



## Prohibition Orders under the Patents Act

A Prohibition Order is an order that prohibits or restricts the publication or communication of the subject matter of an invention. A Prohibition Order can arise from two provisions of the Patents Act:

- S.173 of the Patents Act – “if it appears to the Commissioner to be necessary or expedient to do so in the interests of the defence of the Commonwealth” and
- s.145 of the Patents Act – if the specification contain information of a kind referred to in the definition of associated technology in subsection 4(1) of the Nuclear Non-Proliferation (Safeguards) Act.

If a Prohibition Order is imposed on your application, you must not publish or communicate any information about your invention in contravention of that order. This includes not only the specification, but abstracts, précis, summaries, or even titles. If you contravene the order, you are liable to a penalty of up to 2 years imprisonment.

The vast majority of Prohibition Orders are issued under s.173. The criterion is technologically non-specific, merely relating to ‘the defence of the Commonwealth’. Two obvious examples are nuclear bombs, and weapons of mass destruction – but the ambit is broader than this. On the other hand, although guns are standard tools of the defence forces, very few patents for guns are subject to a Prohibition Order.

The criterion under s.145 is tied to the definition of ‘associated technology’ as used in the Nuclear Non-Proliferation (Safeguards) Act. That definition is:

- associated technology means any document that contains information (other than information that is lawfully available, whether within Australia or outside Australia and whether for a price or free of charge, to the public or a section of the public):
- (a) that is applicable primarily to the design, production, operation, testing or use of:
    - (i) equipment or plant for:
      - (A) the enrichment of nuclear material;
      - (B) the reprocessing of irradiated nuclear material; or
      - (C) the production of heavy water; or
    - (ii) nuclear weapons or other nuclear explosive devices; or
  - (b) to which a prescribed international agreement applies and that is of a kind declared by the Minister, in writing, to be information to which this definition applies;

Prohibition Orders are not common. Furthermore, of the tens of Orders imposed each year, the majority are on applications filed by defence industry applicants.