

Call

Col. Shull

73934

8 Apr about SWANCC  
action on this?

Approved for Release by NSA on 11-04-2014  
pursuant to E.O. 13526

S. 1726 - 25 July 47

HR 4420 - 26 "

SWANEC  
206/29



Mr. Neff

Col. Shull-73934

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Col. Gardes

SECRET

CONFIDENTIAL

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DATE Mar 17 1948

TO	FROM	TO	FROM
Chief, ASA..... (10)	_____	Ch, Security Div..... (80)	_____ ✓
Executive O..... (11)	_____	P & O Staff..... (81)	_____
✓ Dir Comm Res..... (14)	_____ <i>mk</i>	Ch, Materiel Br.... (82)	_____
Ch, Hist Unit..... (13)	_____	Ch, Methods Br.... (83)	_____
Control O..... (15)	_____	Ch, Protective Br... (84)	_____
Asst Chief (Staff)..... (20)	_____	Ch, Maint Br..... (85)	_____
Ch, Pers Sec..... (21)	_____	Ch, Res & Dev Div.. (70)	_____
Ch, Org & Tng Sec. (22)	_____	Tech Staff..... (71)	_____
Ch, Plans & Oper... (23)	_____	Ch, Ciph & Ciph Br. (72)	_____
Ch, Materiel Sec.... (24)	_____	Ch, Int Equip Br... (73)	_____
Ch, Fiscal Sec..... (25)	_____	Ch, Elec & Elec Br. (74)	_____
Adjutant, ASA..... (26)	_____	Ch, Lab Serv Br.... (75)	_____
Ch, Sec Cont Sec... (27)	_____	Ch, C'logic Br..... (76)	_____
Asst Chief (Oper)..... (60)	_____	Ch, Pers & Tng Br.. (61)	_____
Ch, Intel Div..... (90)	_____	Ch, Supply Br..... (62)	_____
Ch, Lab Br..... (91)	_____	Co, Arlington Hall... (40)	_____
Ch, Machine Br.... (92)	_____	2d Sig Serv Bn..... (50)	_____
Ch, Crypt Br..... (93)	_____		

**A B I L L**

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 entitled "An Act to prevent the publication of inventions by the grant of patents that might be detrimental to the public safety or convey useful information to the enemy, to stimulate invention, and provide adequate protection to owners of patents, and for other purposes", 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 the publication or disclosure of an invention by the granting of a patent might, in the opinion of the Commissioner of Patents, be deemed detrimental to the public safety or defense, 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 is deemed to be detrimental to the public safety or defense, the Secretary of War, the Secretary of the Navy, or such other chief officer shall notify the Commissioner of Patents to that

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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: Provided, however, 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: 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 public safety or defense.

"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: 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: Provided further, that any such holding of abandonment, when material in connection with questions of contract rights and obligations, or otherwise, 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 within one year from the date of the rescission of the order or within one year from the effective date of this Act, whichever is later, to apply to the head of any department or agency who caused the order to be issued for compensation for any damage claimed by reason of the order, and if and when he ultimately receives a patent or is notified by the Commissioner of Patents that except for the order the application for such patent is in condition for allowance, have the right, within one year from the date of issuance of such patent, or such notification by the Commissioner or the effective date of this Act, whichever is later, to apply for compensation based upon the use, if any, of the invention by the Government, such right to compensation to begin from the date of the 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 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 be 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 seventy-five per centum (75%) 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 use, if any. 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 accruing to such claimant by reason of the order and for the use, if any, of the invention by the Government: Provided, that any such suit not filed within one year following final termination of negotiations for settlement and compromise, shall be debarred. 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, general or special, that may be pleaded by a defendant in an action for patent infringement.

"Sec. 4. During any time when the United States is at war, or during any period of National Emergency as declared by the President, 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, 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 thereof, 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.

"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 and the Commissioner of Patents, may separately issue such rules and regulations

as may be necessary and proper 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. This Act shall take effect upon approval. 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 full 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 Act or Acts to the contrary notwithstanding, may be presented and determined pursuant to the provisions of section 3 hereof.