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September 3, 1947. WAR

Secretary of Defense,
Washington 25, D. C.

Secretary, Department of the Army,
Washington 25, D. C.

Secretary, Department of the Air Force,
Washington 25, D. C.

Secretary, Department of the Navy,
Washington 25, D. C.

Dear Sirs:

We write as attorneys for Mr. Edward H. Hebern, also known as E. H. Hebern, whose present address is 485 - 40th Street, Oakland, California, and also his assignee, The International Code Machine Company, Reno, Nevada, a corporation duly organized under date of September 15, 1926 and existing under and by virtue of the laws of the State of Nevada with its principal office and place of business at 139 North Virginia Street, Reno, Nevada, and also its assignee, the Hebern Code Machine Corporation, the name of which was changed after the assignment, more particularly hereinafter referred to, to its present name, Hebern Code, Inc., a corporation duly organized under date of May 17, 1945 and existing under and by virtue of the laws of the State of Nevada, also with principal office and place of business at 139 North Virginia Street, Reno, Nevada, which is the address of the resident agent, The Nevada Agency and Trust Company.

Our clients complain of acts done by or for the United States, and assert on information and belief, as follows:

1. That this claim arises under the provisions of the Act of June 25, 1910 (36 Stat. 851.), as amended by the Acts of July 1, 1918 (40 Stat. 705.) and October 31, 1942 (56 Stat. 1014.), 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 then War and Navy Departments, and the United States Coast Guard, of equipment and apparatus.

advised 09/5 Hebern, Edward H. (12-47)

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embodying the inventions described in and covered by the following Letters Patent of invention of the United States.

E. H. Hebern Patent No. 1,683,072 granted September 4, 1928 on an application filed May 17, 1927 by Edward H. Hebern, being a reissue of Reissue Patent, Serial No. 675,898, on an application filed November 20, 1923, being described as Super Code or Electric Code Machine.

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

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

E. H. Hebern Patent No. 2,269,341, granted January 6, 1942 on an application filed November 8, 1938, Serial No. 239,469, by Edward H. Hebern, being Remote Control, and also known as Message Transmission Device.

E. H. Hebern 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 New Code Wheel, and also known as Cipher Machine.

2. That on the dates of grant set forth in Paragraph 1 hereof the patents there listed were duly and legally issued.

3. That claimant, Hebern Code, Inc., under changed name as aforementioned from Hebern Code Machine Corporation, by duly recorded assignment, first from said Edward H. Hebern to the International Code Machine Company, and by assignments of the International Code Machine Company to the Hebern Code Machine Corporation under date of May 22, 1945, and recorded in the United States Patent Office under date of June 11, 1945 at File No. Liber-Book-K-203-Page 56, is the owner of the entire, right, title and interest in and to each of the patents listed in Paragraph 1 hereof, together with the right to receive reasonable compensation for the unauthorized use of the inventions covered thereby, or the infringement of said patents, by others.

3.

4. That prior to the dates of application given in Paragraph 1, with respect to each of the patents enumerated therein, the patentee was the first, original and sole inventor of the improvements set forth in said patents, which improvements were not known or used by others in this country before the invention or discovery thereof by the patentee, were not patented or described in any printed publication in this or any foreign country before the invention or discovery thereof by said patentee, or more than two years prior to the date of application for Letters Patent, and were not in public use or on sale in this country more than two years prior to the date of application for Letters Patent, and had not been abandoned or patented nor caused to be patented by the patentee or a legal representative of the patentee in any foreign country upon an application filed more than twelve months prior to the date of application for said patent.

5. That on the dates given in Paragraph 1 hereof with respect to the application for each of the patents therein enumerated the patentee in each case filed in the United States Patent Office an application for Letters Patent for the invention shown, described and claimed thereby, and that thereupon all requirements of the statutes of the United States then in force in respect thereto having been complied with the said Letters Patent, and each thereof, were duly issued on said application on the dates of grant specified in Paragraph 1 hereof with respect to each patent, whereby there was secured to the patentee and his assigns for a period of seventeen years from the date of grant the exclusive right to make, use and sell apparatus and equipment and use the methods embodying the said inventions.

6. That none of the patentees was in the employ or service of the United States at the time he made the discovery or invention described in or covered by said Letters Patent and each thereof, and none of the patentees nor the claimant is now in the employ or service of the United States; and that this claim for compensation is not in whole or in part based upon 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.

7. That since the date of grant of said Letters Patent and each of them, and more particularly within six years prior to the filing of this claim, apparatus and equipment embodying the inventions described in and covered by the claims of said Letters Patent, and each thereof, have been manufactured by or for the United States and used by the United States with full

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knowledge of claimant's or the assignors' exclusive rights to said inventions, but in complete disregard of claimant's rights thereto and therein and without license of claimant or lawful right to manufacture or use the same.

8. At or about the time plaintiff's assignor, Edward H. Hebern, contracted for the sale and delivery of thirty-one (31) of his machines on or about June 7, 1930, said Hebern was requested by the Navy Department to keep secret certain features covered by his June 7, 1932 patent issued as No. 1,861,857, not fully disclosed in the patent drawings, but incorporated in the said thirty-one (31) code machines. The Navy Department was to test these thirty-one (31) machines for mechanical defects so as to improve any others ordered; at about this time said Hebern was requested by the Navy Department to sign an agreement with the Navy Department not to disclose the vital features incorporated in said thirty-one (31) machines for a term of five (5) years, which agreement he signed and was assured that the Hebern Company would be given all contracts for future machines, but this was not done, said agreement expiring several years before World War II. Just prior to the commencement of World War II, the Navy Department purchased two (2) additional machines from the Hebern Company of the same type as the aforementioned thirty-one (31) machines.

9. That because of wartime conditions claimant has been unable to obtain an inspection of apparatus and equipment used by the United States or complete information concerning the specific manufacturers thereof, but claimant is informed and believes that these said inventions have been extensively utilized and incorporated in apparatus and equipment designated in Technical Manuals and Reports, the details of which are not at present within the knowledge and information of claimant, so that claimant cannot at present and in this, its claim, set out or particularize the separate and specific features of use and infringement as aforesaid, because as aforementioned as to the details and designation thereof claimant presently is not informed.

10. That prior to the presentation of this claim the United States was duly notified of claimant's patents and its rights thereunder.

11. That no action upon claimant's claim has been had by any of the Departments or by the Congress; that no person other than claimant is owner thereof or is interested therein; that no assignment nor transfer has been made of said claim or any part thereof or interest therein; and that claimant is justly entitled

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to compensation from the United States after allowing all just credits and offsets.

12. That at the time of applying for and the issuance of said Letters Patent, and each thereof, the patentees, and since the acquisition thereof by claimant, the claimant bore and at all times prior thereto and thereafter, has borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to any rebellion against the said Government.

13. That the exact amount claimant asks for in its favor against the United States is not known to claimant and cannot be stated until claimant has had an opportunity to ascertain from records exclusively in the possession of the United States, the determining factors in estimating the reasonable and entire compensation due it, but estimates the amount thereof to be in excess of Fifty Million Dollars (\$50,000,000.); and claimant gives notice that it will request and call upon the Armed Services of the United States for the documentary evidence of such reasonable and entire compensation for all unauthorized use participated in, by or for the Government under the provisions of the statutes herein referred to.

14. It is hereby respectfully requested that claimant be afforded and granted as soon as reasonably convenient to the Services all necessary conferences, information, data and hearings as part of all pertinent negotiations looking to appropriate settlement of this the claimant's petition for compensating adjustments.

If the event that a preliminary conference would be helpful in this connection we would be glad to confer at such time and place as you suggest.

Respectfully submitted,

BARNARD & HENRY,

By 

Attorneys for Hebern Code, Inc.,
formerly known as Hebern Code
Machine Corporation, a corpora-
tion of Reno, Nevada, claimant, and
others as hereinbefore specified.

Copies to Chief of Naval Research, United States Navy
Adjutant General, United States Army