IN THE SENATE OF THE UNITED STATES

JULY 10 (legislative day, JUNE 27), 1951

Mr. RUSSELL (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the withholding of certain patents that might be detrimental to the national security, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

That whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Secretary of Commerce upon being so notified shall order that such invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention
by the granting of a patent, within categories prescribed by
the President and in which the Government does not have a
property interest, might, in the opinion of the Secretary of
Commerce, be detrimental to the national security, he shall
make the application for patent in which such invention is
disclosed available for inspection to the Atomic Energy Com-
mission, the Secretary of Defense, and the chief officer of
any other department or agency of the Government desig-
nated by the President as a defense agency of the United
States; and each individual to whom the application is dis-
closed shall sign a dated acknowledgment thereof, which
acknowledgment shall be entered in the file of the applica-
tion. If, in the opinion of the Atomic Energy Com-
mision, the Secretary of Defense, or the chief officer of such
other department or agency so designated, the publication
or disclosure of such invention by the granting of a patent
therefor would be detrimental to the national security, the
Atomic Energy Commission, the Secretary of Defense, or
such other chief officer shall notify the Secretary of Com-
merce to that effect, and the Secretary of Commerce, upon
being so notified, shall order that such invention be kept
secret and shall withhold the grant of a patent therefor for
such period or periods as the national interest requires and
upon proper showing by the head of any department or
agency, who caused such secrecy order to be issued, that
the examination of the application might jeopardize the
national interest, then the Secretary of Commerce shall
immediately seal such application. The owner of a patent
application which has been placed under a secrecy order shall
have a right to appeal from such order to such agency and
under such rules as may be prescribed by the President. No
invention shall be ordered kept secret and the grant of a
patent withheld for a period of more than one year: Pro-
vided, That the Secretary of Commerce shall renew any such
order at the end thereof, or at the end of any renewal period,
for additional periods of one year upon notification by the
head of the department or the chief officer of the agency who
caused the order to be issued that an affirmative determina-
tion has been made that the national interest continues so to
require, excepting, however, that any such order in effect, or
issued, during a time when the United States is at war,
shall be and remain in effect for the duration of hostilities
and a period of one year following cessation of hostilities
unless sooner specifically rescinded: The Secretary of Com-
merce is authorized to rescind any order upon notification
by the heads of all departments and the chief officers of all
agencies who caused the order to be issued that the publica-
tion or disclosure of the invention is no longer deemed to be
detrimental to the national security.

Sec. 2. The invention disclosed in an application for
patent subject to an order made pursuant to section 1 hereof
may be held abandoned upon its being established before
or by the Secretary of Commerce that in violation of said
order said invention has been published or disclosed or that
an application for a patent therefor has been filed in a for-
eign country by the inventor, his successors, assigns, or legal
representatives, or anyone in privity with him or them,
without the consent or approval of the Secretary of Com-
erce, and any such abandonment shall be held to have
occurred as of the time of such violation: Provided, That in
no case shall the consent or approval of the Secretary of
Commerce be given without the concurrence of the heads
of all departments and the chiefs officers of all agencies who
causd the order to be issued. Any such holding of abandon-
ment shall constitute forfeiture by the applicant, his suc-
cessors, assigns, or legal representatives, or anyone in privity
with him or them, of all claims against the United States
based upon such invention.

Sec. 3. Any applicant, his successors, assigns, or legal
representatives, whose patent is withheld as herein provided,
shall, if the order of the Secretary of Commerce above re-
ferred to shall have been faithfully obeyed, have the right,
during a period beginning at the date the applicant is notified
that, except for such order, his application is otherwise in
condition for allowance, or beginning at the effective date
of this Act, whichever is later, and ending two years after
the date a patent is issued on such application, to apply for:
compensation for the damage accruing by reason of the order
of secrecy and/or for the use, if any, of the invention by the
government, if the government's use resulted from the
applicant's disclosure; such right to compensation for use to
begin from the date of the first use of the invention by the
government. The head of any department or agency who
caused the order to be issued is authorized, if any such claim
is presented within the period above specified, to enter into:
an agreement with said applicant, his successors, assigns, or
legal representatives, in full settlement and compromise for
such damage and/or use, if any, and any such settlement
agreement entered into shall be final and conclusive for all
purposes, notwithstanding any other provision of law to the
contrary. If full compromise and settlement of any such
claim cannot be effected, the head of any department or
agency who caused the order to be issued, may, in his dis-
cretion, administratively award and pay to such applicant,
his successors, assigns, or legal representatives, a sum not:
exceeding 75 per centum of the maximum sum, if any, which:
in the opinion of the head of such department or agency:
would constitute fair and just compensation for such damage:
and/or use, if any. Within two years after issuance of a
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patent, any claimant who fails to secure an award satisfac-
tory to him shall have the right to bring suit against the
United States in the Court of Claims for such amount which,
when added to such award, if any, shall constitute fair and
just compensation for the damage and/or use, if any, of the
invention by the Government. The owner of any patent
issued upon an application that was subject to a secrecy order
issued pursuant to section 1 hereof, and who faithfully obeyed
the order, who did not apply for compensation as above
provided, shall have the right, within two years after the
date of issuance of such patent, to bring suit in the Court
of Claims for fair and just compensation for the damage
accruing to him by reason of the order of secrecy and/or
use by the Government of the patented invention, such right
to compensation for use, provided such use resulted from the
applicant's disclosure, to begin at the first date of such use.
In any suit under the provisions of this section, and in any
negotiations concerning settlement and compromise of any
such claim, the United States may avail itself of any and
all defenses that may be pleaded by it in an action under
title 28, United States Code, section 1498, as amended.
This section shall not confer a right of action on anyone or
his successor or assignee who, when he makes such a claim,
is in the employment or service of the United States, or
who, while in the employment or service of the United States,
No person shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design; or model in respect of any invention made in the United States prior to ninety days after filing in the United States an application covering such invention except when authorized in each case by a license obtained from the Secretary of Commerce under such rules and regulations as he shall prescribe: Provided, That no such license shall be granted with respect to any invention which is the subject matter of a subsisting order issued by the Secretary of Commerce pursuant to section 1 hereof without the concurrence of the heads of all departments or the chief officers of all agencies who caused the order to be issued. Such license may be granted retroactively in case of inadvertence except in the case of inventions falling within the categories of invention prescribed under section 1 hereof.

The term "application" when used in this Act includes applications, and any modifications, amendments, or supplements thereto, or divisions thereof.

Notwithstanding the provisions of sections 4886 and 4887 of the Revised Statutes (35 U. S. C., secs. 31 and 32), any person, and the successors, assigns, or legal representative of any such person, may apply for a patent on the ground that the said invention or model was discovered, invented, or developed on which such claim is based.

If a person is authorized to file an application for patent or for the registration of a utility model, industrial design, or model, he shall be entitled to receive a license from the Secretary of Commerce under such rules and regulations as he shall prescribe.
1. Representatives of any such person shall be debarred from receiving a United States patent for an invention if such person, or such successors, assigns, or legal representatives, shall, with due procuring the authorization prescribed in section 4 hereof, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of such invention where authorization for such application is required by the provisions of section 4 hereof; and any such United States patent, actually issued to any such person, his successors, assigns, or legal representatives so debarred or becoming debarred shall be invalid.

Sec. 6. Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 1 hereof, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed such invention, or any material information with respect thereto, or whoever, in violation of the provisions of section 4 hereof, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than two years, or both.
SEC. 7. The prohibitions and penalties of this Act shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon the written instructions of, or in reliance on the written permission or advice of, any such officer or agent.

SEC. 8. The Atomic Energy Commission, the Secretary of Defense, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue such rules and regulations as may be necessary and proper to enable the respective department or agency to carry out the provisions of this Act, and in addition are authorized, under such rules and regulations as each may prescribe, to delegate and provide for the redelegation within their respective departments or agencies of any power or authority conferred by this Act to such responsible officers, boards, agents, or persons as each may designate or appoint.

SEC. 9. If any provision of this Act or of any section hereof or the application of such provision to any person or circumstance shall be held invalid, the remainder of the Act and of such section and application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 10. The Acts of Congress approved October 6,
1917 (ch. 95, 40 Stat. 394); July 1, 1940 (ch. 501, 54 Stat. 710); August 21, 1941 (ch. 393, 55 Stat. 657); and June 16, 1942 (ch. 415, 56 Stat. 370) (U. S. C., title 35, secs. 42 and 42a to 42f), are repealed, but such repeal shall not affect any rights or liabilities existing on the date of this Act. Any order of secrecy heretofore issued under said repealed Acts, and subsisting on the date of the approval of this Act, shall be considered as an order issued pursuant to this Act and shall continue in force and effect for a period of one year from the effective date of this Act unless sooner rescinded as provided herein. Any claim arising under said repealed Acts and unsettled as of the effective date of this Act, the provisions of any other Act or Acts to the contrary notwithstanding, may be presented and determined pursuant to the provisions of section 3 hereof.

Sec. 11. Nothing in this Act shall be construed to alter, amend, revoke, repeal, or otherwise affect the provisions of the Atomic Energy Act of 1946 (60 Stat. 755, as amended).

Sec. 12. This Act may be cited as “The Patent Secrecy Act of 1951”.
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By Mr. Russell

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Read twice and referred to the Committee on the Judiciary