

its records contain matter exempt from disclosure under this bill, an agency would have to prove the contents of such records and thereby negate the intended protection of such records.

7. We raise the question as to whether an amendment to section 161 of the Revised Statute is the most appropriate method of accomplishing the purposes of H.R. 5012. It would appear more appropriate if legislation is enacted to amend section 3(c) of the Administrative Procedure Act. In this connection it is noted that during the 88th Congress bills (S. 1666 and S. 1663) containing provisions somewhat analogous to H.R. 5012 did provide for amendment to the Administrative Procedure Act.

In view of the above and for the reasons set forth in the attached comments from the Department's Patent Office, Maritime Administration, Bureau of Public Roads, and the Assistant Secretary for Administration, this Department recommends against the enactment of H.R. 5012.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

PATENT OFFICE COMMENTS ON H.R. 5012

There are listed below those instances when materials in the possession of the Patent Office are kept confidential. Those instances which are justified on the bases of statute and executive order are listed separately from those instances justified on other bases. Presumably, those instances relying on statute or Executive order would be treated under H.R. 5012 as exceptions under (c) (1) or (c) (3) although the express repealer of section 2 of the bill creates an ambiguity with respect to laws relied upon as providing an exception.

There is presented a much more serious question as to whether the other listed instances, not relying on statute or Executive order, would be exempted from the coverage of the bill. As indicated, in connection with each item, there appears satisfactory and reasonable bases for treating this material in a confidential manner with safeguards against abuse. Examination of these items raises questions concerning the appropriateness of a categorical directive such as would be provided by the bill, which does not allow that distinction and choice of administrative action which appears to be so necessary and proper.

I. INFORMATION RESTRICTED BY LAW OR EXECUTIVE ORDER

A. Applications for patents are directed by law to be kept in confidence by the Patent Office (35 U.S.C. 122). Some discretion is allowed to be exercised in this matter by the Commissioner of Patents "in such special circumstances as may be determined by" him. The Commissioner is circumspect in the exercise of this authority because of danger that property rights in patents may be jeopardized by disclosure. Other exceptions expressly provided by the statute are the disclosure under authority of the applicant or owner, and disclosure necessary to carry out the provisions of any act of Congress.

B. When publication or disclosure by the grant of a patent on an invention might, in the opinion of the head of designated agencies, be detrimental to the national security, it is ordered to be kept secret and violation of such an order is punishable by fine or imprisonment or both. The owner of a patent application may appeal such an order to the Secretary of Commerce (title 35 of the United States Code, ch. 17, sec. 181-188).

C. If agreements in connection with or in contemplation of the termination of a patent interference are not filed with the Patent Office, the agreements and patents involved are not enforceable. If any party filing such an agreement so requests, the agreement shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Occasion for the exercise of this discretion on the part of the Commissioner has not as yet arisen. Exercise of this discretion would be reviewable by the courts. The statute was recently enacted (Oct. 15, 1962; Public Law 87-831; 35 U.S.C. 135).

D. Executive Order 9424 of February 18, 1944 (3 CFR 1943-48 Comp.) provides for the establishment of a register for the recording of all licenses, assignments or other interests of the Government in or under patents or patent applications.