

# Patent and Data Rights Counseling and Disputes

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Wiley's Government Contracts attorneys are experts on the unique rules and contract clauses that provide the framework for the government's rights in contractor intellectual property under government contracts, grants, cooperative agreements, Cooperative Research and Development Agreements (CRADAs), Technology Investment Agreements (TIAs), and Other Transaction Agreements (OTAs). Our team routinely represents contractors in intellectual property disputes with the government as well as competitors and is supported by skilled practitioners in our Intellectual Property (IP), Corporate, and Telecom, Media & Technology (TMT) groups, who have a wealth of experience with high-profile and complex intellectual property matters, from negotiating licenses and other technology transfer agreements to litigating intellectual property disputes.

Representative experience includes:

- Successfully represented large defense contractor in an appeal to the Federal Circuit regarding a contractor's ability to apply restrictive markings directed to third parties to their technical data deliverables. *See The Boeing Company v. Secretary of the Air Force*, 983 F.3d 1321 (Fed. Cir. 2020).
- Successfully obtained summary judgment that software development costs charged to a TIA constituted "private expense," permitting a contractor to assert that the resultant software was subject to restricted rights. *See The Boeing Company*, ASBCA 60373, July 17, 2018.
- Assisting government contractors in the acquisition, protection, management, and enforcement of their intellectual property rights, including classified patent applications.
- Advising contractors on the impact of open source software on licensing to the government.
- Advising clients on the government's patent rights and rights in technical data and computer software, and providing strategies to help contractors maximize the protection of their intellectual property rights when doing business with the federal government.
- Conducting internal audits, including software development trail audits, to advise contractors regarding resulting government rights and reviewing contractors' policies and procedures for protecting and maximizing the value of their intellectual property.
- Providing strategic counsel to large software vendors on government data and IP rights, open source, indemnification, and IP protection issues, such as software development strategies to maximize protections (e.g., how to assert protections and mark code).

- Advising clients with respect to intellectual property in connection with the acquisition and sale of government contractors.
- Representing contractors in connection with pre-challenge requests for information to validate contractor data rights assertions and formal Contracting Officer challenges under FAR 52.227-14, DFARS 252.227-7019, and DFARS 252.227-7037.
- Representing contractors in patent and data rights-related Contract Disputes Act claims at the Boards of Contract Appeals, the Court of Federal Claims, and the Federal Circuit.
- Representing government contractors in administrative claims for patent and copyright infringement; patent infringement suits under 28 U.S.C. § 1498(a); copyright infringement suits under 28 U.S.C. § 1498 (b); and related actions in United States District Courts and appeals to the Federal Circuit.
- Representing clients in disputes with competitors, in both federal and state court, involving theft or misuse of trade secrets, unfair competition, and violations of the Procurement Integrity Act.
- Assisting clients in protecting against the improper release of proprietary information under the Freedom of Information Act (FOIA), including “reverse-FOIA” actions.
- Training contractor personnel on the unique Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and other supplemental agency regulations that relate to the treatment of intellectual property under government contracts, including how rights in patents, technical data, and computer software are determined and allocated, and how to spot “red flags” in solicitations and subcontract agreements.

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Scott A. Felder

202.719.7029 | [sfelder@wiley.law](mailto:sfelder@wiley.law)