

Once the applicant has presented rebuttal evidence, Office personnel should reconsider any initial obviousness determination in view of the entire record.⁸⁴ All the rejections of record and proposed rejections and their bases should be reviewed to confirm their continued viability. The Office action should clearly communicate the Office's findings and conclusions, articulating how the conclusions are supported by the findings. The procedures set forth in MPEP § 706.07(a) are to be followed in determining whether an action may be made final.

See MPEP § 2145 concerning consideration of applicant's rebuttal evidence. See also MPEP § 716 to

§ 716.10 regarding affidavits or declarations filed under 37 CFR 1.132 for purposes of traversing grounds of rejection.

Dated: October 3, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7-19973 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-09]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-09 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 3, 2007.

L.M. Bynum,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 5001-06-M

⁸⁴ See, e.g., *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); *In re Eli Lilly & Co.*, 90 F.2d 943, 945, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990).



DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

OCT 11 2007
In reply refer to:
I-07/010555-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-09, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost \$40 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in cursive script, reading "Richard J. Millies", is positioned above the typed name and title.

Richard J. Millies
Deputy Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House

Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate

Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-09

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Australia
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$26 million |
| Other | <u>\$14 million</u> |
| TOTAL | \$40 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 2,400 Modular Artillery Charge Systems (MACS), 250 M982 Block 1a-2 Excalibur Projectile with base bleed units, 28 Portable Excalibur Fire Control Systems (PEFCS), training ammunition, containers, support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives', engineering and technical support services, and other related elements of logistics support.
- (iv) **Military Department:** Army (UCD)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.
- (viii) **Date Report Delivered to Congress:** 10/10/2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Australia – Modular Artillery Charge System, M982 Block 1a-2 Excalibur Projectiles**

The Government of Australia has requested a possible sale of 2,400 Modular Artillery Charge Systems (MACS), 250 M982 Block 1a-2 Excalibur Projectile with base bleed units, 28 Portable Excalibur Fire Control Systems (PEFCS), training ammunition, containers, support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives', engineering and technical support services, and other related elements of logistics support. The estimated cost is \$40 million.

The proposed sale will enhance Australia's defensive capabilities and increase interoperability with United States (U.S.) and multi-national forces supporting coalition operations. The country will have no difficulty absorbing this new capability into its military.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractors will be Raytheon Missile Systems Corporation, Tucson, Arizona for Excalibur, and General Dynamics Armament and Technical Products, Camden, Arkansas for MACS. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U. S. Government personnel in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-09

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. The XM982 Excalibur Projectile is a family of precision, extended-range modular projectiles incorporating three unique payload capabilities divided into Block configurations. Block 1 consists of high-explosive, fragmenting, or penetrating unitary munitions to enhance traditional fire support operations with increased range, improved accuracy, and reduced collateral damage against personnel, light material, and structure targets. It provides capability to attack all three key target sets, soft and armored vehicles, and reinforced bunkers, out to ranges exceeding current 155mm family of artillery munitions. An internal Global Positioning System (GPS) updates the inertial navigation system, providing precision guidance and improved accuracy. Excalibur is effective in all weather and terrain. The target, platform location, and GPS-specific data are inductively entered into the projectile's mission computer, located in the nose of the projectile.

2. The XM982 and M982 projectile and components are Unclassified; however, the terminal effects, target effects, GPS Anti-Jam vulnerabilities and render safe procedures are classified Secret. The Modular Artillery Charge System is Unclassified. Embedded within the XM982 and M982 projectiles are fuze components with technologies (the know-how, documentation, software) considered critical, the disclosure of which could result in an adversary developing countermeasures to cause premature operation of the fuze, thus lessening the effect of the projectile. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters, and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon systems effectiveness or could be used in the development of a system with similar or advanced capabilities.