

80TH CONGRESS
1ST SESSION

H. R. 4420

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 1947

Mr. MICHENER (by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Act of Congress approved October 6, 1917 (40
4 Stat. 394, ch. 95; 35 U. S. C. 42), and Acts amendatory
5 thereof, are further amended to read as follows:

6 “Whenever publication or disclosure by the grant of
7 a patent on an invention in which the Government has a
8 property interest might, in the opinion of the head of the
9 interested Government agency, be detrimental to the na-
10 tional security, the Commissioner of Patents upon being so
11 notified shall order that such invention be kept secret and

1 shall withhold the grant of a patent therefor under the
2 conditions set forth hereinbelow.

3 "Whenever the publication or disclosure of an invention
4 by the granting of a patent, within categories prescribed
5 by the National Munitions Control Board and in which
6 the Government does not have a property interest, might,
7 in the opinion of the Commissioner of Patents, be detri-
8 mental to the national security, he shall make the applica-
9 tion for patent in which such invention is disclosed available
10 for inspection to the Secretary of War, the Secretary of
11 the Navy, and the chief officer of any other department
12 or agency of the Government designated by the President
13 as a defense agency of the United States. If in the opinion
14 of the Secretary of War, the Secretary of the Navy, or the
15 chief officer of such other department or agency so desig-
16 nated, the publication or disclosure of such invention by
17 the granting of a patent therefor would be detrimental to
18 the national security, the Secretary of War, the Secretary
19 of the Navy, or such other chief officer shall notify the
20 Commissioner of Patents to that effect, and the Commissioner
21 of Patents, upon being so notified, shall order that such
22 invention be kept secret and shall withhold the grant of a
23 patent therefor for such period or periods as the national
24 interest requires: *Provided*, That the owner of a patent
25 application which has been placed under a secrecy order

1 shall have a right to appeal to the National Munitions Control
2 Board from such order: *Provided further*, That no
3 invention shall be ordered kept secret and the grant of a
4 patent withheld for a period of more than one year: *Pro-*
5 *vided further*, That the Commissioner of Patents shall
6 renew any such order at the end thereof, or at the end
7 of any renewal period, for additional periods of one year
8 upon notification by the head of the department or the chief
9 officer of the agency who caused the order to be issued
10 that an affirmative determination has been made that the
11 national interest continues so to require, excepting, however,
12 that any such order in effect, or issued, during a time when
13 the United States is at war, shall be and remain in effect
14 for the duration of the war unless sooner specifically re-
15 scinded: *Provided further*, That the Commissioner of
16 Patents is authorized to rescind any order upon notification
17 by the heads of all departments and the chief officers of all
18 agencies who caused the order to be issued that the publica-
19 tion or disclosure of the invention is no longer deemed to
20 be detrimental to the national security.

21 "SEC. 2. The invention disclosed in an application for
22 patent subject to an order made pursuant to section 1 hereof
23 shall be held abandoned upon its being established before or
24 by the Commissioner of Patents that in violation of said
25 order said invention has been published or disclosed or that

1 an application for a patent therefor has been filed in a foreign
2 country by the inventor, his successors, assigns, or legal
3 representatives, or anyone in privity with him or them, with-
4 out the consent or approval of the Commissioner of Patents,
5 and such abandonment shall be held to have occurred as of
6 the time of such violation: *Provided*, That in no case shall
7 the consent or approval of the Commissioner of Patents be
8 given without the concurrence of the heads of all depart-
9 ments and the chief officers of all agencies who caused the
10 order to be issued: *Provided further*, That any such holding
11 of abandonment shall constitute forfeiture by the applicant,
12 his successors, assigns, or legal representatives, or anyone
13 in privity with him or them, of all claims against the United
14 States based upon such invention.

15 SEC. 3. Any applicant, his successors, assigns, or legal
16 representatives, whose patent is withheld as herein provided,
17 shall, if the order of the Commissioner of Patents above re-
18 ferred to shall have been faithfully obeyed, have the right,
19 within one year from the date the applicant is notified that,
20 except for such order, his application is otherwise in condi-
21 tion for allowance, or the effective date of this Act, which-
22 ever is later, to apply for compensation based upon the use,
23 if any, of the invention by the Government, such right to
24 compensation to begin from the date of the use of the inven-
25 tion by the Government. The head of any department or

1 agency who caused the order to be issued is authorized, if
2 any such claim is presented within the periods above speci-
3 fied, to enter into an agreement with said applicant, his
4 successors, assigns, or legal representatives, in full settlement
5 and compromise for such use, if any, and any such settle-
6 ment agreement entered into shall be final and conclusive
7 for all purposes, notwithstanding any other provision of law
8 to the contrary. If full compromise and settlement of any
9 such claim cannot be effected, the head of any department or
10 agency who caused the order to be issued, may, in his dis-
11 cretion, administratively award and pay to such applicant,
12 his successors, assigns, or legal representatives, a sum not
13 exceeding 75 per centum of the maximum sum, if any, which
14 in the opinion of the head of such department or agency
15 would constitute fair and just compensation for such use, if
16 any. Within two years after issuance of the patent, any
17 claimant who fails to secure an award satisfactory to him shall
18 have the right to bring suit against the United States in the
19 Court of Claims for such amount which, when added to such
20 award, if any, shall constitute fair and just compensation for
21 the use, if any, of the invention by the Government: *Pro-*
22 *vided,* That in any such suit, and in any negotiations looking
23 toward settlement and compromise of any such claim, the
24 United States may avail itself of any and all defenses that may

1 be pleaded by it in an action under the Act of June 25, 1910,
2 as amended (35 U. S. C. 68).

3 "SEC. 4. No person shall file or cause or authorize to be
4 filed in any foreign country an application for patent or for
5 the registration of a utility model, industrial design, or model
6 in respect of any invention made in the United States
7 prior to ninety days after filing in the United States an
8 application covering such invention except when authorized
9 in each case by a license obtained from the Commissioner
10 of Patents under such rules and regulations as he shall
11 prescribe: *Provided*, That no such license shall be granted
12 with respect to any invention which is the subject matter
13 of a subsisting order issued by the Commissioner of Patents
14 pursuant to section 1 hereof without the concurrence of the
15 heads of all departments or the chief officers of all agencies
16 who caused the order to be issued.

17 "SEC. 5. Notwithstanding the provisions of sections
18 4886 and 4887 of the Revised Statutes (35 U. S. C., secs.
19 31 and 32), any person and the successors, assigns, or legal
20 representatives of any such person, shall be debarred from
21 receiving a United States patent for an invention if such
22 person, or such successors, assigns, or legal representatives
23 shall, without procuring the authorization prescribed in sec-
24 tion 4 hereof, have made, or consented to or assisted an-
25 other's making, application in a foreign country for a patent

1 or for the registration of a utility model, industrial design,
2 or model in respect of such invention where authorization
3 for such application is required by the provisions of section
4 4 hereof, and any such United States patent actually issued
5 to any such person, his successors, assigns, or legal repre-
6 sentatives so debarred or becoming debarred shall be invalid.

7 "SEC. 6. Whoever, during the period or periods of time
8 an invention has been ordered to be kept secret and the grant
9 of a patent thereon withheld pursuant to section 1 hereof;
10 shall, with knowledge of such order and without due authori-
11 zation, willfully publish or disclose or authorize or cause to be
12 published or disclosed such invention, or any material in-
13 formation with respect thereto, or whoever, in violation of the
14 provisions of section 4 hereof, shall file or cause or authorize
15 to be filed in any foreign country an application for patent
16 or for the registration of a utility model, industrial design,
17 or model in respect of any invention made in the United
18 States, shall, upon conviction, be fined not more than \$10,000
19 or imprisoned for not more than two years, or both.

20 "SEC. 7. As used in this Act—

21 "The term 'person' includes any individual, trustee, cor-
22 poration, partnership, association, firm, or any other com-
23 bination of individuals.

24 "The term 'application' includes applications, and any

1 modifications, amendments, or supplements thereto, or con-
2 tinuances thereof.

3 "The term 'use' includes manufacture, sale, or other dis-
4 position of the invention by the Government, or for the
5 Government with its authorization or consent.

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

18 "SEC. 8. The prohibitions and penalties of this Act
19 shall not apply to any officer or agent of the United States
20 acting within the scope of his authority.

21 "SEC. 9. The Secretary of War, the Secretary of the
22 Navy, the chief officer of any other department or agency
23 of the Government designated by the President as a defense
24 agency of the United States, the National Munitions Control
25 Board, and the Commissioner of Patents, may separately

1 issue such rules and regulations as may be necessary and
2 proper to enable the respective department or agency to
3 carry out the provisions of this Act, and in addition are
4 authorized, under such rules and regulations as each may
5 prescribe, to delegate and provide for the redelegation within
6 their respective departments or agencies of any power or
7 authority conferred by this Act to such responsible officers,
8 boards, agents, or persons as each may designate or appoint.

9 "SEC. 10. If any provision of this Act or of any sec-
10 tion hereof or the application of such provision to any
11 person or circumstance shall be held invalid, the remainder
12 of the Act and of such section and application of such
13 provision to persons or circumstances other than those as
14 to which it is held invalid shall not be affected thereby.

15 "SEC. 11. Any order of secrecy heretofore issued, and
16 subsisting on the date of the approval of this Act, shall be
17 considered as an order issued pursuant to this Act and shall
18 continue in force and effect for a period of one year from
19 the effective date of this Act unless sooner rescinded as
20 provided herein: *Provided*, That any claim arising under
21 the Act of which this Act is amendatory and unsettled as
22 of the effective date of this Act, the provisions of any other
23 Act or Acts to the contrary notwithstanding, may be
24 presented and determined pursuant to the provisions of
25 section 3 hereof.

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By Mr. MICHENER

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