

82^d CONGRESS
1ST SESSION**S. 1827**See H.R. 4687
8 Oct 51

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That whenever publication or disclosure by the grant of a
4 patent on an invention in which the Government has a
5 property interest might, in the opinion of the head of the
6 interested Government agency, be detrimental to the national
7 security, the Secretary of Commerce upon being so notified
8 shall order that such invention be kept secret and shall with-
9 hold the grant of a patent therefor under the conditions set
10 forth hereinafter.

11 Whenever the publication or disclosure of an invention

1 by the granting of a patent, within categories prescribed by
2 the President and in which the Government does not have a
3 property interest, might, in the opinion of the Secretary of
4 Commerce, be detrimental to the national security, he shall
5 make the application for patent in which such invention is
6 disclosed available for inspection to the Atomic Energy Com-
7 mission, the Secretary of Defense, and the chief officer of
8 any other department or agency of the Government desig-
9 nated by the President as a defense agency of the United
10 States; and each individual to whom the application is dis-
11 closed shall sign a dated acknowledgment thereof, which
12 acknowledgment shall be entered in the file of the applica-
13 tion. If, in the opinion of the Atomic Energy Com-
14 mission, the Secretary of Defense, or the chief officer of such
15 other department or agency so designated, the publication
16 or disclosure of such invention by the granting of a patent
17 therefor would be detrimental to the national security, the
18 Atomic Energy Commission, the Secretary of Defense, or
19 such other chief officer shall notify the Secretary of Com-
20 merce to that effect, and the Secretary of Commerce, upon
21 being so notified, shall order that such invention be kept
22 secret and shall withhold the grant of a patent therefor for
23 such period or periods as the national interest requires and
24 upon proper showing by the head of any department or
25 agency, who caused such secrecy order to be issued, that

1 the examination of the application might jeopardize the
2 national interest, then the Secretary of Commerce shall
3 immediately seal such application. The owner of a patent
4 application which has been placed under a secrecy order shall
5 have a right to appeal from such order to such agency and
6 under such rules as may be prescribed by the President. No
7 invention shall be ordered kept secret and the grant of a
8 patent withheld for a period of more than one year: *Pro-*
9 *vided,* That the Secretary of Commerce shall renew any such
10 order at the end thereof, or at the end of any renewal period,
11 for additional periods of one year upon notification by the
12 head of the department or the chief officer of the agency who
13 caused the order to be issued that an affirmative determina-
14 tion has been made that the national interest continues so to
15 require, excepting, however, that any such order in effect,
16 or issued, during a time when the United States is at war,
17 shall be and remain in effect for the duration of hostilities
18 and a period of one year following cessation of hostilities
19 unless sooner specifically rescinded: The Secretary of Com-
20 merce is authorized to rescind any order upon notification
21 by the heads of all departments and the chief officers of all
22 agencies who caused the order to be issued that the publica-
23 tion or disclosure of the invention is no longer deemed to be
24 detrimental to the national security.

25 SEC. 2. The invention disclosed in an application for

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

19 SEC. 3. Any applicant, his successors, assigns, or legal
20 representatives, whose patent is withheld as herein provided,
21 shall, if the order of the Secretary of Commerce above re-
22 ferred to shall have been faithfully obeyed, have the right,
23 during a period beginning at the date the applicant is notified
24 that, except for such order, his application is otherwise in
25 condition for allowance, or beginning at the effective date

1 of this Act, whichever is later, and ending two years after
2 the date a patent is issued on such application; to apply for
3 compensation for the damage accruing by reason of the order
4 of secrecy and/or for the use, if any, of the invention by the
5 Government, if the Government's use resulted from the
6 applicant's disclosure; such right to compensation for use to
7 begin from the date of the first use of the invention by the
8 Government. The head of any department or agency who
9 caused the order to be issued is authorized, if any such claim
10 is presented within the period above specified, to enter into
11 an agreement with said applicant, his successors, assigns, or
12 legal representatives, in full settlement and compromise for
13 such damage and/or use, if any, and any such settlement
14 agreement entered into shall be final and conclusive for all
15 purposes, notwithstanding any other provision of law to the
16 contrary. If full compromise and settlement of any such
17 claim cannot be effected, the head of any department or
18 agency who caused the order to be issued, may, in his dis-
19 cretion, administratively award and pay to such applicant,
20 his successors, assigns, or legal representatives, a sum not
21 exceeding 75 per centum of the maximum sum, if any, which
22 in the opinion of the head of such department or agency
23 would constitute fair and just compensation for such damage
24 and/or use, if any. Within two years after issuance of a

1 patent, any claimant who fails to secure an award satisfac-
2 tory to him shall have the right to bring suit against the
3 United States in the Court of Claims for such amount which,
4 when added to such award, if any, shall constitute fair and
5 just compensation for the damage and/or use, if any, of the
6 invention by the Government. The owner of any patent
7 issued upon an application that was subject to a secrecy order
8 issued pursuant to section 1 hereof, and who faithfully obeyed
9 the order, who did not apply for compensation as above
10 provided, shall have the right, within two years after the
11 date of issuance of such patent, to bring suit in the Court
12 of Claims for fair and just compensation for the damage
13 accruing to him by reason of the order of secrecy and/or
14 use by the Government of the patented invention, such right
15 to compensation for use, provided such use resulted from the
16 applicant's disclosure, to begin at the first date of such use.
17 In any suit under the provisions of this section, and in any
18 negotiations concerning settlement and compromise of any
19 such claim, the United States may avail itself of any and
20 all defenses that may be pleaded by it in an action under
21 title 28, United States Code, section 1498, as amended.
22 This section shall not confer a right of action on anyone or
23 his successor or assignee who, when he makes such a claim,
24 is in the employment or service of the United States, or
25 who, while in the employment or service of the United States,

17 discovered, invented, or developed the invention on which
20 such claim is based as of the date of the filing of the application.
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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 Secretary of Commerce
under such rules and regulations as he shall prescribe: *Pro-*
vided, 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 sec-
tion 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 retro-
actively in case of inadvertence except in the case of inven-
tions 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 supple-
ments 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 repre-

1 representatives of any such person, shall be debarred from receive
2 ing a United States patent for an invention if such person, or
3 such successors, assigns, or legal representatives shall, with
4 out procuring the authorization prescribed in section 4 hereof,
5 have made, or consented to or assisted another's making,
6 application in a foreign country for a patent or for the regis-
7 tration of a utility model, industrial design, or model in re-
8 spect of such invention where authorization for such applica-
9 tion is required by the provisions of section 4 hereof; and any
10 such United States patent, actually issued to any such person,
11 his successors, assigns, or legal representatives so debarred or
12 becoming debarred shall be invalid.

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

1 SEC. 7. The prohibitions and penalties of this Act shall
2 not apply to any officer or agent of the United States acting
3 within the scope of his authority, nor to any person acting
4 upon the written instructions of, or in reliance on the written
5 permission or advice of, any such officer or agent.

6 SEC. 8. The Atomic Energy Commission, the Secretary
7 of Defense, the chief officer of any other department or
8 agency of the Government designated by the President as
9 a defense agency of the United States, and the Secretary
10 of Commerce, may separately issue such rules and regula-
11 tions as may be necessary and proper to enable the respective
12 department or agency to carry out the provisions of this Act,
13 and in addition are authorized, under such rules and regu-
14 lations as each may prescribe, to delegate and provide for
15 the redelegation within their respective departments or agen-
16 cies of any power or authority conferred by this Act to such
17 responsible officers, boards, agents, or persons as each may
18 designate or appoint.

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

25 SEC. 10. The Acts of Congress approved October 6,

1 1917 (ch. 95, 40 Stat. 394) ; July 1, 1940 (ch. 501, 54
2 Stat. 710) ; August 21, 1941 (ch. 393, 55 Stat. 657) ; and
3 June 16, 1942 (ch. 415, 56 Stat. 370) (U. S. C., title
4 35, secs. 42 and 42a to 42f), are repealed, but such repeal
5 shall not affect any rights or liabilities existing on the date
6 of this Act. Any order of secrecy heretofore issued under
7 said repealed Acts, and subsisting on the date of the approval
8 of this Act, shall be considered as an order issued pursuant
9 to this Act and shall continue in force and effect for a period
10 of one year from the effective date of this Act unless sooner
11 rescinded as provided herein. Any claim arising under said
12 repealed Acts and unsettled as of the effective date of this
13 Act, the provisions of any other Act or Acts to the contrary
14 notwithstanding, may be presented and determined pursuant
15 to the provisions of section 3 hereof.

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

19 SEC. 12. This Act may be cited as "The Patent Secrecy
20 Act of 1951".

82^D CONGRESS
1ST SESSION

S. 1827

A BILL

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

By Mr. RUSSELL

JULY 10 (legislative day, JUNE 27), 1951

Read twice and referred to the Committee on the
Judiciary

REF ID:A4161584