

REF ID: A104708
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RESTRICTED

DATE 8 Sept 49

TO	FROM	TO	FROM
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- Approval & Return
 As Requested
 Concurrence or Comment
 Information & Forwarding
 Information & Return
 Information & File
 Recommendation
 Signature if Approved
 Your Action (by _____)
 For recommended reply

1 Herewith draft of proposed 3d Ind
you requested me to prepare.

2 I have seized the opportunity to
present some angles which I think
are pertinent to the case but which
may go a bit further than what
you may wish to do now. However,

REF ID: A104708
I earnestly request your careful
consideration of the draft and
hope you will find much of it
acceptable. Thanks

F.
I am prepared to sign
w/ly

~~SECRET~~

9 Sept 1949

3d Ind

Headquarters, Army Security Agency, The Pentagon, Washington 25, D. C.

TO: The Director of Intelligence, Room 2E800, The Pentagon, Washington
25, D.C.

1. It is recommended that the decision referred to in Par. 3b of 2d Ind be made and that this Headquarters be informed so that Mr. Friedman may be advised thereof, as requested by him in Par. 3b of 2d Ind.

2. a. This Agency does not concur in the view of the Judge Advocate General, stated in Par. 3 of Comment No. 5, that it is highly improbable that Mr. Friedman could secure the service of a private counsel to assist him in his claim without disclosing to the counsel classified matter relating to his patent application. In this connection it should be pointed out that although the machines covered by the subject patent application were manufactured under secret contract by a commercial firm, several thousand persons (perhaps more than 25,000) who operated and serviced the equipment and who are no longer under military control are well-acquainted with its cryptographic principles and the details of its construction. Under these circumstances it does not appear reasonable to deny, merely on security grounds, Mr. Friedman's request that he be

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3d Ind. (continued)

permitted to consult private counsel in matters affecting whatever commercial rights he feels he may have in the subject patent application.

b. In connection with the general question as to whether or not an inventor of a classified invention may be permitted to consult with private counsel, it is pertinent to cite the following provision of the paragraph concerning "Compensation Awards and Royalties" in that section of the Atomic Energy Act of 1946 which deals with "Patents and Inventions" [Sec. 11(e)(2)(D)]:

"Any person making application under this subsection shall have the right to be represented by counsel."

3. It should also be pointed out that technically speaking Mr. Friedman has not filed or entered a claim against the U.S., nor does he contemplate filing a claim. A careful study of the correspondence will show that he merely wishes to avail himself of the benefits of an official policy established by the A.C. of S., G-2 in 1946 with a view to working out some means whereby inventors who have made inventions in the field of classified cryptographic equipment, and whose commercial rights must necessarily be withheld from them for lengthy periods because of security considerations, may be recompensed. It appears equitable to establish a mechanism whereby such inventors may possibly derive, in some measure, the monetary benefits which inventors in the non-classified fields enjoy from the exploitation of their commercial rights.

4. a. In view of the opinion expressed by the Judge Advocate General in Par. 2 of Comment No. 5, it is apparent that the policy set forth in the G-2 memorandum of 29 April 1946 for the Chief, Army Security Agency, Subject: Release of Cryptographic Principles, is of no value whatever in these cases because of the inclusion in Par. b thereof of the clause "and does not relate to a matter as to which the employee was specifically directed to experiment with a view to suggesting improvements." All employees of the Army Security Agency with the exception of custodial personnel have been and are currently required to sign a "Patent Memorandum" similar to the one signed by Mr. Friedman and therefore no inventions made by ASA personnel would fall within the category covered by the present policy. It is therefore recommended that the policy announced in the G-2 memorandum of reference be amended by striking out the clause which has been quoted above and which contravenes the primary purpose for which the policy was designed.

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3d Ind. (continued)

b. It should be pointed out that the clause recommended for deletion from the G-2 policy constitutes a proviso or limitation therein which is not consonant with the liberal but official policy covering patents and inventions of Department of the Army employees, as set forth in Par. 9, AR 350-50, 17 July 1942.

5. The Judge Advocate General, in the last paragraph of Comment No. 5, states that, since the policy is limited to patent rights in cryptographic principles, it is highly discriminatory in favor of inventors in the cryptographic field as against inventors in other classified fields. This may be one way of looking at the matter. But it should be pointed out that the present system whereby inventors in non-classified fields acquire their commercial rights with little or no delay and are free to exploit them for their own benefit, whereas inventors in classified fields do not share these advantages, is highly discriminatory against the whole group of inventors of the latter category. The primary purpose of the G-2 policy was to try to eliminate this discrimination in the cryptographic field, which is under the cognizance of the Director of Intelligence. The chiefs of other services are certainly free to adopt similar policies if they desire, with a view to stimulating invention by their employees. Such a policy of fostering invention is consonant with the fundamental policy of the Department of the Army. It is my belief that a uniform and equitable policy in the premises, applicable throughout at least the Department of the Army but preferably throughout the Department of Defense, should be elaborated. It is further my belief that in the absence of such a uniform and equitable policy, a continuance of the present one, which constitutes a policy that is highly discriminatory against inventors in the classified fields, will in a short time either stifle invention or lead capable inventors to turn from those fields into others in which such discrimination does not exist, a result which would certainly be to the detriment of national defense.

CARTER W. CLARKE
Brigadier General, Signal Corps
Chief, Army Security Agency

1 Incl
n/c

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