated requests by Mr. Trunk. Accordingly, Mr. Trunk submits this Complaint in order to determine whether information that he originally submitted in the form of patent applications remains legally classified, and if so, the level of classification; whether material derived from that classified material and associated with it is likewise classified; and the conditions under which Mr. Trunk can disclose this information. Without a resolution of these critical issues, Mr. Trunk lives under a cloud of uncertainty and is unable to obtain gainful employment.

I. PARTIES

1. Mr. Trunk is an individual currently residing in Gaithersburg, Maryland.

2. The Department of the Navy is located at 1200 Navy Pentagon, Washington, D.C., 20350-1200. Raymond E. Mabus, the Secretary of the Navy, is named in his official capacity.

3. The Department of Energy is located at 1000 Independence Ave., SW, Washington, DC, 20585. Dr. Ernest Moniz is named in his official capacity as Secretary of the Department of Energy.

4. The Department of Defense is located at 1000 Defense, Pentagon, Washington, DC, 20301-1000. Chuck Hagel, Secretary of Defense, is named in his official capacity.

5. The Patent & Trademark Office is located at P.O. Box 1450, Alexandria, Virginia, 22313-1450. Michelle K. Lee is named in her official capacity as Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the U.S. Patent & Trademark Office.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§1331, 1346 and 2201.

7. The Court has personal jurisdiction over the Defendants, each of which is located in the District of Columbia.

8. Venue is proper pursuant to 28 U.S.C. §1391(e).

III. FACTUAL BACKGROUND

9. Beginning around 1993, Mr. Trunk made a series of fundamental discoveries in the fields of physics and material physics that have broad engineering applications. Beginning in 1994, Mr. Trunk proceeded to file a series of patent applications with the U.S. Patent &

Trademark Office ("PTO") describing a portion of what he had discovered, and ONR commenced its security reviews of those applications and the technology disclosed therein.

10. The applications filed by Mr. Trunk show how to solve specific problems in fundamental material physics that relate to a host of engineering design applications, both civilian and military.

11. Secrecy Orders were issued on these applications beginning in January 2000 by the PTO at the request of the Department of the Navy, Office of Naval Research ("ONR"). On information and belief, each of the applications was made subject to a Type 3 Secrecy Order. On information and belief, the applications were classified by ONR beginning in January 2000, and Secrecy Orders were reissued annually through September 2004.

12. On information and belief, Mr. Trunk's patent applications were classified 'DoD/Secret/Restricted Data', although Mr.Trunk was informed by ONR that the documentation was to only be marked DoD/Secret. According to ONR documentation released pursuant to Mr. Trunk's FOIA request, the patent applications were classified under the following three cited classification authorities:

> DODINST S5230.29 (Aircraft and ship stealth technology)
>
> OPNAVINST S5513.3B, enclosures 38, 55, 56, and 57 (Ship and submarine stealth technology) ; and
>
> DoD/DoE Topical Classification Guide – "Weapon Science" (TCG – WS – 1) (nuclear weapon design)

13. On information and belief, the information in Mr. Trunk's patent applications would have been classified only after consultation with program offices from the different agencies that might have an interest in the technology, including the Navy, the Air Force, and the Department of Energy. Under the Atomic Energy Act of 1954 ("AEA"), 42 USC Part 2014(y); 10 CFR Part 1045; and 50 USC Part 2501(10), the cited DoD/DoE nuclear weapons design

classification authority defines and classifies these applications as "Restricted Data," not simply "National Security Information." The above-cited Department of Defense classification authority (DODINST S5230.29) and Department of the Navy classification authority (OPNAVINST S5513.3B) also classify these applications as "National Security Information."

14. Mr. Trunk has never been issued a security clearance by ONR, the Navy, DOD, or DOE, nor has he been granted contractor status or a government contract which would enable him to obtain a security clearance. As a result, Mr. Trunk has been placed under threat of possible criminal violations for possession of classified information without a security clearance. Mr. Trunk was told by law enforcement authorities at DOE that under the law he could be guilty of a criminal offense for possessing classified information, even though he had never intentionally or knowingly committed any offense. Mr. Trunk has been told that as a matter of law, technically he cannot even "think about" or "discuss with myself" the subject matter of the patent applications because of the lack of a security clearance. The DOE General Counsel's Office has even asked (presumably in jest) whether Mr. Trunk is now required to "shoot himself" since he is in possession of classified information without a security clearance. Both the Navy and the FBI have refused to take possession of this classified material. Mr. Trunk was notified by the FBI that the Navy refused to grant the FBI authorization to take possession of the classified material. ~~Mr. Trunk was~~The Chief of the FBI's National Security Law Branch in Washington, DC notified ~~by~~Mr. Trunk, as well as the Houston~~, Texas~~ FBI field office, that if ~~he~~Mr. Trunk surrendered the classified material, he would be arrested for unauthorized possession

15. In early 2002, Mr. Trunk was advised by a Naval Air System Command (NAVAIR) attorney that NAVAIR had requested the issuance of the Secrecy Orders. This NAVAIR attorney informed Mr. Trunk that he would "never make a penny" from his

technology. He was told that his heirs might make something from it, if the government ever turned it loose, but that he would not. In December 2003, NAVSEA legal counsel advised Mr. Trunk that his applications had made all five of the government's restricted technology lists. He also told Mr. Trunk that ONR had "locked the technology down so tight that you'll probably never get it turned loose."

16. Beginning around April 2000, General Dynamics – Electric Boat Corporation, the Navy's principal contractor for nuclear submarine design, requested access to Mr. Trunk's technology. An NDA was negotiated and signed by Mr. Trunk, and Electric Boat and designated Electric Boat personnel were granted permits by the PTO for access to his patent applications. On information and belief, sometime around late 2000, Electric Boat submitted a request to the Industrial Security Division of DOD-Defense Security Services (DSS) for a ruling as to how the material in Mr. Trunk's patent applications was to be handled at their facility in Groton, Connecticut.

17. On information and belief, Secrecy Orders on all eight patent applications identified above were rescinded on or about September 30, 2004. The Secrecy Orders were rescinded by the PTO at the request of ONR.

18. On information and belief, under authorities such as 42 U.S.C. § 2162 and 10 CFR 1045.14-1045.17, Mr. Trunk's patent applications (and associated other technology) could and can only be downgraded from a status of "Restricted Data" to a status of "Formerly Restricted Data" by the Department of Energy classifiers, and could and can be declassified only after consultation with and approval by the same program offices which would have had ownership of the various classification authorities listed for classification of the applications (DON, DOD, DOE), and the Office of the Deputy Assist. Secretary of Defense for Nuclear

Matters (DoD). There is no evidence that the proper procedures were followed with respect to Mr. Trunk's patent applications.

19. In April 2005, after he became aware that the Secrecy Orders had been rescinded, Mr. Trunk contacted the DOD-IG's office and was told that it might be several more years before his complaint was resolved because his case was "difficult." Mr. Trunk was later told by staff from the DOD-IG's office to "watch your back and cover your ass," "not to worry about anyone else," and to "beware of the industrial military complex." When Mr. Trunk asked if this meant he was being targeted by ONR, he was told to interpret the warning "any way he wanted."

20. In July 2005, Mr. Trunk contacted the Department of State about obtaining a Commodity Jurisdiction Ruling for his patent applications and was informed that he needed to obtain declassification documentation from ONR or DOD.

21. In September 2005, Mr. Trunk requested declassification documentation on all of his applications from DOD, through the Defense Technology Security Administration (DTSA). DTSA forwarded Mr. Trunk's request to the Navy and stated that ONR had to either declassify the applications or reissue Secrecy Orders. On information and belief, ONR failed to respond to DTSA's request.

22. In September 2005, Mr. Trunk also filed a complaint with the Dallas field office of the Naval Criminal Investigative Service ("NCIS"). In the course of the investigation relating to that complaint, the NCIS Special Agent conducting the investigation told Mr. Trunk that ONR had informed him that Mr. Trunk's applications had never been classified and did not require declassification, and that Mr. Trunk was free to do whatever he wanted with the material. In October 2005, the NCIS Special Agent handling the case informed Mr. Trunk that he wanted to confirm this statement with the Navy's ballistic missile submarine security office before closing

down the investigation (N-775 Program Office). Mr. Trunk never heard from NCIS again about the matter and NCIS failed to respond to any of his inquiries.

23. Classified security receipts issued by the PTO in connection with office actions related to the prosecution of Mr. Trunk's patent applications demonstrate that the applications were in fact classified by ONR, that the PTO was well aware of that fact, and that ONR's statements to NCIS were false and a transparent attempt by ONR to cover up its mishandling of Mr. Trunk's patent applications. ONR's purported declassification action in 2010 of the first of Mr. Trunk's applications classified in January 2000 likewise demonstrates that the applications had indeed been classified by ONR beginning in January 2000, contrary to ONR's denials.

24. When Mr. Trunk contacted the PTO after Secrecy Orders were lifted and asked them about the classification issue, he was informed that the material had never been classified by ONR. When he asked about the classified material receipts, he was told none were ever sent. When Mr. Trunk said he was looking at one as they spoke, he was asked to fax a copy to the PTO, which he did. The PTO then refused further comment on the matter.

25. Around March 2006, DOE representatives indicated to Mr. Trunk that they had inspected his applications in the PTO vault and that they had been marked as having been "declassified." However, DOE indicated to Mr. Trunk that the DOE's General Counsel's Office had never received any request for declassification of his applications and that the applications were still legally classified. Mr. Trunk was given verbal instructions by the DOE General Counsel's Office on how he was to handle the unauthorized release of the classified material. Therefore, DOE's office of declassification had not reviewed Mr. Trunk's applications. This was in direct conflict with an earlier statement from the Navy IG to Senator Cornyn's office that DOE had reviewed the material and found it not to be of national security concern.

26. On information and belief, the Secrecy Orders on Mr. Trunk's Applications were lifted without a proper review for declassification. For example, Mr. Trunk was advised that a patent screener under contract with DOE reviewed his applications, totaling hundreds of pages, for approximately 20 minutes before concurring in the decision to lift the Secrecy Orders. Any request for declassification would have to have been processed through the DOE General Counsel's office. This DOE patent screener had no authority to declassify any material classified as Restricted Data. Apparently the DOE patent screener never forwarded the material to DOE's declassification office for a declassification review.

27. On or about March 13, 2006, Mr. Trunk received a letter from John Kinczel, Inspector General of the Department of Defense, Defense Security Service ("DSS"), advising Mr. Trunk in writing that material in his patent applications was still under a secrecy order and that he should continue to handle the material "in such as manner as to preclude access by individuals without the appropriate level of clearance, and the need to know/access the materials" until such time as those Secrecy Orders were properly rescinded.

28. In or about April 2006, Mr. Trunk was advised by DTSA that the publication of Mr. Trunk's patent application was also a direct ITAR violation. Nevertheless, the PTO refused to comply with, or even acknowledge, Mr. Trunk's written request in April 2006 to remove the published application from the PTO's website, even though the PTO knew the information in the applications had been classified and had no reason to believe the information was ever properly declassified.

29. In June 2006, Mr. Trunk was told by the Chief of the Munitions List Division of DOD-DTSA that he needed to file the request as soon as possible to force ONR and the PTO to "clean up their mess." The Chief of the Munitions List Division told Mr. Trunk that he was not

to cause any public disclosure of the information in his patent applications, even though one had been published, or he would face fines, prosecution and imprisonment because the material had not been removed from the Munitions List, and the classification issue was yet to be resolved.

30. In order to resolve the confusion and uncertainty concerning the status of the information in his patent applications, Mr. Trunk filed, on August 28, 2006, a request for a Commodity Jurisdiction Ruling with the U.S. Department of State.

31. On information and belief, in late 2006, after doing a technical evaluation, General Dynamics-Electric Boat Corporation prepared and circulated a White Paper requesting acquisition and/or licensing of Mr. Trunk's technology. The White Paper was supposedly submitted to the Navy's Program Executive Office for Submarines (PEOSUBS). Electric Boat informed Mr. Trunk they had classified the White Paper as "NOFORN" ("Not Releasable to Foreign Nationals"). Northrop Grumman informed Mr. Trunk that they had seconded the request for acquisition in mid-2007.

32. On information and belief, a hearing was held on Mr. Trunk's request for a Commodity Jurisdiction ruling in January 2007. Mr. Trunk was told by the IG of DSS that he was not allowed to attend the meeting because of the classified nature of the information to be discussed and because he held no DOD or DOE security clearance.

33. Mr. Trunk's request for a Commodity Jurisdiction ruling failed to provide any clarity concerning the classification status of his applications. A ruling was issued on or about May 4, 2007, simply stating that the Department of State had no jurisdiction over the information in Mr. Trunk's applications since they dealt with "fundamental research, which is not subject to the licensing jurisdiction of the Department of State." The ruling further advised Mr. Trunk that

he could seek a separate ruling from the Department of Commerce if application of his "theory" to a product or technology produced a defense article or constituted a defense service.

34. Mr. Trunk was advised by a State Department employee, Denzel Tice, his case officer, that ONR had indeed admitted that they had classified his applications but claimed that the classification action was a "mistake." The classification in fact was not a mistake, but on information and belief was done on the direct recommendation of Mr. Gene Remmers, the ONR science officer who conducted the security review in connection with Mr. Trunk's patent applications from 1994 to 2000. In fact, contrary to what ONR informed the Department of State, Mr. Trunk was told around January 2000 by ONR's legal counsel that they had to impose secrecy orders because not to do so could be construed as "criminal negligence."

35. Mr. Trunk has requested, through correspondence and FOIA requests, copies of any paperwork classifying and purportedly declassifying his patent applications, in order to attempt to resolve the issue of what could be disclosed, and to whom. Despite Mr. Trunk's repeated requests, ONR has never provided copies of the classification paperwork for each of his patent applications and, more significantly, has never provided any evidence that his patent applications were declassified by any individuals having the necessary declassification authority.

36. Upon the advice and suggestion of the DSS Inspector General, Mr. Trunk contacted the National Reconnaissance Office (NRO) in late 2007. NRO referred Mr. Trunk to the Navy's security office at Ft. Mead, and they in turn referred Mr. Trunk to the National Security Agency's (NSA) Office of Military Affairs. In the first week of January 2008, Mr. Trunk filed a formal complaint for a security violation through NSA's "security and classification" office. NSA notified NCIS headquarters of the complaint and told Mr. Trunk to "follow NRO's advice." The NRO advised Mr. Trunk he should not disclose information that is

or could be considered derivative of the information in his patent applications until they had a chance to review it and determine whether or not it should be classified.

37. NRO has expressed an interest in Mr. Trunk's work. Around April 2008, Mr. Trunk was contacted by NRO and informed as to how they operate. He was advised by NRO that he should team up with one of NRO's prime contractors and submit an implementation proposal to NRO for their consideration.

38. NASA has also indicated an interest in gaining access to various aspects of Mr. Trunk's work if and when the security issues concerning that work are resolved. In the Fall of 2009, Mr. Trunk was invited by NASA to present his work and discuss a possible consulting agreement. NASA was advised by ONR that the Secrecy Orders with respect to Mr. Trunk's patent applications had been lifted in 2004. ONR did not provide any of the paperwork regarding classification or possible declassification of Mr. Trunk's applications to NASA. In February 2010, Mr. Trunk gave a presentation in response to NASA's invitation to approximately 50 NASA scientists and engineers at the Langley Research Center in Virginia. NASA was particularly interested in Mr. Trunk's work in electromagnetic theory.

39. In late 2013, NASA again contacted Mr. Trunk with another invitation to speak on his work in electromagnetics at NASA's Langley Research Center, as well as present his vision for a long term research program in electromagnetics. Mr. Trunk, however, advised NASA through their prime contractor for this project that he cannot discuss or disclose information in his patent applications, or information related to those applications, until the issues relating to classification have been resolved. As a result, Mr. Trunk has had to forego a possible consulting arrangement with NASA and/or their contractors.

40. In order to attempt to resolve these classification issues, Mr. Trunk's counsel contacted John Forrest, ONR's Patent Counsel, on November 25, 2009. The letter requested details concerning the classification status of Mr. Trunk's patent applications, and also requested copies of documents relating to the classification and possible declassification of those applications.

41. When no response was received from ONR's Patent Counsel, Mr. Trunk's counsel sent a letter to Mr. Forrest citing the classification authorities that Mr. Trunk understood had been used to classify his applications and requesting details concerning the classification and possible declassification of those applications, including related documentation. The letter requested a response by December 3, 2009. No response was received from ONR by December 3, either by telephone or in writing.

42. Mr. Trunk, through counsel, sent a letter to Mr. Forrest on December 4, 2009, again requesting copies of documentation relating to the classification and possible declassification of Mr. Trunk's patent applications. As noted in the letter, the issues were not limited to Mr. Trunk's patent applications, but also related to information which was "derivative of" or related to the information in the applications, and Mr. Trunk's ability to possess his own information without a security clearance.

43. Mr. Trunk's counsel received an auto-reply to the email copy of his December 4, 2010 letter, indicating that Mr. Forrest was out of the office "indefinitely" and that anyone attempting to reach Mr. Forrest should contact Bryan Wood of ONR's legal department. On information and belief, Mr. Wood was at that time the head of ONR's legal department and Mr. Forrest's superior.

44. Mr. Wood sent an email to Mr. Trunk's counsel on December 8, 2009, indicating that Mr. Forrest was out of the office until later that week and would respond "as soon as practicable" after his return. Mr. Trunk's counsel responded later that day, again requesting a substantive response to Mr. Trunk's inquiries, noting that Mr. Trunk had been trying to resolve these issues for several years, and offering to meet with ONR's legal counsel to facilitate a resolution. Mr. Wood responded with an email on December 8 stating that "a meeting will not be productive until we have had a chance to review the issue thoroughly" and that "Mr. Forrest will contact you as soon as practicable."

45. On December 11, 2009, ONR's counsel, Mr. Forrest, sent a letter claiming that Mr. Trunk's applications had never been classified in the first place, that Secrecy Orders had been lifted, and that Mr. Trunk could "do whatever he wanted" with the technology in his applications. This directly contradicted an email from Mr. Forrest to Dennis Bushnell of NASA dated November 6, 2009, stating that the PTO had issued a notice rescinding the secrecy order on one of Mr. Trunk's patent applications and "This means that the Navy no longer considers the patent application to contain classified information," clearly indicating that the patent applications were classified at one time.

46. In a letter dated December 17, 2009, Mr. Trunk's counsel responded that ONR's position was contrary to evidence that Mr. Trunk's applications were indeed classified, and again requested copies of classification/declassification documents to determine whether the applications were properly declassified. ONR refused to provide this documentation and Mr. Forrest responded in a letter dated December 23, 2009 that "A further discussion of your assessment of the processing of these responses will not be engaged."

47. On December 22, 2009, Mr. Trunk's counsel sent a follow-up letter to the Secretaries of the Navy, Energy, the Air Force, Defense and Commerce and the Assistant Commissioner of the PTO and their general counsels, with copies to the Director of National Intelligence and the National Reconnaissance Office and their general counsels. The December 22 letter was followed by numerous communications, orally and in writing, with the general counsels for their respective agencies. Despite these further attempts to resolve this matter, the Defendants failed to provide any substantive response to Mr. Trunk's inquiries, failed to take a position on whether or not Mr. Trunk's work was ever properly classified or should remain classified, and failed to provide any of the requested documents regarding the classification process.

48. Following ONR's refusal to "engage" any further in late 2009, and after receiving the final documentation provided under FOIA requests to ONR and various other Federal agencies, Mr. Trunk commenced a further review of all pertinent correspondence and dialogues since 1998, as well as a detailed review of applicable Federal national security law and associated regulations, in an attempt to determine the appropriate classification status of his patent applications and derivative work. Mr. Trunk was forced to attempt to make this assessment on his own because of the persistent refusal of ONR and other government agencies to provide any clarity on the classification status of his work, and the implications for Mr. Trunk personally if the information was still classified. At the same time, Mr. Trunk sought to attempt to resolve this matter through negotiation with ONR with the assistance of individuals having high stature in the intelligence community, rather than having to go through the formal litigation process, which Mr. Trunk considered to be a last resort, to be commenced only if all other attempts at resolution failed.

49. After this review, a letter dated April 5, 2013, with six supporting enclosures, was sent to the Chief of Naval Research at ONR for action. Specifically mentioned in that letter were the pertinent national security laws which are discussed in the CFR (Code of Federal Regulations), Parts 10, 15, 18, 22, and 27. While there remains some question as to whether Mr. Trunk's patent applications were properly classified and placed under Secrecy Orders in the first place, the above statutes and regulations clearly make it abundantly clear that ONR had no declassification authority whatsoever over Mr. Trunk's patent applications, once again raising the issues of whether proper declassification procedures were followed.

50. A letter dated May 13, 2013 was received from John Forrest, IP counsel of the Navy. It contents were unresponsive. Once again, Mr. Forrest stated that ONR would make no further comments or representations to Mr. Trunk or his legal counsel on these classification and security issues, or attempt to help resolve them.

51. On July 1, 2013, Mr. Trunk's counsel responded to ONR's letter of May 13, 2013 from Mr. Forrest, expressing his disagreement with Mr. Forrest's remarks. Mr. Trunk's counsel indicated, among other things, that "While you stated in your December 23, 2009 that '… ONR considers this matter to be closed…', in fact the matter is not closed. Contrary to your assertions, the information received to date makes it clear that ONR did indeed classify Mr. Trunk's patent applications, and ONR has failed to provide evidence that they were properly declassified."

52. Mr. Trunk's attorney's July 1, 2013 letter continued: "Specifically from the cited classification authorities, and our understanding and interpretation of the law (Atomic Energy Act of 1954, as amended, 10 CFR 1045, EO 133526, DOD and USN Information Security Manuals, etc.), it is clear that Mr. Trunk's patent applications were classified under both national

security and atomic energy classification authorities, and as such were classified as RESTRICTED DATA. It is our further understanding of the law that there is a well-defined statutory process that must be followed for the downgrading of RESTRICTED DATA and its subsequent declassification. From the information provided to us to date we find no evidence, and ONR has provided none, that downgrading and declassification was or has been requested by ONR or that the statutory declassification process was followed."

53. To date there has been no response by ONR to the July 1, 2013 letter.

54. Because of the manner in which Mr. Trunk's patent applications were classified, those applications cannot be declassified without following the statutory declassification procedures as specified by law. There is no evidence that those procedures were followed in this case. Furthermore, ONR has repeatedly refused to provide documentation showing that the required statutory procedures were followed, for both the alleged declassification actions in September 2004, and again in December in 2010. The Defendants' actions have been evasive and contradictory, placing Mr. Trunk in an untenable legal situation, living in fear of criminal prosecution and unable to publish his work, continue his professional career, or gain meaningful employment.

55. On information and belief, ONR and the other Defendants engaged in an improper and unlawful course of conduct in a deliberate and malicious manner in an attempt to gain possession of Mr. Trunk's valuable intellectual property without compensation, and in the process preventing Mr. Trunk from benefiting financially and professionally from his own discoveries, without regard or concern as to how this conduct would affect Mr. Trunk's personal life or his career as an engineer, scientist, and businessman.

56. On information and belief, the Defendants have deliberately refused to resolve Mr. Trunk's situation in order to attempt to avoid responsibility and liability for their improper and unlawful actions, and their willful failure to handle Mr. Trunk's information properly, as stipulated by law.

57. As a result of the Defendants' actions, Mr. Trunk does not know at this time whether or not his patent applications, and derivative or related technology, are still classified; whether they have been properly declassified; or what information concerning his ground-breaking discoveries can be published and discussed publicly. Mr. Trunk faces the risk of possible criminal liability for disclosure of classified information until these issues are resolved. Mr. Trunk's numerous and diligent efforts to resolve these issues informally with the Defendants have been unsuccessful and have been met with hostility. Accordingly, Mr. Trunk is forced to seek declaratory relief from the Court.

IV. FIRST CLAIM FOR DECLARATORY RELIEF

58. Plaintiff incorporates by reference the allegations set forth above in paragraphs 1 through 57.

59. A case or controversy currently exists concerning the classification status of Mr. Trunk's patent applications and material derived from the technology described in those applications. Despite diligent efforts, Mr. Trunk has been unable to obtain any resolution of those issues.

60. Accordingly, Mr. Trunk seeks a declaration as to whether or not his patent applications, and the information in those applications, and derivative works related to the information in those applications, are classified and whether proper declassification procedures have been followed; and if the information is still classified, the level of classification; who, including Mr. Trunk, is permitted to have access to the information; the names of the agencies

that still consider the information to be classified; and to whom, and under what conditions, the information may be disclosed.

V. ~~WHEREFORE,~~ SECOND CLAIM FOR DECLARATORY RELIEF (RELIEF UNDER THE APA)

61. Mr. Trunk ~~seeks declaratory relief as~~incorporates by reference the allegations set forth above~~,~~ in paragraphs 1 through 60.

62. Despite repeated requests, Defendants have failed to provide Mr. Trunk with accurate information regarding the classification and declassification status of his patent applications. And, despite numerous requests, Defendants have failed to provide information indicating which government agencies, if any, were consulted as part of the decision to lift the Secrecy Orders on Mr. Trunk's patent applications.

63. Defendants' failure to provide Mr. Trunk with accurate information as to his patent applications' classification status is arbitrary, capricious and unreasonable under 5 U.S.C. § 706(1).

64. Moreover, Defendants acted arbitrarily, capriciously and unreasonably under 5 U.S.C. § 706(1) by, for example, improperly and unreasonably designating Mr. Trunk's scientific discoveries as classified material, refusing to provide truthful and accurate information in response to Mr. Trunk's inquiries and FOIA requests related to the classification status of his patent applications; failing to follow proper declassification procedures for Mr. Trunk's applications; failing to provide Mr. Trunk with accurate information about the classification status of his patent applications; and misinforming Mr. Trunk and providing inconsistent statements about the classification status of his applications.

65. Defendants' arbitrary, capricious and unreasonable acts and the uncertainty created about the classification status of Mr. Trunk's applications are contrary to law and have

caused Mr. Trunk to live in fear of prosecution for possessing classified information, resulted in the loss of valuable employment and consulting opportunities, and otherwise interfered with Mr. Trunk's life and career and made it impossible for Mr. Trunk to realize the fruits of his discoveries. A declaration as requested by Mr. Trunk regarding the status of his patent applications is therefore necessary.

VI. THIRD CLAIM FOR DECLARATORY RELIEF (ON FIRST AMENDMENT GROUNDS)

66. Mr. Trunk incorporates by reference the allegations set forth in paragraphs 1 through 65.

67. Defendants suppressed Mr. Trunk's freedom of speech by threatening him with prosecution, fines, and imprisonment and otherwise instructing Mr. Trunk not to disclose the subject matter of his patent applications, either because the subject matter of the applications was never classified (as Defendants aver), was improperly classified, or was never properly declassified.

68. Moreover, Defendants' decision to classify and failure to properly declassify Mr. Trunk's discoveries was improper and amounts to a restriction of his freedom of speech.

69. Defendants' acts in violation of Mr. Trunk's First Amendment rights and the uncertainty created about the classification status of his applications have caused Mr. Trunk to live in fear of prosecution for possessing classified information, resulted in the loss of valuable employment and consulting opportunities, and otherwise interfered with Mr. Trunk's life and career and made it impossible for Mr. Trunk to freely publish and speak about, and otherwise realize, the fruits of his discoveries. A declaration as requested by Mr. Trunk regarding the status of his patent applications is therefore necessary.

VII. PRAYER FOR RELIEF

WHEREFORE, Mr. Trunk requests as relief an order from this Court:

A. Declaring whether Mr. Trunk's patent applications, the information in those applications, and derivative works related to the information in those applications, are classified and whether proper declassification procedures have been followed, and if the information is still classified, the level of classification, who (including Mr. Trunk) is permitted to have access to the information, the names of the agencies that still consider the information to be classified, and to whom and under what conditions the information may be disclosed;

B. Directing Defendants to issue a definitive statement informing Mr. Trunk of the classification status of his patent applications, the information in those applications, and derivative works related to the information in those applications, and if the information is still classified, the level of classification, who (including Mr. Trunk) is permitted to have access to the information, the names of the agencies that still consider the information to be classified, and to whom and under what conditions the information may be disclosed;

C. If Defendants contend that any of Mr. Trunk's patent applications are not classified or were classified but have been properly declassified, declaring that Defendants' cannot prevent Mr. Trunk from disclosing to others his patent applications, the information in those applications, and derivative works related to the information in those applications; and

~~A.~~D. Any other relief that the Court may deem appropriate, as well as reimbursement of all attorneys fees and costs incurred in connection with this litigation.

~~61. Dated: November 20, 2014~~

Respectfully submitted,

~~62.~~

~~63.~~

~~64. By: _____~~

~~65. GARY M. HNATH~~

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~~72.~~

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~~74. FRANK JOSEPH TRUNK~~

Dated: September 16, 2015

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Frank Joseph TRUNK, III, *Plaintiff,* v. Raymond E. MABUS, *et al.*, *Defendants.*	Civil Action No. 1:14-cv-02139 (KBJ)

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND

On consideration of Plaintiff's Unopposed Motion for Leave to Amend the Complaint, it is hereby ORDERED that Plaintiff's Motion is GRANTED. Plaintiff's Amended Complaint attached as Exhibit A to his motion is hereby entered as of the date of this order.

_____
Ketanji Brown Jackson
United States District Judge