A BILL

To amend the Act relating to preventing the publication of inventions in the national interest, and for other purposes.

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

That the Act of Congress approved October 6, 1917 (40 Stat. 394, ch. 95; 35 U. S. C. 42), and Acts amendatory thereof, are further amended to read as follows:

"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 hereinbelow.

"Whenever the publication or disclosure of an invention by the granting of a patent, within categories prescribed by the National Munitions Control Board 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 Secretary of War, the Secretary of the Navy, 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. If in the opinion of the Secretary of War, the Secretary of the Navy, 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 Secretary of War, the Secretary of the Navy, 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 interests requires: Provided, That the owner of a patent application which has been placed under a secrecy order shall have a right to appeal to the
National Munitions Control Board from such order: Provided further, That no invention shall be ordered kept secret and the grant of a patent withheld for a period of more than one year: Provided further, 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 the war unless sooner specifically rescinded: Provided further, That 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 shall 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
1. foreign country by the inventor, his successors, assigns, or
2. legal representatives, or anyone in privity with him or them,
3. without the consent or approval of the Commissioner of
4. Patents, and such abandonment shall be held to have
5. occurred as of the time of such violation: Provided, That in
6. no case shall the consent or approval of the Commissioner
7. of Patents be given without the concurrence of the heads
8. of all departments and the chief officers of all agencies who
9. caused the order to be issued: Provided further, That any
10. such holding of abandonment shall constitute forfeiture by
11. the applicant, his successors, assigns, or legal representatives,
12. or anyone in privity with him or them, of all claims against
13. the United States based upon such invention.

"Sec. 3. Any applicant, his successors, assigns, or legal
15. representatives, whose patent is withheld as herein provided,
16. shall, if the order of the Commissioner of Patents above
17. referred to shall have been faithfully obeyed, have the right,
18. within one year from the date the applicant is notified that,
19. except for such order, his application is otherwise in condition
20. for allowance, or the effective date of this Act, whichever is
21. later, to apply for compensation based upon the use, if any,
22. of the invention by the Government, such right to compen-
23. sation to begin from the date of the use of the invention by
24. 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 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 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 use, if any, of the invention by the Government: Provided, That in any such suit; and in any negotiations looking toward settlement and compromise of any such claim, the United States may avail itself of any and all defenses that may be pleaded

"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.

"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 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, 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. As used in this Act—

"The term 'person' includes any individual, trustee, corporation, partnership, association, firm, or any other combination of individuals."
"The term 'application' includes applications, and any modifications, amendments, or supplements thereto, or continuances thereof.

"The term 'use' includes manufacture, sale, or other disposition of the invention by the Government, or for the Government with its authorization or consent.

"Inventions, disclosure of which is detrimental to national security, shall include but shall not be limited to inventions relating to (a) arms, ammunition, and implements of war; (b) which can be applied only in the manufacture or use of arms, ammunition, or implements of war; (c) inventions coincident with or closely allied to classified federally financed research for national-security purposes; (d) inventions closely related to classified information relating to national security in the possession of national-defense agencies; and (e) inventions embodying a fundamental advance in technology which would drastically increase the military potential of foreign countries.

"Sec. 8. 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.

"Sec. 9. The Secretary of War, the Secretary of the Navy, the chief officer of any other department or agency of the Government designated by the President as a defense
agency of the United States, the National Munitions Control Board, 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 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. 10. 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. 11. Any order of secrecy heretofore issued, 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: Provided, That any claim arising under the Act of which this Act is amendatory and unsettled as of the effective date of this Act, the provisions of any other
I. Act or Acts to the contrary notwithstanding, may be presented and determined pursuant to the provisions of section 3 hereof.
A BILL

To amend the Act relating to preventing the publication of inventions in the national interest, and for other purposes.

By Mr. Gurney

JULY 25 (legislative day, JULY 16), 1947

Read twice and referred to the Committee on the Judiciary