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SIGLG-3LG Subject: Patent Office Secrecy Orders

TO: Chief, Army Security Agency FROM: Legal Division DATE: 13 May 1948 COMMENT NO. 2
 Agency OCSigO
 Att: Capt. Rambo

1. References: Letter dated 18 September 1945, File: SPSIF-7, from Signal Security Branch, Army Communications Service to Director, Legal Division, Subject: Patent Office Secrecy Orders. (This was a reply to Reference 1 c identified in Comment No. 1.)

2. Reference 1 c, identified in Comment No. 1, included as an inclosure a copy of a letter dated 12 September 1945 from the Legal Division of this Office to the Patent Office, War Division. This letter gave a definition of cryptology, emphasized the importance to the Signal Corps of this field (which was then a Signal Corps responsibility) and of having an opportunity to review patent applications in this field. This was reemphasized in our letter of 5 October 1945 to the Patent Office War Division. (Actually six copies of this letter were sent so that they might be distributed to the several divisions of the Patent Office handling cases in this field.) Inclosure 1 is a copy of this letter. On 16 October 1945, the Army and Navy Patent Advisory Board (referred to below as ANPAB) sent a copy of this same letter to the Commissioner of Patents.

3. a. On 2 May 1946, this Office sent to the Patents Division, Office of the Judge Advocate General (referred to below as JAG), a new list of the categories of subject matter which the Signal Corps wanted to have brought to its attention by the Patent Office. (See Inclosure 2.) It will be noted that Item 1 on this list is identical with Item 1 on the list included in Inclosure 1 and reads "Secret signalling and cryptographic devices and systems".

b. JAG sent copies of Inclosure 2 to the Commissioner of Patents with a letter dated 6 May 1946. (See Inclosure 3.)

4. Upon receiving Comment No. 1 of the present correspondence, this Office investigated the problem thus presented. The conclusion was reached that of the very few cases brought to the attention of the Signal Corps by the Patent Office, for review as to classification, during the period since 30 November 1945 (the date of the Patent Office's General Rescinding Order, rescinding all secrecy orders previously in effect, except those specifically excepted at the request of the Armed Forces), all were apparently closely related in subject-matter to cases which were then or at some time in the past under secrecy in the Patent Office. (Of these very few cases, even fewer pertained to the activities of your Agency.) As the situation is recalled, the relationship between these cases was not merely one of subject-matter, but one involving Patent Office practice, for example, a parent case and a divisional case, or a parent case and a continuation or a continuation-in-part.

5. a. Recently, and after receiving Comment No. 1, this Office had occasion to borrow a file from JAG to try to find some correspondence pertaining to another security problem affecting patent applications. While going through this file, it was found that it contained a copy of a memorandum dated 28 November 1945 (see Inclosure 4) from the Patent Office War Division to the Commissioner of Patents request-

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CC FOR: CHIEF, ARMY SECURITY AGENCY, WASH., D.C. ATTN. MR. H.B. STAUFFER, CHIEF, PATENT SECTION

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COMMENT NO. 2 (cont'd)

ing approval of a new procedure with respect to security matters and including the statement "Applications not under secrecy order will be ordered for Army and Navy Patent Advisory Board only if there is a power to inspect; this is not an examination under authority of Public 700 (an exception to Rule 15), but a mere convenience to the advisory agency during the time the War Division is functioning." The then Commissioner of Patents, Mr. Casper W. Ooms, approved this new procedure. Since this was the first indication that present personnel of this Office had seen to the effect that the Patent Office was following a new and deliberate practice of not bringing cases to the attention of the Armed Forces for security review except in certain limited situations, this point was more fully investigated.

b. It was then found that the "Supplement to the History of the Army Section of the Army and Navy Patent Advisory Board covering the Period 1 April 1945 to 31 December 1945" contained, on page 10, the following statement:

"The Board was furnished, for its information, with a copy of a letter to the Commissioner of Patents from the Patent Office War Division dated 28 November 1945, and bearing notation that it was approved by the Commissioner, setting up the procedure to be followed on security matters after 30 November 1945 (Appendix MM). By the practice set up in this letter the submission of new applications to advisory agencies was limited to those reviewed first by the Commissioner, or those in which a power to inspect was in the file. Cases in secrecy would be referred to the Army and Navy Patent Advisory Board to consider rescission upon request, or when forwarded by the examiners for opinion. During December a few new secrecy orders were issued upon the recommendation of the Board by reason of information previously known to the Board members but no new applications were submitted for examination by the Patent Office. The main activities at the Patent Office War Division were directed toward completing records and coordinating previous work. By 31 December 1945 the activities and personnel of the War Division were much reduced."

c. A thorough search of the files of the Signal Corps, JAG, and ANPAB on this subject has not produced any evidence that either ANPAB or JAG ever notified the Signal Corps that the Patent Office was following the "new and deliberate practice" referred to in Paragraph 5 a above.

d. If Inclosure 3 is studied in the light of what is now known, it will be seen that it is not clear whether at the conference referred to in the first paragraph of this Inclosure, it was decided to change this "new and deliberate practice" by having the Patent Office bring to the attention of the Armed Forces, all cases coming within the categories listed as having military importance, or merely those cases of this type which were related to "other applications which had been placed in secrecy . . . in accordance with the provisions of the act of October 6, 1917, as

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COMMENT NO. 2 (cont'd)

amended (35 U.S.C. 42)." (This quotation is taken from the second paragraph of Inclosure 3.)

6. a. When this Office was about to discuss this matter with JAG, it was learned that Mr. T. E. Cosgrove, Alternate Member for the Ordnance Department on ANPAB, had arranged a meeting with Colonel G. W. Gardes, Chief, JAG Patents Division, and Major H. E. Galleher, Jr., of the latter Division, to discuss the same problem as that presented by your Agency in Comment No. 1. Mr. Glasman of this Office visited Mr. Cosgrove and discovered that Ordnance had independently raised the same problem and had also independently reached the same conclusion as the Signal Corps concerning a somewhat related matter.

b. The latter has to do with the fact that it is sometimes necessary to place an application under secrecy merely because it refers to a classified military usage of the invention, even though the description of the invention itself is unclassified and the reference to the military usage is not essential to the completeness of the disclosure. Under present Patent Office practice, cancellation of the reference to the military usage would merely mean that red lines would be drawn through this reference. The information contained in the reference could still be easily read and would be available to the general public in the patented file, if a patent issued covering this patent application. It was our idea that the Army should sponsor a new statute which would provide for the actual excision of the classified portions of a patent application where such portions were not essential to the completeness of the disclosure. This excision would be accompanied by appropriate safeguards, such as consent of the Commissioner of Patents and of the owner of the application, and would be done only at the request of the Armed Forces. The statute should also provide for complete destruction (again with appropriate safeguards) of a patent application which contains very highly classified information so much distributed throughout the application that it is most unlikely that the application would ever be permitted to issue as a patent. This latter provision would probably be of special interest to your Agency.

7. Mr. Glasman of this Office participated in the meeting mentioned in Par. 6 a above and which took place on 27 April 1948. At this meeting, after the two problems already referred to had been discussed, Mr. Glasman brought up a third problem -- the question of the adequacy of the security protection given by the Patent Office to classified patent applications.

8. The conclusions reached at the meeting were as follows:

a. Colonel Gardes stated that ANPAB would write to each branch of the Army, Navy and Air Force represented on that Board, and request the views of such branch as to the reinstatement by the Patent Office of the procedure of submitting to the Armed Forces for security review applications coming within certain categories, and would also request a list of the categories in the event that the branch thought that the procedure should be reinstated. If, as is almost certain to be the case,

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ANFAB decided that the procedure should be reinstated, Colonel Gardes would arrange for a meeting with the Commissioner of Patents to get his views on this matter. (Incidentally, the present Commissioner of Patents is not Mr. Ooms but Mr. Lawrence G. Kingsland.)

b. During this same meeting, Colonel Gardes will discuss with the Commissioner of Patents, ^{the} proposed statute which is mentioned in Par. 6 b above.

c. Colonel Gardes will discuss either with the Commissioner of Patents or Assistant Commissioner Mr. Thomas P. Murphy, the question of the adequacy of the security protection given by the Patent Office to classified patent applications and, if possible, will make a survey of the type of protection afforded in some of the Patent Office divisions having a considerable number of such applications.

9. It is requested that this Office be advised whether your Agency is interested in changing the description of the category of applications which you would like to review, from its present version of "Secret signaling and cryptographic devices and systems".

10. You will be kept advised of any further developments in the matters covered by this communication.

FOR THE CHIEF SIGNAL OFFICER:

JG
LAWRENCE GLASSMAN
Patent Counsel
Legal Division

4 Incls.

Incl 1. ltr dd 5 Oct 48 fm OCSigO to
Pat Off War Div.

Incl 2. ltr dd 2 May 48 fm OCSigO to
JAG

Incl 3. ltr dd 6 May 46 fm JAG to Pat Off

Incl 4. Memo dd 28 Nov 45 fm Pat Off
War Div to Cmr of Patents

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5 October 1945

Honorable Commissioner of Patents
Department of Commerce Building
Washington 25, D. C.

Attention: War Division

Dear Sir:

For the guidance of the Patent Office personnel in submitting patent applications now under secrecy order to Signal Corps personnel for review there follows a description of the categories by subject matter of cases which Signal Corps would be interested in reviewing for recommendations as to whether or not the secrecy orders should be continued beyond 30 November 1945.

1. Secret signaling and cryptographic devices and systems.
2. Radio remote control devices or systems for guidance of land, sea, or air vehicles.
3. Object detection and locating techniques and devices involving principles other than ordinary pulse and frequency modulation techniques currently employed. An example of the type desired is infra-red and heat detection systems.
4. Electronic devices or systems which may be employed in a military role as means of countermeasures. This includes deceptive devices, intentional signal jamming generators and systems or techniques for obtaining desired signal through intentional jamming of signals. It does not include ordinary noise generators for laboratory test purposes or techniques for obtaining desired signal through static or interference due to weather conditions, if these may be segregated.
5. Applications containing a description of military tactical uses of the invention other than those commonly known to the public.

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There exists an additional class, namely, proximity fuses. However, it is understood that this class will be covered by a similar listing of categories of cases of interest to Army Ordnance.

Not all cases falling within the categories listed above will be recommended for secrecy. It is expected that very few secrecy orders will be recommended since only those cases which are primarily military will be recommended for secrecy. The list presented merely represents those classes of cases which it is felt should be examined by Signal Corps experts for the purpose of determining which applications, if any, should be placed under a secrecy order.

Yours very truly

DONALD K. LIPPINCOTT
Colonel, Signal Corps
Patents and Inventions Counsel
Legal Division

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2 May 1946

Categories of Classified Signal Corps Equipment

Judge Advocate General, Washington, D. C.
Attention: Colonel Vanderwerker, Chief, Patents Division

The following is the present list of categories of subjects matter which Signal Corps would be interested in reviewing with reference to the possible placing of secrecy orders on applications coming within these categories.

1. Secret signalling and cryptographic devices and systems.
2. Electromagnetic wave remote control devices and systems which are applicable to guided missiles.
3. Electronic devices and systems applicable to military countermeasures. This includes deceptive devices, intentional signal jamming generators and systems and techniques for obtaining a desired signal in the presence of intentional jamming. It does not include ordinary noise generators for laboratory test purposes or techniques for obtaining a desired signal through natural interference.
4. Applications, if any, in the general class of "death rays", in which electrical particles or wave radiations are claimed to exert deleterious effects on human beings or machines.

FOR THE CHIEF SIGNAL OFFICER:

WILLIAM D. HALL
Patents & Inventions Counsel
Legal Division

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6 May 1946

Honorable Casper W. Ooms
Commissioner of Patents
United States Patent Office
Washington 25, D. C.

Dear Commissioner Ooms:

Reference is made to a conference held in your office several weeks ago attended by Captain John H. Austin, USNR, General Patent Counsel, Office of Research and Inventions, Navy Department, Major Paul A. Rose, JAGD, of my office and myself.

At this conference, among other things, you referred to the fact that the Corps of Examiners in the Richmond Patent Office had brought to your attention approximately fifty applications, the subject matter of which was directly related to other applications which had been placed in secrecy by you in accordance with the provisions of the act of October 6, 1917, as amended (35 U.S.C. 42). You asked me if the War Department would be interested in examining these approximately fifty cases to determine whether or not they, too, should be placed in secrecy under the provisions of the Act, and I informed you that the War Department would be quite pleased to examine them with that end in view.

You also suggested that you might perhaps consider making this a continuing process and to that end you suggested that I furnish you an up-to-date list of the particular technical fields in which the various technical services of the War Department were interested.

I transmit such a list herewith, in duplicate, covering the particular technical fields of interest to the Army Air Forces, Chemical Warfare Service, the Ordnance Department and the Office of the Chief Signal Officer. Negative reports were received from the other technical services of the War Department.

Upon notice from you that any applications are available for examination in the Patent Office War Division, I will arrange to have the proper technical personnel examine them promptly.

Sincerely yours,

(sgd) Francis H. Vanderwerker

4 Incls
Lists (in dup)

FRANCIS H. VANDERWERKER
Colonel, JAGD
Chief, Patents Division

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DEPARTMENT OF COMMERCE
 United States Patent Office
 Washington

PATENT OFFICE
 Nov 28 1945
 WAR DIVISION

To: Commissioner of Patents
 From: Patent Office War Division

The following procedure on security matters is proposed after November 30, 1945.

Applications under Secrecy Order (Special Order continuing secrecy after November 30, 1945) may be referred to the Army and Navy Patent Advisory Board to consider rescission at its request or after consulting the examiners as to applications which should be removed from secrecy. Applications not under secrecy order will be ordered for Army and Navy Patent Advisory Board only if there is a power to inspect this is not an examination under authority of Public 700 (an exception to Rule 15), but a mere convenience to the advisory agency during the time the War Division is functioning. Non-secret applications on atomic energy or closely related to other secret applications are to be forwarded to the Commissioner with the examiner's comments as to need of secrecy; the Commissioner will consider the issuance of a secrecy order without referring the application to Army and Navy Patent Advisory Board.

Applications under Secrecy Order, Special Handling, or the Three Year Rule are to be handled in accordance with the current D-17, pages 4 and 5, Section 5. The special precautions indicated on page 3, Section 3 for Special Handling applications may now be eliminated, and use of the D-38 sticker is optional as a secrecy sticker. These applications need not be sent by messenger but in usual course of business.

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Applications remaining under Secrecy Order or Special Handling are to be newly indexed by serial number, division number, and inventor's names; this follows the index now used in Docket Division for Three Year Rule applications, and may be later combined therewith. The form 191 fanfold used by Issue Division is available in quantity and is adaptable to this purpose (see sample). The original card is to be sent to the examiner before filing for comment as to the need of security; the agency requesting such status will be asked to reconsider its recommendation if the examiner indicated security is unnecessary. A similar comment by the examiner on three year applications would assist in eliminating some of them also.

Upon termination of the license law, the (35 white fanfold) AP cards for license petitions for foreign filing of an application, now filed by serial number and showing

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completed action on the petitions, should be made a part of the application file record. This would dispose of the principal card record from the License Section of the War Division, a serial number index disclosing much data corresponding to the books in the Application Division but, almost necessarily open to the general public in order to search for violation of the license law. It would also simplify rejection of pending applications or determining invalidity of issued patents, where corresponding foreign applications had been filed and the existence of a license is in question. The remaining AP cards now filed by serial number (blue) but not showing completed action, by petition number (green, yellow after October 1945), or by license number (green only after October 1945) would be of slight value and need not be readily accessible. The similar AM cards for license petitions for foreign filing of an amendment, are filed by petition number, petitioner's name, and license number, do not include as much data as the AP cards, and could be made available to the public on request.

Your approval is requested.

Patent Office War Division

Approved C. W. Ooms
Commissioner

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