



August 27, 2020

Dr. Mark T. Esper
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington D.C. 20301
Via: pfpa.pentagon.cco.mbx.general@mail.mil

Dr. Amy Jenkins
Pandemic Prevention Platform
Defense Advanced Research Projects Agency
675 North Randolph Street
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Via: amy.jenkins.ctr@darpa.mil

Dear Dr. Esper and Dr. Amy Jenkins:

Attached is a request by Knowledge Ecology International (KEI) that the Department of Defense (DoD) investigate an apparent failure by Moderna Therapeutics (“Moderna”) to disclose awards from the Defense Advanced Research Projects Agency (DARPA) in applications for patents on inventions.

The request is outlined in the attached report by Luis Gil Abinader, dated August 27, 2020, titled: “2020:3 KEI Research Note: Moderna failures to disclose DARPA funding in patented inventions.”

The obligation to disclose U.S. federal government support in patent applications is a requirement of the Bayh-Dole Act and regulations issued by the U.S. Patent and Trademark Office.

Moderna was one of the awardees under the Autonomous Diagnostics to Enable Prevention and Therapeutics (ADEPT) program and performed research related to mRNA vaccines with funds granted by DARPA. Moderna used the ADEPT funding in their Chikungunya and Zika vaccines programs. It is likely that the DARPA awards more generally supported the establishment of their mRNA platform, which can be used against other viral infections,

including COVID-19. This support is acknowledged by DARPA itself; for instance on the DARPA website there is currently a statement that states “[t]he first coronavirus vaccine to start human testing is from DARPA investment in the Moderna company.”

Several of the patents filed by Moderna since March 22, 2013 (when their first grant from DARPA was awarded) claim inventions related to methods and compositions for inducing an immune response by administering an mRNA vaccine. Some of these patents are specifically related to their Chikungunya and Zika vaccines programs, some are directed to vaccines against other viral infections, and others are generally relevant to the mRNA platform Moderna has developed.

KEI examined the 126 patents assigned to “Moderna” or “ModernaTx” as well as 154 patent applications. Despite the evidence that multiple inventions were conceived in the course of research supported by the DARPA awards, not a single one of the patents or applications assigned to Moderna disclose U.S. federal government funding.

To protect taxpayer investments, the funding agency should remedy the failure to disclose by at a minimum requiring a correction to the patent and more appropriately by taking title to the patents themselves, as the sanction for the failure to disclose.

We also request the opportunity to discuss this issue with the appropriate persons at the DoD.

Sincerely,



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