

IN THE
UNITED STATES COURT OF CLAIMS

No. 213-53

ELLIE L. HEBERN, executrix of the
Estate of Edward H. Hebern, Deceased,
and HEBERN CODE, INC., a Corporation,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA, Defendant

ACTION FOR COMPENSATION FROM THE UNITED STATES FOR
INFRINGEMENT OF PATENT AND FOR OTHER RELIEF

PETITION

(Filed May 19, 1953)

To the Honorable the Chief Judge and the Associate Judges of the
United States Court of Claims:

1. Plaintiff Ellie L. Hebern is the duly appointed, qualified and acting executrix of the estate of Edward H. Hebern, deceased, Letters Testamentary having been issued to her by the Superior Court of the State of California in and for the County of Alameda, Department No. 4, in Proceeding No. 118818, on March 11, 1953. Plaintiff Ellie L. Hebern is a citizen of the United States of America, and Edward H. Hebern was a citizen of the United States of America. Plaintiff Hebern Code, Inc. is a corporation organized and existing under the laws of the State of Nevada.

2. This petition is filed against the United States of America under and pursuant to the provisions of the Act of Congress approved June 25, 1948, 62 Stat. 940 and 942, as amended by the Act

of Congress approved May 24, 1949, sec. 87, 63 Stat. 102, the Act of Congress approved October 31, 1951, sec. 50(c), 65 Stat. 727, and the Act of Congress approved July 17, 1952, 66 Stat. 757, all as embodied in Title 28, United States Code, sections 1491 and 1496.

3. The following United States Letters Patent were issued to or acquired by Edward H. Hebern, deceased, and plaintiff Hebern Code, Inc.

Patent No. 1,510,441 granted September 30, 1924 on an application filed March 31, 1921, Serial No. 457,419, by Edward H. Hebern, being an Electric Coding Machine.

Patent No. 1,663,072, granted September 4, 1928 on an application originally filed November 20, 1923, and renewed May 17, 1927, Serial No. 675,898, by Edward H. Hebern, being an Electric Code Machine, also described as Super Code.

Patent No. 1,861,857, granted June 7, 1932 on an application filed May 17, 1927, Serial No. 192,074, by Edward H. Hebern, being a Cryptographic Machine and System, also described as Universal Dogs.

Patent No. 2,267,196, granted December 23, 1941 on an application filed July 5, 1938, Serial No. 217,480, by Walter H. Fanning, being a Remote Control System, also described as Wiring System.

Patent No. 2,269,341, granted January 6, 1942 on an application filed November 2, 1938, Serial No. 239,469, by Edward H. Hebern, being a Message Transmission Device, also described as Remote Control System.

Patent No. 2,373,890, granted April 17, 1945 on an application filed October 3, 1938, Serial No. 232,995, by Edward H. Hebern, being a Cipher Machine, also described as New Code Wheel.

4. Patent Nos. 1,663,072, 1,861,857, 2,267,196, 2,269,341 and 2,373,890 were assigned by the original applicants to International Code Machine Company, a Nevada corporation, and by said corporation they were on May 22, 1945, assigned to Edward H. Hebern, such assignment being recorded in the United States Patent Office June 11, 1945, Liber K-203, page 56. The aforesaid five patents were by Edward H. Hebern on May 23, 1945 assigned to Hebern Code Machine Corporation, Inc., a Nevada Corporation (the name of which was subsequently changed to Hebern Code, Inc., one of the plaintiffs herein, such assignment being recorded in the United States Patent Office June 11, 1945, Liber K-203, page 58. All

patents and any and all improvements made to said patents, and any and all claims arising out of, or in respect to, or by virtue of said patents and improvements thereto, theretofore held by International Code Machine Company, including all claims arising out of the aforesaid five patents and Patent No. 1,510,441, were assigned to Edward H. Hebern on December 2, 1947 by Sheriff's Certificate of Sale of Personal Property of International Code Machine Company under Order of Execution No. 110645, dated November 21, 1947, in the Second Judicial District Court of the State of Nevada in and for the County of Washoe. All patents, improvements and claims acquired under said Sheriff's Sale were assigned to Hebern Code, Inc. by Edward H. Hebern on February 10, 1948. All patents, improvements and claims acquired by Hebern Code, Inc. as set forth in this paragraph were re-assigned to Edward H. Hebern by Hebern Code, Inc. on April 11, 1950, such assignment being recorded in the United States Patent Office April 13, 1950, Liber S-223, page 166.

5. Plaintiffs are informed and believe and therefore aver, that the United States of America, through the officers and employees of its Departments of the Army, Navy, Air Force and Coast Guard, and otherwise, has since the grant of said United States Letters Patent, as described in paragraph 3 hereof, and before the filing of this petition, without the license of plaintiffs or of Edward H. Hebern, deceased, or of any other party authorized thereto, and without lawful right, caused to be made and manufactured and used, or caused to be used, great numbers of devices and structures based on and containing and embodying the inventions covered and claimed by said United States Letters Patent, in violation and infringement of said Letters Patent and the rights of plaintiffs and of Edward H. Hebern, deceased, thereunder.

6. By letter dated September 3, 1947, plaintiff Hebern Code, Inc. and Edward H. Hebern, deceased, filed with the United States Secretaries of Defense, Army, Air Force and Navy a claim to recover reasonable and entire compensation from the United States for the unauthorized use by or for the Armed Services of the United States, particularly the War and Navy Departments and the United States Coast Guard, of equipment and

apparatus embodying the inventions described in and covered by the said Letters Patent. The said claim was finally rejected by the Departments of the Navy, Army and Air Force by Letters dated January 22, 1953.

7. A portion of the manufacture and use herein complained of and for which compensation is claimed first accrued within six years prior to the filing of this petition.

8. A portion of the manufacture and use herein complained of and for which compensation is claimed first accrued more than six years prior to the filing of this petition but within the period, up to six years, during which the claim described in paragraph 6 hereof was pending before the named departments or agencies of the United States Government; and compensation therefor is claimed by virtue of the provisions of Title 35, United States Code, section 286, as added by the Act of Congress approved July 19, 1952, 66 Stat. 813.

9. A portion of the manufacture and use herein complained of and for which compensation is claimed first accrued more than six years, as extended by the aforesaid provisions of Title 35, United States Code, section 286, prior to the filing of this petition, but the United States Government has at all times refused, and still refuses, to disclose any information with respect to the manufacture and use of it in violation of said Letters Patent.

10. Edward H. Hebern, deceased, was, up to and including the date of his death, and plaintiffs have been at all material times and are, bound by an agreement between the said Edward H. Hebern and the United States Government prohibiting any disclosure or any making public of certain features of his inventions; but devices and structures based on and containing and embodying such secret features were manufactured and used by the United States Government under an implied contract (within the meaning of subdivision (4) of Title 28, United States Code, section 1491) that the said Edward H. Hebern would be compensated for such manufacture and use.

11. The inventions disclosed and claimed in the United States Letters Patent described in paragraph 3 hereof were not invented or discovered while the inventors or patentees thereof were employees of or in the service of the United States Government, nor are such inventors or patentees now employed by the United States Government or in its service.

12. Plaintiffs' claim for compensation for the manufacture and use by or for the United States of America of devices and structures embodying the inventions disclosed and claimed in the United States Letters Patent described in paragraph 3 hereof, is not based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United States prior to July 1, 1918.

13. Neither the plaintiffs nor Edward H. Hebern has sold or transferred the claim as described herein, or any part thereof, to any person or persons, except as set forth in paragraph 4 hereof; no action has been taken on this claim in the Congress; the United States has been notified by Edward H. Hebern and by plaintiffs of this infringement of the said United States Letters Patent and of the violation by the United States of the aforesaid implied contract for compensation for manufacture and use of devices and structures based on and containing and embodying the secret features of Hebern's inventions, but such infringement and violation by the United States has, after such notice, continued and still continues and no compensation therefor has ever been paid to plaintiffs or to Edward H. Hebern.

WHEREFORE, plaintiffs pray for judgment against the United States of America for the sum of Fifty Million Dollars (\$50,000,000.00) and for such other and further relief as to the Court may seem just.

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