My dear Mr. Lawton:

There is inclosed 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," and a copy of a proposed letter to the Congress recommending its enactment.

The proposed bill is a part of the Department of Defense Legislative Program for 1951 and is similar to S. 2557 and H. R. 6389 of the 81st Congress, which were recommended by the Department of Defense. The principal difference between this proposal and those bills is in the provision for compensating the inventor whose invention is made the subject of a secrecy order. S. 2557 and H. R. 6389 merely provided for compensation "based upon use, if any, of the invention by the Government." The current proposal would enlarge the right by authorizing compensation "for damage accruing by reason of the order of secrecy" in addition to compensation for "use." The Bureau of the Budget indicated in connection with S. 2557 its approval of such a change.

The Departments of State, Justice, and Commerce have an interest in this proposed legislation.

Your advice is requested as to its relationship to the program of the President.

Sincerely yours,

Marx Leva

Inclosures

Honorable Frederick J. Lawton
Director
Bureau of the Budget
My 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.

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 yours,

Max Leva

Inclosures

Honorable Sam Rayburn
Speaker of the House of Representatives
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 Representatives 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 Commissioner of Patents 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 Commissioner of Patents, 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 Commission, the Secretary of Defense, and 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 each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the appli-
cation. If, in the opinion of the Atomic Energy Commission, 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 Commissioner of Patents to that effect, and the Commissioner of Patents, 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 Commissioner of Patents 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: Provided, That the Commissioner of Patents 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 determination 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 Commissioner of Patents 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 publication 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 Commissioner of Patents 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 foreign 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 Commissioner of Patents, 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 Commissioner of Patents be given without the concurrence of the heads of all departments and the chief officers of all agencies who caused the order to be issued. Any such holding of abandonment shall constitute
forfeiture by the applicant, his successors, 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 Commissioner of Patents above referred 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, 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 periods 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 discretion, 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 the patent, any claimant who fails to secure an award satisfactory 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 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. No compensation under the Act shall be paid for use by the Government of an invention made while the inventor thereof was employed by the Government.

SEC. 4. 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 Commissioner of Patents 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 Commissioner of Patents 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.

SEC. 5. 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 representa-
tives 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 representative shall, without
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 Commissioner of Patents, 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 au-
thorized, under such rules and regulations as each may prescribe,
to delegate and provide for the redelegation within their re-
spective departments or agencies of any power or authority con-
ferred 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 (United States Code, title 35, sections 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. 753), as amended.
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 determine 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 such damage or use, or settlement in an audit not exceeding 75% of the maximum sums which such department head considers a fair and just compensation. Owner 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 28 U.S.C. 1498, 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 se-
Section 4 shall serve to debar 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 excepts 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 thereof 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.