

80TH CONGRESS  
1ST SESSION

# S. 1726

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IN THE SENATE OF THE UNITED STATES

JULY 25 (legislative day, JULY 16), 1947.

Mr. GURNEY (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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  
10      national security, the Commissioner of Patents upon being  
11      so notified shall order that such invention be kept secret

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

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

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

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

14. "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

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

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

3. "SEC. 4. No person shall file or cause or authorize to  
4. be filed in any foreign country an application for patent or  
5. for the registration of a utility model, industrial design, or  
6. model 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  
20. legal representatives of any such person, shall be debarred  
21. from receiving a United States patent for an invention if  
22. such person, or such successors, assigns, or legal repre-  
23. sentatives shall, without procuring the authorization pre-  
24. scribed in section 4 hereof, have made, or consented to or  
25. assisted another's making, application in a foreign country

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

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

22 "SEC. 7. As used in this Act—

23 "The term 'person' includes any individual, trustee,  
24 corporation, partnership, association, firm, or any other  
25 combination of individuals.

1       “The term ‘application’ includes applications, and any  
2 modifications, amendments, or supplements thereto, or con-  
3 tinuances thereof.

4       “The term ‘use’ includes manufacture, sale, or other  
5 disposition of the invention by the Government, or for the  
6 Government with its authorization or consent.

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

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

22       “SEC. 9. The Secretary of War, the Secretary of the  
23 Navy, the chief officer of any other department or agency  
24 of the Government designated by the President as a defense



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

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

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

1 Act or Acts to the contrary notwithstanding, may be pre-  
2 sented and determined pursuant to the provisions of section  
3 3 hereof.

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By Mr. GURNEY

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Read twice and referred to the Committee on the  
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