Mr. Dirksen introduced the following bill; which was read twice and referred to the Committee on the Judiciary.

A BILL

To authorize the extension of patents covering inventions whose practice was prevented or curtailed during certain emergency periods by service of the patent owner in the Armed Forces or by production controls.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That (a) if at any time during any of the periods specified in subsection (d) of this section—

(1) the term of any patent of the United States including time during which any individual or individuals, owning solely or jointly with his spouse or their spouses the entire interest in such patent, was, or were performing honorable service on active duty in the
Army, Navy Air Force, Marine Corps, or Coast Guard, which service prevented or substantially curtailed the normal use, exploitation, promotion, or development of the patent; or

(2) the normal use, exploitation, promotion, or development of the inventions described and claimed in any patent of the United States was prevented or substantially curtailed by any order of an agency of the Government prohibiting or limiting the production or use of any class of machines, articles, or materials, or the use of any class of processes or formulas; or

(3) to further the interests of the United States of America, the owner of such patent has heretofore granted a license thereunder to the United States, or to manufacturers, producers, or contractors authorizing them to produce or furnish goods or services for or to the United States, without payment of royalty, or at a nominal royalty, such license having been granted by such owner to promote any war effort, or any program of rearmament or preparation for the national defense, in which the United States has been engaged since the invasion of Poland by Germany on September 1, 1939; and since September 1, 1939, under the authority of such license, the United States, or manufacturers, producers, or contractors furnishing goods or services to the United
States, have made substantial use of the invention embodied in such patent in the production or furnishing of goods or services for or to the United States, such use of said invention having been of material assistance and benefit to the United States in connection with any war effort, or any program of rearmament or preparation for the national defense, which granting of a license prevented or substantially curtailed the normal use, exploitation, promotion, or development of the patent; then the term of such patent may be extended in accordance with the provisions of this Act.

(b) The period of extension of a patent under this Act shall be a further term from the expiration of the original term as follows:

(1) In cases where the only grounds for extension are those described in subsection (a) (1) of this section, the further term shall equal twice the length of the active service during the applicable period or periods specified in subsection (d).

(2) In cases where the only grounds for extension are those described in subsection (a) (2) the further term shall equal the time for which (during the applicable period or periods specified in subsection (d) the practice of the inventions described and claimed in the
patent was prevented or substantially curtailed as set forth in subsection (a).

(3) In cases where the only grounds for extension are those described in subsection (a) (3), the further term shall equal the period during which the initial license granted by the owner of such patent; without payment of royalty, or at a nominal royalty, was in effect after September 1, 1939: Provided, however, That in no event shall the period of extension hereunder be greater than the period during which the normal use, exploitation, or development of the patent was prevented or substantially curtailed.

(4) In cases where grounds for extension exist under more than one paragraph of subsection (a); the further terms designated in this subsection (b) shall not be cumulative but shall be determined under the applicable paragraph of this subsection (b) which results in the longest extension.

(c) If the ownership of the patent at the time the circumstances, described in subsection (a), which qualify the patent for extension, first arose, is different from the ownership at the time of the filing of the application for extension under this Act, such application shall be acted upon only if the owner or owners at the time such circumstances first
(d) The periods during which one or more of the circumstances described in subsection (a) (1) or subsection (a) (2) must have occurred in order to qualify a patent for extension under this Act are as follows:

(1) The period beginning December 7, 1941, and ending September 2, 1945.

(2) The period beginning June 26, 1950, and ending July 26, 1953.

(e) For the purposes of this section, a reissue patent shall be considered to be the same patent as that which it supersedes.

Sec. 2. On the filing of an application for extension of the term of a patent hereunder, together with such information as may be required by the Commissioner, and upon payment of such initial fees as the Commissioner may from time to time prescribe, the Commissioner shall publish a notice thereof in the Official Gazette of the Patent Office. Within sixty days from such publication any person may oppose an application for extension by filing with the Commissioner a notice of opposition thereto stating the grounds therefor, which shall not include any charge that the patent
is invalid. If a proper notice of opposition is filed and payment is made by the opponent of such initial fees as the Commissioner may from time to time prescribe, the Commissioner shall set a day for hearing which shall be within forty-five days of the date of the filing of such notice of opposition, and shall give not less than thirty days' notice of such hearing to the parties in interest. Upon the hearing the parties in interest shall present such evidence as they believe is relevant and such other pertinent evidence as may be required by the Commissioner. If, from all the evidence presented before him, the Commissioner is satisfied that a patent should be extended in accordance with this Act, he shall grant such extension. The Commissioner shall take action granting or denying an extension within six months after the filing of an application for extension. The Commissioner shall fix the total fees (not exceeding $150) to be paid by each applicant for extension of the term of a patent hereunder and the total fees (not exceeding $50) to be paid by each opponent to an application, the specific amount of all such fees to be determined according to the work of the Patent Office required in processing the application or in hearing an opponent thereto, as the case may be, and the estimated cost thereof to the Patent Office.

SEC. 3. If any applicant for an extension is dissatisfied with the decision of the Commissioner or of any board
established by the Commissioner for the determination of applications for extensions, he shall have the same remedy by appeal to the United States Court of Customs and Patent Appeals, or suit in the District Court for the District of Columbia, as provided, in the case of applications for patent.

Sec. 4. The Commissioner shall issue a certificate evidencing the granting of an extension hereunder. A notice of the granting of an extension shall appear in the Official Gazette of the Patent Office.

Sec. 5. Upon the issuance of the certificate of extension, said patent shall have the same force and effect in law as though it had been originally granted for seventeen years plus the term of such extension, except as otherwise provided herein.

Sec. 6. Except where the owner of a patent extended hereunder was entitled to royalties under said patent (whether or not such royalties were received or waived) for any class of machines, articles or materials, or for the use of any class of processes or formulas, produced or furnished exclusively to or for the benefit of the United States, or used exclusively by or for the benefit of the United States, no patent extended under the provisions of this Act shall serve as a basis for any claim by reason of manufacture, use, or sale by or for the United States during the period of exten-
sion, and the rights of the United States shall remain in all
respects as if such patent had not been extended.

SEC. 7. In the event that an extension is not issued until
after the date of expiration of the original term of a patent
or reissue thereof, the extension order shall provide that any
vested rights arising out of the actual manufacture, use, or
sale of the invention covered by the patent so extended,
which took place after the said expiration and before the
issuance of the extension order may continue during the
remainder, if any, of the period of the extension upon such
terms and conditions as the Commissioner may prescribe,
including the payment of reasonable royalties, providing the
person or persons claiming such vested rights establish such
inghts to the satisfaction of the Commissioner upon a
hearing.

SEC. 8. In any action for infringement after the expira-
tion of seventeen years from the grant of the patent and
during the period of such extension, the defendant may
plead and prove that any material statement of the applica-
tion for extension required by this Act is not true in fact;
and if any one or more of such statements shall be found un-
true in fact, judgment shall be rendered for the defendant,
with costs.

SEC. 9. Any application for the extension of the term
of a patent hereunder shall be filed within one year from the
effective date of this Act except for applications which are filed under subsection (a) (1) of section 1, which applications shall be filed within one year from the effective date of this Act or within one year from the date of the applicant’s honorable discharge from service.