

ASSISTANT SECRETARY OF DEFENSE  
Washington 25, D. C.

Dear Mr. Speaker:

There is forwarded herewith a draft and sectional analysis of proposed legislation, "To provide for the withholding of certain patents that might be detrimental to the national security, and for other purposes."

This proposal is a part of the Department of Defense Legislative Program for 1951, and it has been approved by the Bureau of the Budget. The Department of Defense recommends that it be enacted by the Congress.

Purpose of the Legislation. The proposed legislation is designed, where national security dictates: (a) to maintain certain inventions in a secret category and thereby prevent disclosures thereof; (b) to provide for compensation to inventors where patents are withheld; and (c) to provide penalties for violations of secrecy. Temporary wartime legislation which now prevents the disclosure of inventions, the wrongful use of which would be detrimental to the security of the United States will terminate with the formal conclusion of World War II. Upon expiration of the temporary law, there would be virtually unrestricted access to patented scientific and technical advancements. It appears, therefore, to be vitally important to national security to have such permanent legislation.

Collateral Effects. Enactment of this bill will prevent American citizens or other persons who first apply for patents in the United States from availing themselves of the twelve-month priority period afforded by Article 4 of the International Convention for the Protection of Industrial Property, as revised at London in 1934, with respect to any inventions kept secret under order of the Secretary of Commerce for a period longer than twelve months following filing of the patent application in the United States. The State Department advises, in its opinion, that enactment of the United States with respect to the International Convention agreement above referred to, and other such agreements. The Executive bill would not involve any violation of the commitments of the Departments will favor amendment of international agreements, which would be affected by enactment of the bill, in order to secure to American inventors the privileges presently accorded to them by foreign countries. However, even if the necessary amendments to the international agreements should not be forthcoming, the Executive Departments favor enactment of this bill because of the importance to the National Defense of the objectives of the bill, and

because the methods by which the bill's objectives will be attained are believed to be reasonable. The Congress may wish to give consideration to inclusion in the bill as an element of compensation, the loss, ensuing by reason of the order of secrecy, of the priority privilege and any other advantages presently afforded by international patent agreements. The Department of Defense would not object to such consideration but does not actively sponsor it because of the intangible and speculative nature of the damages, if any.

Legislative References: Legislation similar to this proposal was introduced in the 81st Congress (S. 2557 and H. R. 6389) upon the recommendation of the Department of Defense. The principal difference between this bill and the one recommended to the 81st Congress is in the enlargement of the right to apply for compensation in the new proposal to include not only compensation for use of the invention by the Government, but also compensation for any damage caused by reason of the order of secrecy.

Cost and Budget Data: It is impossible to determine the number of inventions that may be subjected to a secrecy order in the interest of national defense; hence, an accurate estimate of the fiscal effects of this legislation cannot be made.

Department of Defense Action Agency: The Department of the Navy has been designated as the representative of the Department of Defense for this legislation.

Sincerely,

Daniel D. Edwards

Inclosures

Honorable Sam Rayburn  
Speaker of the House of Representatives

SECTIONAL ANALYSIS

Section 1 provides that the Commissioner of Patents may order that certain inventions within categories prescribed by the President be kept secret, regardless of whether the Government has property interest therein, whenever publication or disclosure thereof might be detrimental to the national security. The Atomic Energy Commission, the Secretary of Defense, and such other chief officers of other departments or agencies when designated by the President, may initiate action for secrecy when the Government has a property interest, or may inspect applications for patents on inventions in which the Government has no property interest when referred by the Commissioner of Patents and determines whether secrecy is necessary. The period of secrecy would be one year or for the duration of hostilities and for one year following cessation of hostilities during a time the United States is at war, but the one year period may be renewed by the commissioner of Patents, or the secrecy classification cancelled upon notification that secrecy is no longer necessary. The President would prescribe regulations for appeal of secret order.

Section 2 provides that publication, disclosure, or filing an application for patent in a foreign country after an application for patent has been subjected to a secrecy order and without consent of the Commissioner may constitute abandonment of the invention at the time of such violation. Such abandonment shall also constitute forfeiture of all claims against the United States based upon such invention.

Section 3 provides for compensation for damages accruing by reason of the secrecy order or for government use and prescribes a two year statute of limitation. Authorizes head of any department who caused secrecy order to be issued to make full settlement for the maximum sum which such department head considers a fair and just compensation. One may, in absence of satisfactory award, bring suit in Court of Claims, in which case United States may avail itself of all defenses provided in 8 U.S.C. 1948, as amended. No compensation shall be paid for government use of an invention made by an inventor employed by the Government.

Section 4 provides that no person shall file an application in a foreign country for a patent or for the registration of a utility model, or industrial design, prior to ninety days after filing in the United States unless authorized in each case by a license issued by the Commissioner of Patents.

Section 5 provides that failure to abide by requirement of Section 4 shall serve to bar persons from receiving United States patent.

Section 6 provides penalties for violation for willful publication or disclosure of any material information on matter covered by secrecy order.

Section 7 excepts officers or agents of the United States, when acting within the scope of their authority, from prohibitions and penalties prescribed, and similarly exempts persons acting upon their written instruction or in reliance on their written permission or advice.

Section 8 authorizes issuance of separate regulations to enable the respective departments or agencies to carry out the provisions of the bill.

Section 9 provides for continuance of the Act should any part hereof be held invalid.

Section 10 repeals present laws but saves secrecy orders issued prior to enactment and claims unsettled under Act amended.

Section 11 provides that atomic Energy Act of 1946, as amended, will not be affected by these provisions.

Section 12 provides a short title for the Act.

**CODE NUMBERS  
ASSIGNED TO EXECUTIVE DEPARTMENTS AND AGENCIES  
FOR USE WHEN REPORTING INVENTIONS**

Agriculture, Department of . . . . .	1
Air Force, Department of the . . . . .	12
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Army, Department of the . . . . .	10
Central Intelligence Agency . . . . .	27
Civil Aeronautics Board . . . . .	37
Civil Service Commission . . . . .	14
Commerce, Department of . . . . .	2
Defense, Department of:	
Office of the Secretary . . . . .	9
Department of the Air Force . . . . .	12
Department of the Army . . . . .	10
Department of the Navy . . . . .	11
Defense Production Administration . . . . .	44
District of Columbia Government . . . . .	47
Economic Cooperation Administration . . . . .	24
Federal Communications Commission . . . . .	17
Federal Deposit Insurance Corporation . . . . .	41
Federal Mediation & Conciliation Service . . . . .	31
Federal Power Commission . . . . .	21
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Federal Security Agency . . . . .	6
Federal Trade Commission . . . . .	25
General Services Administration . . . . .	7
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Interior, Department of the . . . . .	3
Interstate Commerce Commission . . . . .	26
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National Advisory Committee for Aeronautics . . . . .	8
National Capital Housing Authority . . . . .	42
National Capital Park & Planning Commission . . . . .	39
National Labor Relations Board . . . . .	32
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Railroad Retirement Board . . . . .	33
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Tennessee Valley Authority . . . . .	19
Treasury Department . . . . .	15
Veterans Administration . . . . .	20
War Claims Commission . . . . .	36

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- 7 - General Services Administration
- 8 - National Advisory Committee for Aeronautics
- 9 - Office of the Secretary of Defense
- 10 - Department of the Army
- 11 - Department of the Navy
- 12 - Department of the Air Force
- 13 - Post Office Department
- 14 - Civil Service Commission
- 15 - Treasury Department
- 16 - Department of Labor
- 17 - Federal Communications Commission
- 18 - Reconstruction Finance Corporation
- 19 - Tennessee Valley Authority
- 20 - Veterans Administration
- 21 - Federal Power Commission
- 22 - Housing and Home Finance Agency
- 23 - Smithsonian Institution
- 24 - Economic Cooperation Administration
- 25 - Federal Trade Commission
- 26 - Interstate Commerce Commission
- 27 - Central Intelligence Agency
- 28 - National Security Council
- 29 - National Security Resources Board
- 30 - Selective Service System
- 31 - Federal Mediation and Conciliation Service
- 32 - National Labor Relations Board
- 33 - Railroad Retirement Board
- 34 - Securities and Exchange Commission
- 35 - United States Tariff Commission
- 36 - War Claims Commission
- 37 - Civil Aeronautics Board
- 38 - Federal Reserve System
- 39 - National Capital Park & Planning Commission
- 40 - American Battle Monuments Commission
- 41 - Federal Deposit Insurance Corporation
- 42 - National Capital Housing Authority
- 43 - National Mediation Board
- 44 - Defense Production Administration
- 45 - Housing Expediter, Office of the
- 46 - Panama Canal
- 47 - District of Columbia Government

Government Patents Board

April 26, 1951