Department of the Army
Pamphlet 27–11

Legal Services

ARMY PATENTS

Headquarters
Department of the Army
Washington, DC
15 March 1979

UNCLASSIFIED

SUMMARY of CHANGE

DA PAM 27–11
ARMY PATENTS

This Change 1 corrects omissions in the original printing of DA Pam 27-11.

o

o

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

ARMY

Whereas, THERE HAS BEEN PRESENTED TO THE

PATENTS

A PETITION PRAYING FOR THE GR[illegible] LETTERS PATENT FOR AN ALLEGED NEW AND USEFUL INVENTION [illegible] CRIPTION OF WHICH ARE CONTAINED IN THE SPECIFICAT[illegible] HEREUNTO ANNEXED AND MADE A PART HEREOF. A[illegible] REQU[illegible]TS OF LAW IN SUCH CASES MADE AND PROVIDED H[illegible] THE TITLE THERETO IS. FROM THE RECORDS [illegible] EMARK OFFICE IN THE CLAIMANT(S) INDICATE[illegible] EREAS, UPON DUE EXAMINATION MADE, THE SAID [illegible] DGED TO BE ENTITLED TO A PATENT UNDER THE LA[illegible]

NOW, THEREFORE, THESE [illegible] ARE TO GRANT UNTO THE SAID CLAIMANT(S) AND THE SUCCESSORS, HEIRS OR ASSIGNS OF THE SAID CLAIMANT(S) FOR THE TERM OF SEVENTEEN YEARS FROM THE DATE OF THIS GRANT, SUBJECT TO THE PAYMENT OF ISSUE FEES AS PROVIDED BY LAW, THE RIGHT TO EXCLUDE OTHERS FROM MAKING, USING OR SELLING THE SAID INVENTION THROUGHOUT THE [illegible]NITED STATES.

DEPARTMENT OF THE ARMY · UNITED STATES OF AMERICA · 1775

In testimony whereof *I have hereunto set my hand and caused the seal of the* Patent and Trademark Office *to be affixed at the City of Washington this fourth day of July in the year of our Lord one thousand nine hundred and seventy-eight, and of the Independence of the United States of America the two hundred and third.*

Attest:

Ruth C. Mason

Attesting Officer

Donald W. Banner

Commissioner of Patents and Trademarks.

ARMY PATENTS

"That reminds me to remark, in passing, that the very first official thing I did, in my administration—and it was on the very first day of it, too—was to staff a Patent Office, for I knew that a country without a Patent Office and good patent laws was just a crab, and couldn't travel any way but sideways or backwards . . . . The first thing you want in a new country is a Patent Office; then work up your school system; and after that, out with your paper."

—Mark Twain "Connecticut Yankee"

Intellectual Property Division
Office of The Judge Advocate
Department of the Army
Washington, DC 20310

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Under the patent laws of the United States, a property right exists in intellectual property. Some knowledge of invention, patent laws and procedure is essential to all Army inventors. This pamphlet is intended to serve as a handbook to point out some of the steps an inventor must take to protect his and the Government's interests and to thereby insure that the results of research and engineering development and design are not used by others in a manner contrary to the interests of the inventor and the Government.

Masculine or feminine pronouns appearing in this pamphlet refer to both genders unless the context indicates another use.

PREFACE

The purpose of this handbook is to assist Army inventors in protecting their inventions. It is intended to answer simply and briefly the questions which Army inventors normally have concerning their inventions.

The Intellectual Property Division is the office for the control, coordination, and liaison of all patent and related activities of the Department of the Army under the direction of The Judge Advocate General. Forms of intellectual property handled by this division include patents, trademarks, copyrights, and rights in technical data. The activities performed with respect to intellectual property include patent searching, patent prosecution (domestic and foreign), patent licensing, recordation of patent assignments and licenses granted to or by the Army, determination of intellectual property rights, infringement and procurement matters, litigation and international law matters relating to intellectual property.

Suggestions, comments, and/or recommendations designed to improve this booklet are welcome and should be addressed to:

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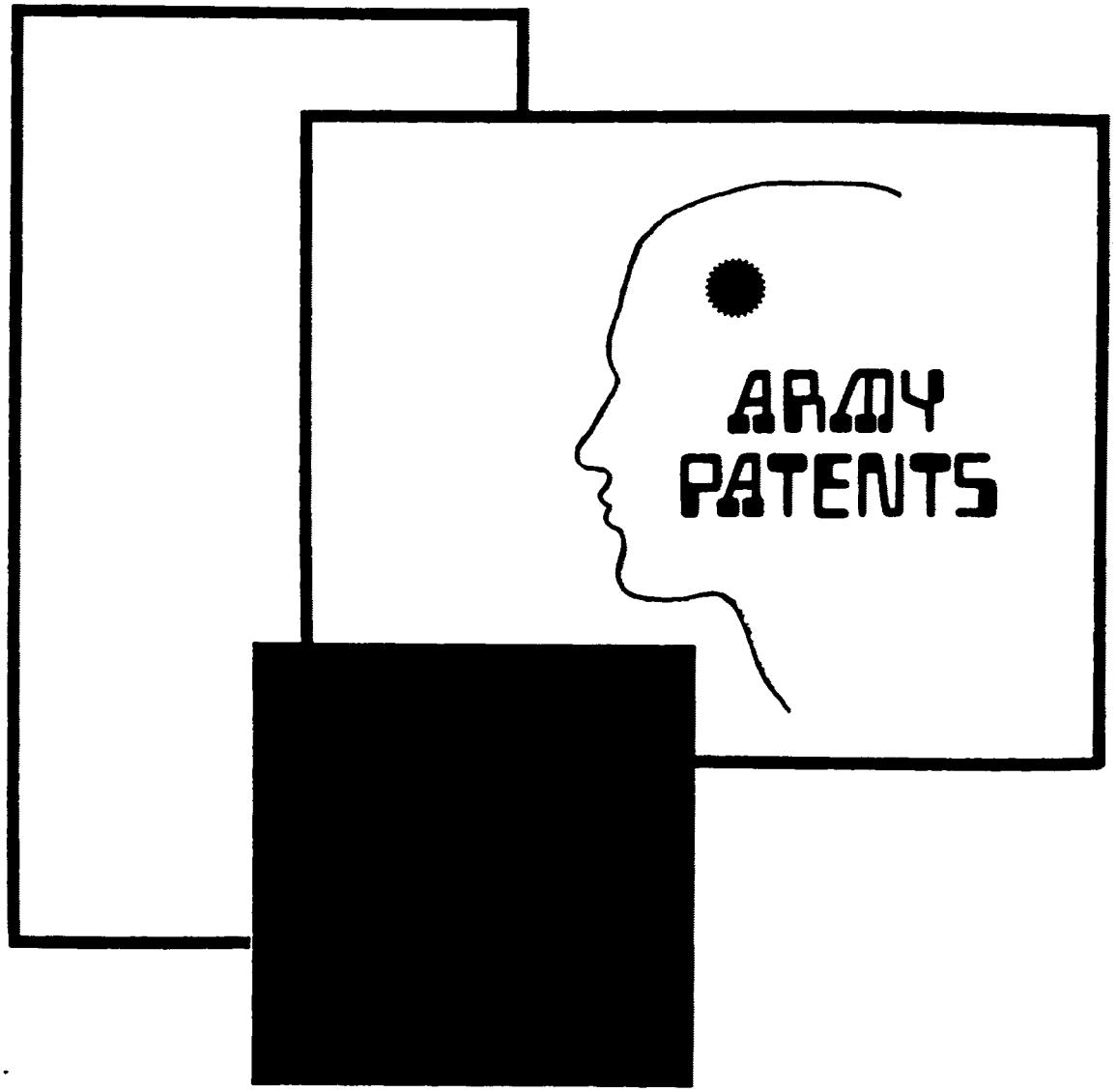
ARMY
PATENTS

Headquarters
Department of the Army
Washington, DC
15 March 1979

Department of the Army Pamphlet 27–11

Legal Services

ARMY PATENTS

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

History. This publication has been reorganized to make it compatible with the Army electronic publishing database. No content has been changed.

Summary. The purpose of this handbook is to assist Army inventors in protecting their inventions. It is intended to answer simply and briefly the questions which Army inventors normally have concerning their inventions.

Applicability. Not applicable.

Proponent and exception authority. The proponent of this regulation is the Office of The Judge Advocate General.

Interim changes. Interim changes to this pamphlet are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration date unless sooner superseded or rescinded.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA(DAJA-IP) WASH DC 20310.

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Chapter 1
THERE'S GOLD IN YOUR "ATTIC"

1–1. There's Gold in Your "Attic"

"The patent system added the fuel of interest to the fire of genius."

-Abraham Lincoln

a. The United States Government employs many of the finest scientific and technical personnel available in the world. Various studies, however, have shown that for every unit of research dollars spent, private enterprise generates approximately five times as many invention disclosures as does the US Government. The big question is WHY?

b. Certainly such a big difference does not reflect the quality of Government personnel. We believe it could be due to a lack of awareness of the value of a patent to both the inventor and the Government; a perhaps misguided primary interest in disclosing new scientific discoveries to the public through symposia, publications or the like rather than going through the sometimes lengthy process of obtaining patent protection; and perhaps lack of appreciation of what is or is not patentable.

c. This booklet is intended to open, for the Army inventor, the door to the seemingly complex world of patents and inventions; to guide him or her along the patent path; and to remove the mystique that sometimes surrounds the subject of patents.

d. Patents may be of considerable value to Government employee inventors in a number of ways. First, there is a nominal monetary inventive award given to the inventor upon filing of an application for his invention in the US Patent and Trademark Office plus an additional award if and when a patent issues. Second, suggestion awards are available. The monetary value of these awards vary considerably depending upon the extent of use of the invention and the savings accruing to the Government through use of the invention. Third, depending upon the circumstances under which the invention was made, commercial rights may be retained by the inventor. The value of such commercial rights will, of course, depend upon the adaptability of the invention to use in the civilian economy. Fourth, the inventor frequently may obtain all rights in foreign countries subject to a royalty-free license to the US Government; such foreign rights could include uses of the invention for both commercial and military purposes. In addition, the matter of professional prestige should be considered. The number of patents issued to an inventor is frequently taken as an indication of his scientific creativity and could have a significant impact on future promotions or job opportunities.

e. The value to the Government of patents on Government employee inventions is primarily of a defensive nature. In order to carry out the missions of the Army, it is necessary to buy and use products developed in many fields of technological development. Therefore, the Army, as well as its contractors, are involved in enormous research and development efforts to provide certain items necessary to improve the operational effectiveness of the Army. Patents serve to protect the Government against payment of royalties for using technology which was first developed by an Army inventor; provide protection against multimillion dollar infringement claims and suits; enable the Government to enter into advantageous arrangements with foreign governments in cooperative research, development and production; and serve to advance the frontiers of science and technology.

1–2. Title not used.

Paragraph not used.

Chapter 2
TECHNOLOGICAL ACHIEVEMENTS BY THE ARMY

2–1. Technological Achievements by the Army

a. The Army serves a key role as a leader and supporter of technological advancement. As a direct result of its

(1) research and development efforts and

(2) procurement activities, our military forces and civilian population have received enormous benefits. For instance, if you drink a cup of freeze-dried coffee or use low-lead or lead-free gasoline, you use a product developed with major assistance from the Army. Although these products were initially developed for military application, they have also found widespread use and acceptance by the commercial sector.

b. The Army was early to recognize the beneficial significance of aviation to our Nation. Thus it is not surprising that

(1) the Wright brothers sold their first airplane to the Army,

(2) the first American satellite was orbited by the Army,
(3) the first American astronauts and scientific payloads flew on Army missiles, and
(4) the first astronauts landing on the moon used lunar maps plotted by Army topographers.

United States Patent [19]

Larsen et al.

[11] **4,135,131**

[45] **Jan. 16, 1979**

[54] **MICROWAVE TIME DELAY SPECTROSCOPIC METHODS AND APPARATUS FOR REMOTE INTERROGATION OF BIOLOGICAL TARGETS**

[75] Inventors: **Lawrence E. Larsen**, Silver Spring; **John H. Jacobi**, Bowie, both of Md.

[73] Assignee: **The United States of America as represented by the Secretary of the Army**, Washington, D.C.

[21] Appl. No.: **842,137**

[22] Filed: **Oct. 14, 1977**

[51] **Int. Cl.**[2] **G01R 27/04**

[52] **U.S. Cl.** ..... **324/58.5 A**; 128/2 A

[58] **Field of Search** ..... 324/58.5 A, 57 SS, 58 A; 195/103.5 R; 128/2 A, 2 R, 2 S

[56] **References Cited**

U.S. PATENT DOCUMENTS

3,432,752	3/1969	Frederickson et al.	324/57 SS
3,441,843	4/1969	Wainwright	324/57 SS
3,445,762	5/1969	Wu	324/57 SS
3,586,969	6/1971	Rudisill, Jr.	324/57 SS
3,956,695	5/1976	Stamm	324/58.5 A

Primary Examiner—Stanley T. Krawczewicz
Attorney, Agent, or Firm—William G. Gapcynski; Werten F. W. Bellamy

[57] **ABSTRACT**

Remote interrogation of biological targets is accomplished in accordance with the present invention by method and apparatus wherein a microwave signal is generated which varies in frequency from a first frequency to a second frequency in a predetermined time period. The signal is divided into two signals, one of which is propagated through a test channel comprising a transmitting antenna for transmitting the signal through the target, and a receiving antenna for receiving the signal transmitted through the target, and the other of which is propagated through a reference channel providing a fixed time delay of propagation. The propagated signals are detected and mixed to produce a time delay spectrum wherein the frequency of each spectral line represents the instantaneous difference in the frequencies of the detected signals.

7 Claims, 5 Drawing Figures

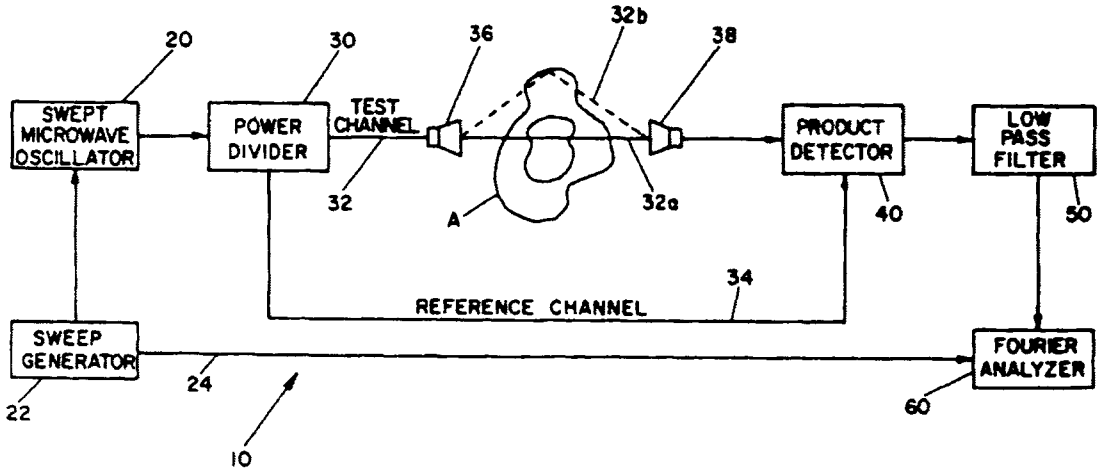

Figure 2–1. United States Patent

c. In the Army Medical Corps the pioneering efforts of Major Walter Reed led to the eradication of the Yellow Fever disease. A young Army doctor named Jonas Salk developed many influenza vaccines. There are thousands of products which the Army developed, or had a major hand in developing, including:

Communications

Aerial Photography
Communication Satellites
Computers
Telegraph Networks
Long-Range Photography
Photomicrography
Transistors

ENERGY AND CONSERVATION

Biodegradable Detergents
Biodegradation of Waste
Gas Turbine Engines
High-Powered Batteries
Hydroelectric Projects
Low-Lead and lead-free Gasoline
Mobile Power Generators
Nonpolluting Combustion Processes
Nuclear Reactors
Pollution Control Valves
Pollution Sensors

INDUSTRY AND TECHNOLOGY

Automated Ultrasonic Inspection
First American Engineering School
Improved Lubricants
Infrared Detection Instruments
New Metals and Alloys
Prefabricated Buildings
Radar
Synthetic Rubber
Thermal Detection Instruments
X-Ray Inspection

FOOD AND CLOTHING

Fire-Resistant Fabrics
Flexible Food Packaging
Food Sterilization
Freeze-Dried Foods
Mildew-Resistant Fabrics
Prepackaged Meals
Shrinkage-Resistant Fabrics
Static Electricity Resistant Fabrics
Water-Resistant Fabrics

SPACE

Electronic Guidance Systems
First Free-World Satellite
First Successful Lunar Probe

Liquid and Solid Rocket Propellants
Protective Space Clothing
Recovery of Live Animals from Space
Recovery of Man-Made Objects from Space
Redstone Missiles
Re-Entry Heat Problem Solutions
Relief Moon Maps
Space Food

TRANSPORTATION

Air-Cushion Vehicles
Alaska Highway
Automobile Antifreeze
Aviation Landing Systems
First Transcontinental Railroad
500 Harbors
Helicopter
Interstate Highway Specifications
Panama Canal
20,000 Miles of Waterways

MEDICINE AND PUBLIC HEALTH

Aero-Medical Evacuation
Anthrax Vaccine
Antibacterial Burn Creams
Antivenom Serum
Artificial Eyes
Artificial Limbs
Blood Preservation
First Public Health Statistics
Fracture Care
Gastroenterology
Heart Pump
Preventive Dentistry
Rabies Vaccine
Smallpox Vaccine
Tranquilizers
Traumatic Surgery Techniques
Tuberculosis Treatment
Typhoid Vaccine
Venereal Disease Control
Water Chlorination
X-Rays
Yellow Fever Control

d. To date, many technological discoveries and improvements have been awarded patent protection in recognition of significant contributions and advancements in scientific achievements.

2–2. Title not used.

Paragraph not used.

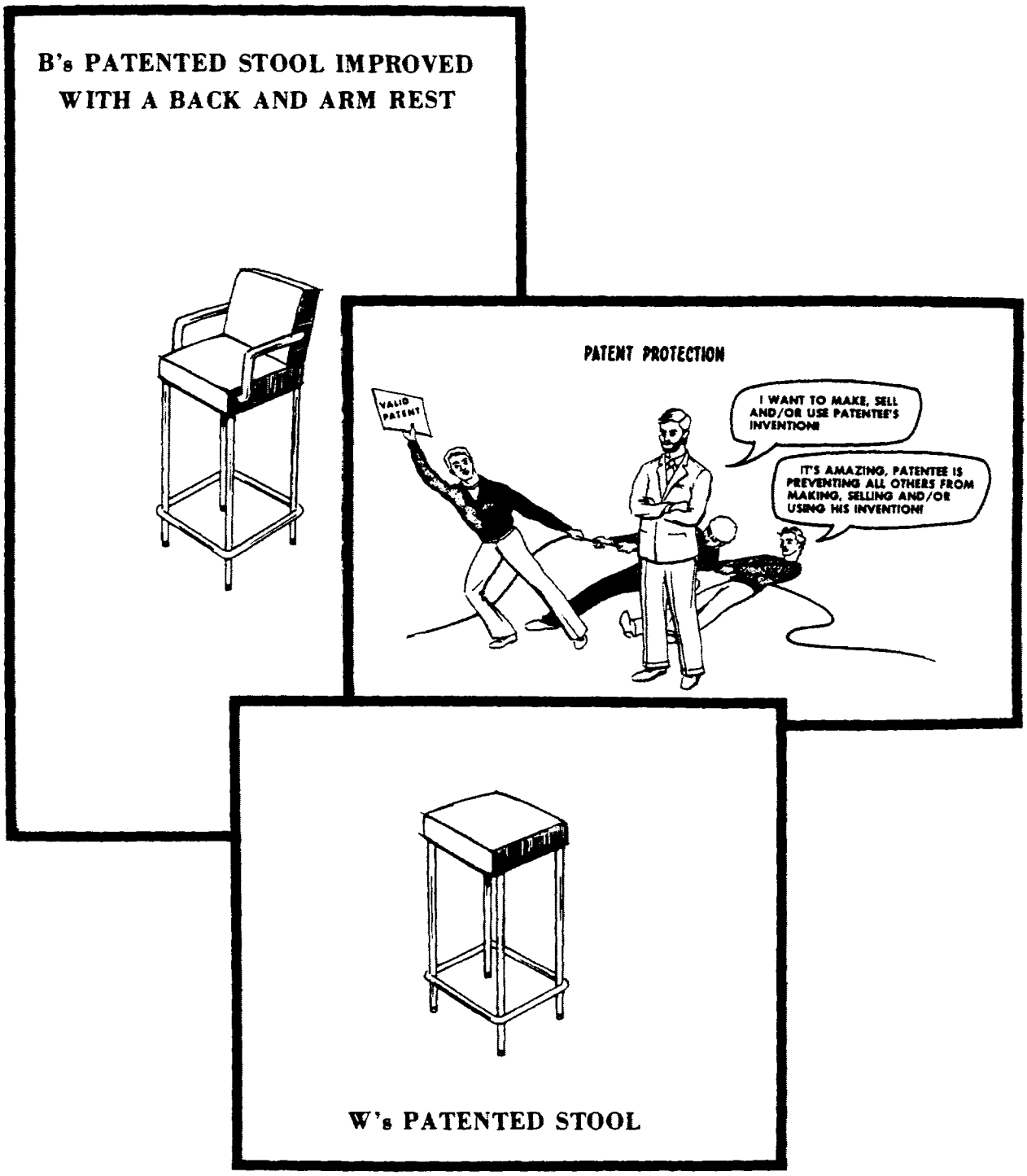

Figure 2–2. Patent Protection

Chapter 3
WHAT IS A PATENT?

3–1. What is a Patent?

a. A patent is the grant by the United States Government of a NEGATIVE right to an inventor for a LIMITED time. This right permits the patent owner to exclude or prohibit ALL others from making, using, or selling the patented invention throughout the United States for the life of the patent. The life of the patent is normally seventeen years from the date it is issued. The patent is enforceable in United States courts for infringing acts committed within the United States.

b. A patent issued by the United States has no extraterritorial effect. In order to protect an invention abroad, an application must be filed in each foreign country in which protection is desired. However, except when authorized by a license obtained from the Commissioner of Patents and Trademarks, a person may not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for a patent or for registration of a utility model, industrial design, or model in respect of an invention made in this country.

c. A patent does not necessarily give the inventor the right to make, use or sell devices embodying his invention because that right may be subject to the superior right of a dominant patent which was issued earlier and upon which the inventor has improved.

d. It should be kept in mind that an invention does not have to be a major scientific breakthrough to be patentable. Inventions may be simple devices or material improvements of existing technology. For example, the first electric light bulb was invented many years ago, but it would be possible to obtain a patent for an improved electric light bulb whose "burning life" has been significantly extended due to an inventive modification.

e. To assist in further understanding the nature of an improvement patent, consider the following illustration:

Suppose,

W's patent claims the stool and later, B is granted a patent which claims a stool improved with a back and arm rest

THEN,

Inventor W can make, use, or sell his stool and prevent others from doing the same.

f. But, Inventor W must get Inventor B's permission in order to make, use, or sell the improved stool.

g. On the other hand, Inventor B cannot even make, use, or sell his improved stool without Inventor W's permission.

h. Inventors W and B can resolve their problem by granting to each other a license under their respective patents to enable both inventors to make, use, and sell the improved stool.

i. Any patent owner may license to others the right to make, use, or sell the invention or assign them a part or whole interest in his patent subject to prior recorded assignments or licenses.

3–2. Title not used.

Paragraph not used.

Chapter 4
WHY BOTHER WITH PATENT PROTECTION?

4–1. Why Bother with Patent Protection?

"The best defense is a good offense"

-Montaigne

Ordinarily, when a person makes an invention, there are three courses of action which may be taken:

(1) Keep the invention as a trade secret,
(2) Publicize the invention by writing or other suitable means, or

(3) File a patent application.

4–2. Trade Secrecy Protection

If the inventor elects to keep the invention secret–some other person may come along at a later date and, having independently made the same invention, may patent it or make it public, and receive full credit. The inventor who keeps his own secret can rarely establish that he thought of the idea first. Therefore, it is obvious that today when thousands of researchers are seeking new developments in all fields of technology, secrecy alone affords poor protection.

4–3. Publication Protection

Some inventors may elect to publish their invention, and one might think that sufficient. However, another inventor may independently make the same invention and file a patent application within a year of the publication, "swear back of the publication date" and obtain a patent. A person can swear back of the publication date by filing an affidavit or declaration of prior invention in the US Patent and Trademark Office. After the patent is granted, the patent-holder will be able to keep the public, including the first inventor, from practicing the invention for the life of the patent.

4–4. Patent Protection

a. The best protection is to have a patent application filed promptly, in the name of the first inventor(s), before publishing a description of the invention. In addition to the monetary incentive award given to Army inventor(s), the patent serves as:

(1) FAVORABLE PUBLICITY for the inventor and the Government;

(2) SYMBOL OF PRESTIGE for the inventor in his field; and

(3) AN INCREASE IN INCOME may possibly result.

b. There are additional considerations when the inventor is a Government employee, for instance, patenting protects the Government against unjustified payments of royalties. Every time a patent application is filed we are disposing of a potential lawsuit against the Government for patent infringement. Therefore it is well established policy of the Department of the Army to apply for patents on inventions made by its employees which are of value to the Army.

c. Remember to consider patenting before publishing or risk the chance of losing the valuable patent rights to which you and the Government might be entitled.

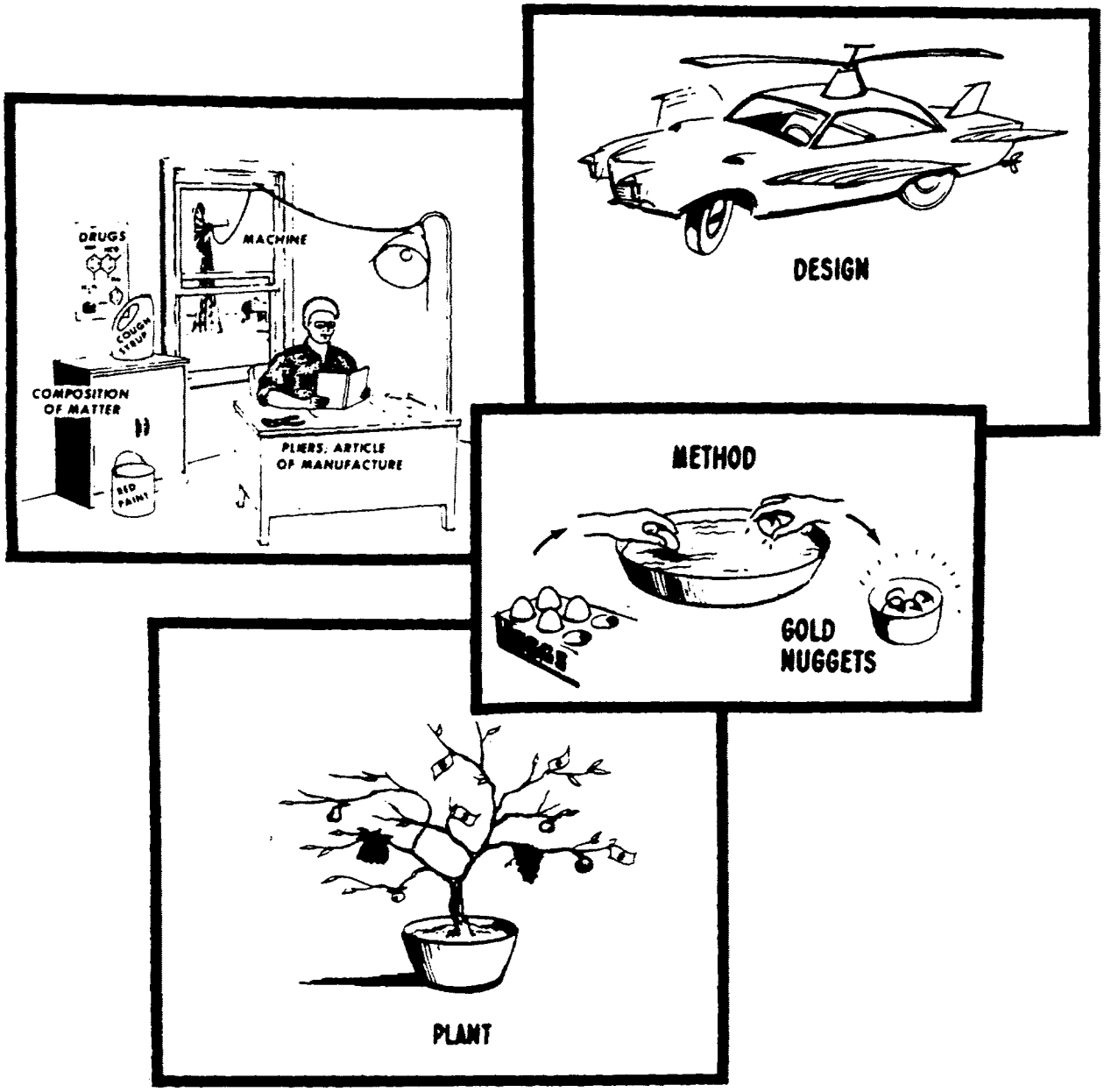

Figure 4–1. What Can and Cannot be Patented?

Chapter 5
WHAT CAN AND CANNOT BE PATENTED?

5–1. What Can and Cannot be Patented?

"A tool is but the extension of a man's hand, and a machine is but a complex tool. And he that invents a machine, augments the power of a man, and the well being of mankind."

-Henry Ward Beecher

a. In order to obtain a patent, an invention must be NEW, USEFUL, and UNOBVIOUS and fall within one of the six statutory classes.

b. The term "NEW" means that the invention or discovery was first made by the inventor(s) seeking a patent.

c. The term "USEFUL" means that the invention or discovery must have at least one lawful purpose and is workable.

d. The term "UNOBVIOUS" means that the invention or discovery is not reasonably suggested by an invention or discovery which has been disclosed to the public through publication or use.

e. The "Six Statutory Classes" are

(1) method,

(2) machine,

(3) article of manufacture, or

(4) composition of matter, or any new and useful improvement of items (1) to (4),

(5) an ornamental design and

(6) certain kinds of plants.

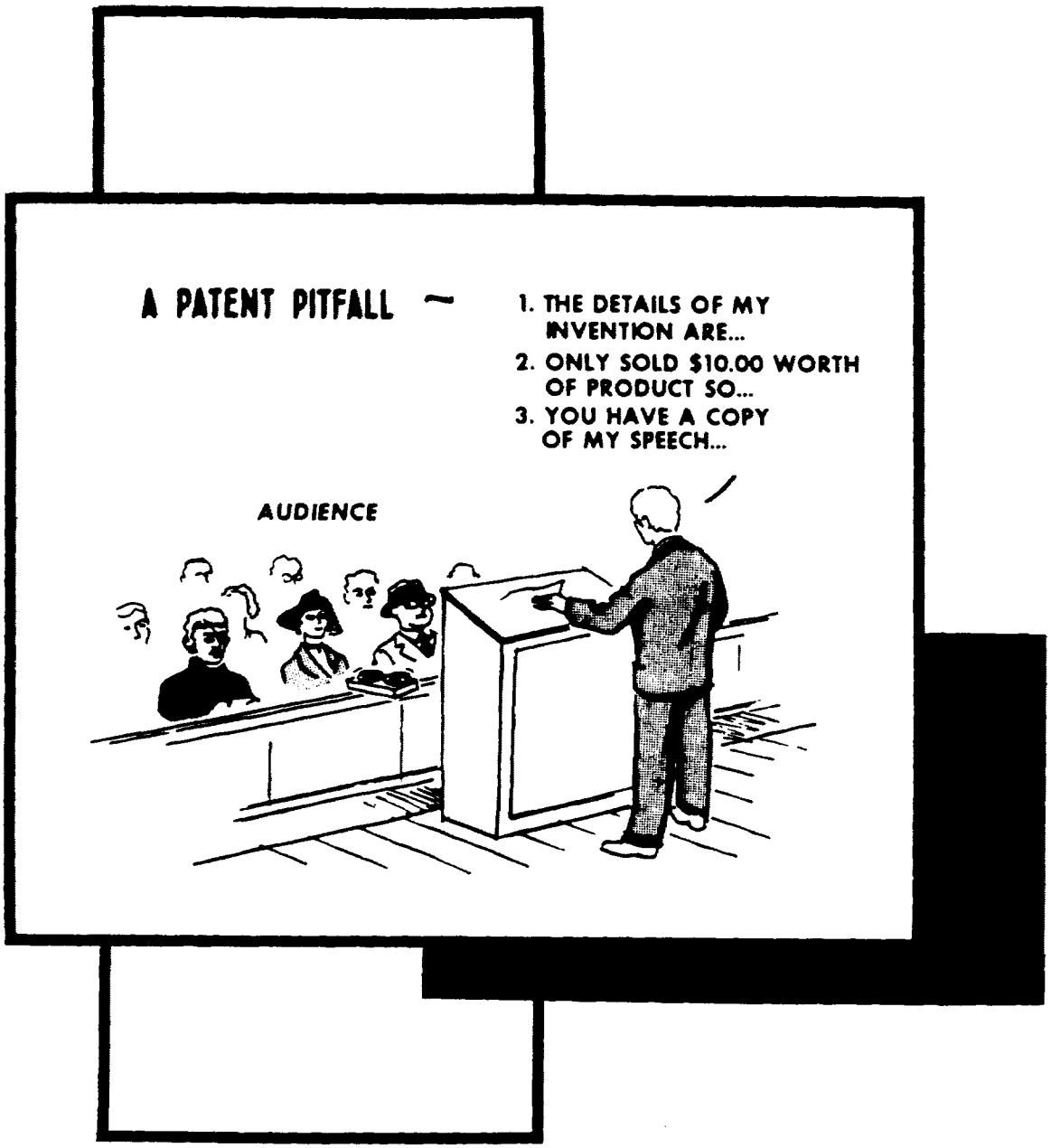

Figure 5–1. A Patent Pitfall

5–2. Method

The word "method" includes not only those processes or methods which are purely chemical, but also those which involve successive physical or mechanical steps to obtain useful results.

5–3. Machine

The second class is termed "a machine." This class includes electric circuitry and encompasses generally any operating system which functions according to an inherent natural law to produce a useful result.

5–4. Article of Manufacture

The third class is an article of manufacture, which comprehends generally a dormant device without a particular mode of operation (i.e., a wrench, hammer).

5–5. Composition of Matter

a. The fourth class is the composition of matter, which includes chemical compounds or mixtures (i.e., explosives, fuel compositions, plastics, synthetic fibers, alloys, food formulations).

b. The above statutory types or inventions constitute what are called "utility inventions." Utility patents comprise about 95 percent of the 4 million patents issued in the United States since 1836.

c. The remaining two classes of patents issued by the US Patent and Trademark Office are design and plant patents.

5–6. Design Patent

Design patents cover only the ORNAMENTAL APPEARANCE of an article of manufacture. They have nothing to do with its operation or function, but only its external appearance. Typical design patents include printed designs in dress materials, plastic cabinets or furniture, and new designs for playing cards.

5–7. Plant Patent

a. The plant patent is granted for new, asexually reproduced plants. Most of the patented plants are new varieties of fruit trees, bushes, vines, and ornamental flowering plants.

b. An invention must fall into at least one of the above utility classes, or into the plant or design classes, or else it cannot be patented in the United States. Court decisions have determined the limits of the statutory classes. Examples of subject matter not patentable under the Statute (35 USC 101) are as follows:

(1) *Printed Matter*–A mere arrangement of printed matter, though seemingly a "manufacture," is rejected as not being within the statutory classes.

(2) *Naturally Occurring Article*–A thing occurring in nature, which is substantially unaltered, is not a "manufacture." A shrimp with the head and digestive tract removed is an example.

(3) *Method of Doing Business*–Though seemingly within the category of a process or method, a method of doing business can be rejected as not being within the statutory classes.

(4) *A Scientific Principle*–Divorced from any tangible structure can be rejected as not within the statutory classes.

Chapter 6
PATENT PITFALLS THE STATUTORY BARS

6–1. Patent Pitfalls the Statutory Bars

Even though you may be the first person to invent certain patentable subject matter, it still may not be patentable by you if certain events (Statutory Bars) have occurred which by law prevents anyone from obtaining a patent. In this connection, a patent cannot be obtained if the invention:

(1) Was patented or described in a printed publication in the United States or a foreign country more than one year before you file a proper patent application,
(2) Was in public use in the US for more than a year before you file a proper patent application, or
(3) Was on sale in the US for more than one year before you file a proper patent application.

6–2. Remember this Well!

The minute your invention is disclosed to the public before filing a US patent application, you will have only one year to file a patent application in the United States, involving a process which frequently may be very time consuming. However, you will be prevented by law from filing a patent application in most foreign countries if the invention has been disclosed to the public even one day prior to filing a patent application in the United States.

Chapter 7
PROTECT YOUR INVENTION

7–1. Protect your Invention

"Under the long established rule of law, there must be independent corroboration of all of the essential factors

concerned in reduction to practice."

-Senkus v. Johnston
CCPA, 1948, 77 USPQ 113

a. In the preceding chapter, it was revealed that certain events such as publication, public use or the sale of your invention can prevent you from obtaining a patent

(1) in the US if they occur more than a year before you file a proper patent application and

(2) in most foreign countries if they occur anytime before you file a proper patent application. Obviously, you should avoid the creation of these hurdles by taking proper action. The sooner you can get your patent application filed the less likely it will be that these hurdles will be in your way.

b. Until your patent application is filed, what can you do to protect your invention?

7–2. Practice Good Recordkeeping!

a. It is often very important to be able to establish, from your WRITTEN RECORDS, the date on which your discovery was made. As soon as possible, you should put your ideas in writing, describing in as much detail as possible (including any sketches or drawings), and explain how the invention works. This writing should then be shown in confidence, preferably to a disinterested friend or fellow worker, and described so that he or she understands your idea. Your friend should then be asked to witness that they "read and understood" the document by signing and dating it. The number of witnesses is not really important although two witnesses are better than one. Too many witnesses should be avoided to protect the secrecy of the invention. Standard laboratory notebooks, if you happen to work in a laboratory or engineering facility, when properly completed and witnessed are excellent evidence of the date of the invention. (See AR 27-60.)

b. The written description or disclosure of your invention should be submitted promptly to your Army patent counsel as described in the following chapter.

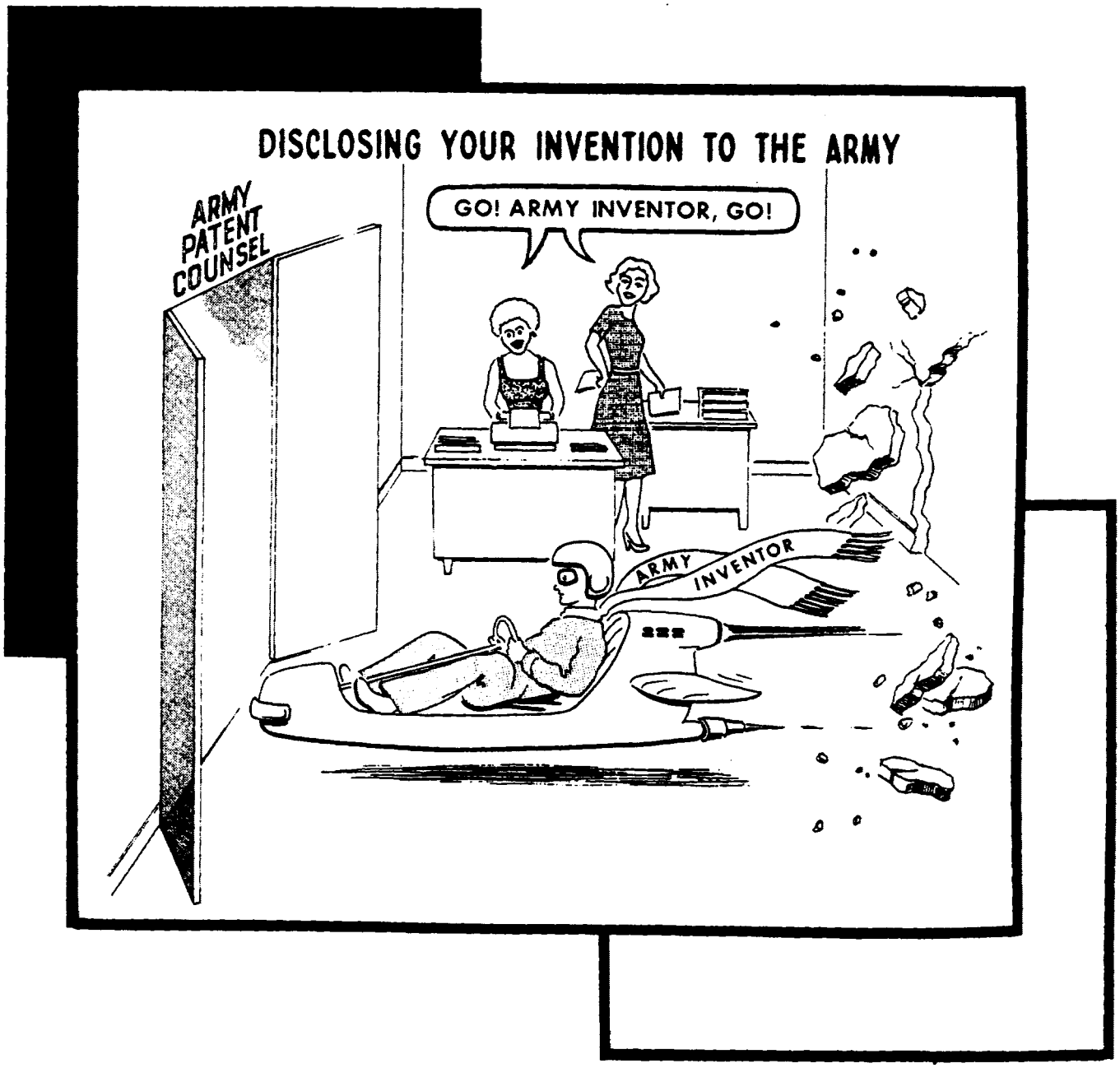

Figure 7–1. Disclosing your Invention to the Army

c. It is often said that the invention of anything involves two steps:

(1) the "Conception of the invention", that is, the idea of mental perception of the invention and

(2) the "reduction to practice" of that idea by the construction of a physical embodiment of the idea or the actual use of a process to verify that the idea really works.

d. Detailed records as described above, should be kept as soon as the idea for your invention is conceived. Recordkeeping should be continued through all the stages of invention development as you proceed with the implementation and perfection of the concept.

e. It is not necessary to actually "reduce your invention to practice", by making a model or performing a process,

before filing a patent application, as long as your idea can be described in writing and drawings sufficient to permit some other skilled person to practice your invention. In the event the application is filed prior to actual reduction to practice, the filing of application is considered a "constructive reduction to practice."

f. In the event you do actually reduce your invention to practice, dates and witnesses again become important. In addition, you should practice your invention in private to avoid any later argument about "public" use.

Chapter 8
DISCLOSE YOUR INVENTION TO THE ARMY AND OBTAIN VALUABLE ASSISTANCE IN PATENT PROSECUTION

8–1. Disclose your Invention to the Army and Obtain Valuable Assistance in Patent Prosecution

"What we do not understand, we do not possess."

--Goethe

a. As a member of the Army team, you are required to report all inventions made which relate to your duties being performed for the Army. Invention disclosures indicated to be of value and possible use to the Army should be directed to the head of the Army agency or component to which the invention relates. The appropriate invention disclosure form appears as appendix A. If that agency or component is not supported by a patent section and the invention appears to deserve further processing, the head of the agency or component will transmit the invention disclosure to the Chief, Intellectual Property Division. (See AR 27-60) DA Form 4734-R (Invention Disclosure app A) will be locally reproduced on 8½ by 14 inch paper, printed head to foot.

b. This disclosure will be treated in confidence and will not affect your right to obtain a patent.

c. Additionally, the inventor should complete an "Invention Rights Questionnaire," DA Form 2871.

d. A Government employee is entitled to all rights in his invention if none of the following conditions are present:

(1) the invention was made during working hours;

(2) the invention was made with the use of Government facilities, equipment, materials, funds, information;

(3) the invention was made with contribution of time or services of, other Government employees on official duty; or

(4) the invention was directly related to or made in consequence of the official duties of the inventor.

e. If any of the above conditions are present, the Government may require the inventor to assign his invention to it. However, in any case where the Government

(1) contribution to the invention, as measured by any one or more of the stated conditions is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title, and interest in such invention; or

(2) lacks sufficient interest in an invention to obtain the entire domestic right, title, and interest therein, even though the conditions under which the invention was made entitled it to do so, the Government may leave title to such invention in the employee. However, the title would be subject to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license (DA Form 2873-R) in the invention with power to grant licenses for all governmental purposes.

f. Where an assignment to the Government of the domestic rights in an invention is required, the employee must, if requested, assign the foreign rights in the invention to the Government for each foreign country in which the Government determines to cause a patent application to be filed, within an eight-month period after the filing of the United States patent application. If the Government fails to determine to cause the filing of a foreign patent application in a particular foreign country within the eight-month period, all rights, title, and interest in the invention remains in the inventor(s) subject to a nonexclusive, irrevocable, royalty-free license to the Government in any issued patent, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government.

g. The procedure for determination of rights is described in AR 27-60, which is initiated as follows:

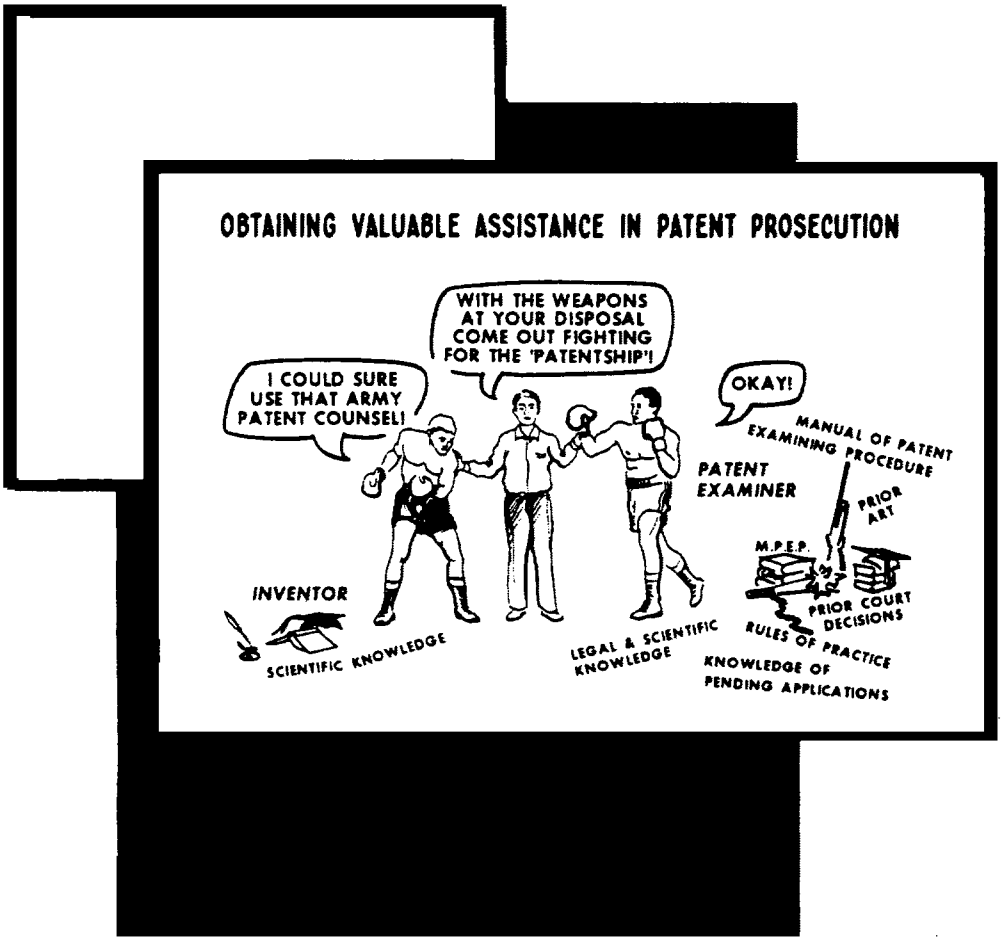

Figure 8–1. Obtaining Valuable Assistance in Patent Prosecution

8–2. A. Agencies Having A Patent Section.

a. (See appendix B)

(1) Each inventor and his supervisor must complete "Invention Rights Questionnaire," (DA Form 2871) and forward it along with the "Invention Disclosure" (app A) to the patent section to determine if the invention disclosure constitutes invention.

(a) If invention is found to exist and the inventor(s) desires to assign the invention to the Government, the patent section should obtain an executed assignment (DA Form 2874-R) from the inventor(s). No determination of invention rights is required.

(b) If invention is found to exist and the inventor does not assign the invention to the Government, or if no invention is found but a determination is requested by the inventor, the patent section will prepare and forward a Request for a Determination of Invention Rights (DA Form 2872).

(c) If no invention found to exist, the patent section will not request a determination of rights unless requested to do so by the inventor in view of his intention to file using his own resources.

(2) (Paragraph not used.)

b. All requests for a determination of invention rights (DA Form 2872) should be forwarded through patent counsel to Chief, Intellectual Property Division (appendix B).

8–3. B. Agencies Not Having A Patent Section.

a. Invention disclosures forwarded to Chief, Intellectual Property Division, which were reported through agencies not having patent sections will not require a Request for a Determination of Rights (DA Form 2872) or a recommendation.

b. The Chief, Intellectual Property Division, will make a determination of rights and will notify the employee of the determination. Review of the decision by the Chief, Intellectual Property Division is available by appealing to the Commissioner of Patents and Trademarks within thirty days of actual receipt of the determination.

c. It would be a needless and wasteful expense for you to independently proceed to obtain a patent on your invention only to find later that because of your employment the Army is entitled to ownership of your patent rights.

d. In addition to the determination and protection of your rights, disclosure of your invention allows it to be evaluated to determine whether the Army has a use for your invention. This may well be the first step in marketing your invention.

e. If it is determined that you are entitled to all patent rights to your invention, you are then free to hire a patent attorney of your own choosing to prepare the patent application and represent you before the U.S. Patent and Trademark Office. However, if you desire, the Army patent attorney will prepare the patent application and represent you before the U.S. Patent and Trademark Office at no charge and the Army will pay all fees, if the invention is determined to be of interest to the Army. To obtain this service, the inventor must agree to give the Army a nonexclusive, royalty free license to use the patent for Government purposes.

f. On the other hand, if it has been determined that by virtue of the circumstances surrounding your invention that the Army is entitled to the ownership or a license to the patent, the Army will provide all of the legal services necessary to prepare the application and represent you before the Patent and Trademark Office.

Chapter 9
PATENT SEARCHING

9–1. Preliminary Patent Searching

a. The preliminary patent search is conducted with respect to invention disclosures by the Army patent counsel in order to determine if the proposed invention appears patentable over existing US or foreign patents.

b. Prior to making this type search, the Army patent counsel studies your invention disclosure, to insure that he understands what it is, how it works, and what is new. Once an understanding of the invention has been obtained, the patent counsel will examine prior patents and other publications in an effort to determine whether the invention is in fact new, useful, and unobvious. If the invention does not appear to be patentable in view of an earlier invention you will be so advised. If the invention appears to be

(1) patentable and

(2) of value to the Army, a patent application will be prepared and filed in the U.S. Patent and Trademark Office.

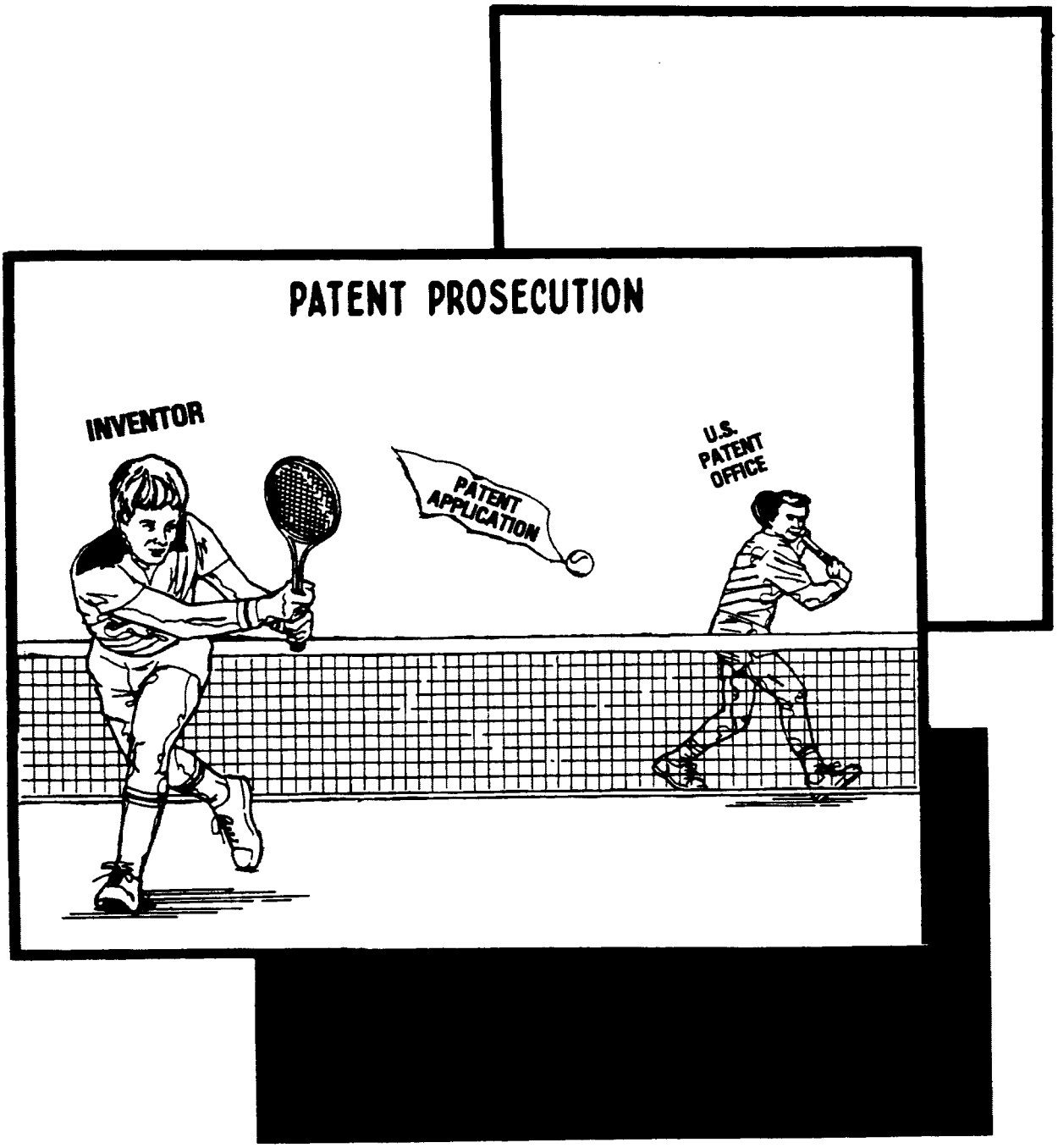

Figure 9–1. Patent Prosecution

9–2. State-Of-The-Art Patent Searching

a. State-of-the-Art patent searches are conducted by the Army patent counsel to determine if patents exist which cover areas of technology planned for scientific investigation by the Army. To date, the United States Patent and Trademark Office has issued over 4 million patents, which afford an unparalled review of more than a century and a half of scientific progress in almost every field of technology. For research managers, scientists, and engineers, an understanding of patents can be a powerful tool for research, planning, and evaluation in connection with new projects. These patents are not only source material of past developments but are also indicative of present scientific trends. In private industry, it is common practice to study prior patents as well as technical literature for information describing past research efforts. Government research and development personnel are urged to consider this approach.

b. Prior to the launch of any major research effort, Army research managers should feel compelled to request a state-of-the-art patent search. Following the completed search, the patent counsel will furnish a comparison between the technology involved in the proposed research effort and the patented technology. This approach serves two extremely important purposes, which should be fundamental to all research efforts of appreciable magnitude. Firstly, it will reduce research efforts, which only serve to "rediscover" technology, which is well known in the patent literature and commercially available. Secondly, the related patents will serve to assist Army researchers in structuring proposed research and development programs in a manner, which would avoid patent infringement. The use of this procedure would undoubtedly result in enormous savings of money and manpower for the Army.

Chapter 10
THE PATENT APPLICATION AND PATENT PROSECUTION PROCEDURE

10–1. The Patent Application and Patent Prosecution Procedure

"The pen is the tongue of the mind."

-Cervantes, "Don Quixote"

a. The application for patent is made to the Commissioner of Patents and Trademarks and includes:

(1) A written document which comprises a specification (description and claims) and an oath or declaration.

(2) A drawing in those cases in which a drawing would be helpful in understanding the invention.

(3) The prescribed filing fee.

b. The specification contains a written description of the invention and includes the manner and process of making and using it and at least one embodiment. The specification must be written so that any person skilled in the art to which the invention pertains can make or use it. The claims appear at the end of the specification and should be drafted to cover the full scope of the applicant's invention. The claims represent the metes and bounds for the invention, which is legally protected by the patent grant.

c. The oath or declaration is signed by the inventor or inventors.

d. A power of attorney is signed by the inventor(s) to permit the Army patent counsel to prosecute the application. This power of attorney may be combined with the oath or declaration so that the inventor or inventors need only sign once.

e. A model is not normally required.

f. The patent prosecution procedure is normally as follows:

(1) The application is filed for the inventor by the Army in the U.S. Patent and Trademark Office where it is given a serial number and filing date.

(2) The application is assigned to an examiner of the U.S. Patent and Trademark Office for examination of the merits of the invention.

(3) The examiner determines whether the application complies with the patent law. The examiner will make an "Office Action" in the form of a letter in which he may reject some or all of the claims for various reasons or may allow some or all of the claims. For prior art rejections, he will cite prior art references, which anticipate your claimed invention or show that it would be obvious to a person having ordinary skill in the field of the invention. It is normal to have some or all claims rejected on the first examination.

(4) The Army patent counsel will answer the Office Action on behalf of the inventor, by an Amendment in the form

of a letter within a prescribed period of time. The Amendment will seek to overcome the examiner's rejections or objections by pointing out reasons why a patent should be granted.

(5) The examiner examines the amended application. The process of the examiner making an Office Action and the Army making an Amendment continues until the inventor's remaining claims are either finally rejected or allowed.

(6) The finally rejected claims are either abandoned or appealed to the Patent and Trademark Office Board of Appeals and then to the courts.

(7) If the claims are allowed, a patent is issued in the name of the inventor after the payment of an issue fee by the Army. In due course the inventor will receive the original of the patent from the Army.

10–2. Title not used.

Paragraph not used.

Figure 10–1. Interference

Chapter 11
INTERFERENCE PROCEEDINGS

11–1. Interference Proceedings

a. Interference refers to the situation where different inventors are claiming to have invented substantially the same invention. This situation arises when the invention is

(1) claimed in two or more pending applications filed by different inventors or

(2) claimed in an application filed within one year after a patent issues to another inventor.

b. An interference proceedings is instituted by the U.S. Patent and Trademark Office to determine who is the first inventor and entitled to a patent. The priority question is determined by a Board of Patent Interferences. The losing party may seek redress in the courts.

c. In order to prove that you are the first inventor you should have contemporaneous records of the conception of the invention and reduction to practice, which predate the records of the other inventor(s). Your records should be corroborated by at least one (preferably two) disinterested and competent witness. Evidence of reasonable diligence practiced to complete the invention is important when you conceived your invention before the other inventors but reduced it to practice after they did so.

d. It is in the event of an interference that practicing good recordkeeping as suggested in chapter VII often plays the decisive role.

11–2. Title not used.

Paragraph not used.

Chapter 12
INCENTIVE AWARDS TO ARMY INVENTORS

12–1. Incentive Awards to Army Inventors

"The pen is the tongue of the mind."

-Cervantes, "Don Quixote"

a. Each Army inventor is entitled to a $100.00 AWARD when a patent application is filed by the Army on the invention. Additionally, each inventor is entitled to share a $300.00 AWARD when a patent is granted by the Patent and Trademark Office on the invention.

b. As a separate consideration, inventor(s) may be entitled to an additional SUGGESTION AWARD based on the actual value of his invention when the actual value can be determined by the Army. This means that an Army inventor may receive an award up to $25,000 for an invention that results in substantial improvement to Government operations. (5 USC 4502)

12–2. Title not used.

Paragraph not used.

Chapter 13
PATENT INFRINGEMENT

13–1. Patent Infringement

"An experiment with a patented article for the sole purpose of gratifying a philosophical taste or curiosity or for mere amusement is not infringement of the rights of the patentee."

-Walker on Patents, Deller's Edition

After a patent issues, the unauthorized using, making, or selling of the item claimed in the patent constitute patent infringement. Where the Government infringes the patent of another, patentee's remedy is a suit for damages in the Court of Claims against the United States.

13–2. Title not used.

Paragraph not used.

Chapter 14
WHAT IS A COPYRIGHT?

14–1. What is a Copyright?

a. A copyright protects the works of an author against being copied. The scope of the copyright law includes all kinds of literary, choreographic, pictorial, graphic, sculptural, audiovisual, visual, dramatic, or musical works. These works include written or printed material, motion pictures, sound recordings, and material stored in a computer and readable only by machine. The copyright prevents others from copying the creation of the author and goes only to the form of expression rather than to the subject matter of the writing.

b. For example, a description of a machine could be copyrighted as writing, but this would only prevent others from copying the description. The copyright would not prevent others from writing a description of their own or from making and using the machine.

c. For another to practice without permission any of the exclusive legal rights granted by the Copyright Office to the copyright owner, such as copying, reproducing, translating, publishing, etc. is an infringement of the copyright and is punishable at law by award of damages to the copyright owner.

d. There are some exceptions to the copyright owner's exclusive right to permit copying or distribution of a

e. Copyrighted work. These exceptions include "fair use" copies made for teaching, scholarship, or research and library archive copies. Unless an exception applies, the user must obtain permission to use the copyrighted work, which may involve purchase of a license. Use for governmental purposes without permission could result in liability of the Government. Army Regulation 310-1 contains information on procedures to obtain permission to use copyrighted material.

f. By law, no copyright can be obtained on works produced by a Government employee as a part of his or her official duties. However, any questions relating to the use of copyrighted works may be directed to the patent counsel for your agency or the Chief, Intellectual Property Division. (app B)

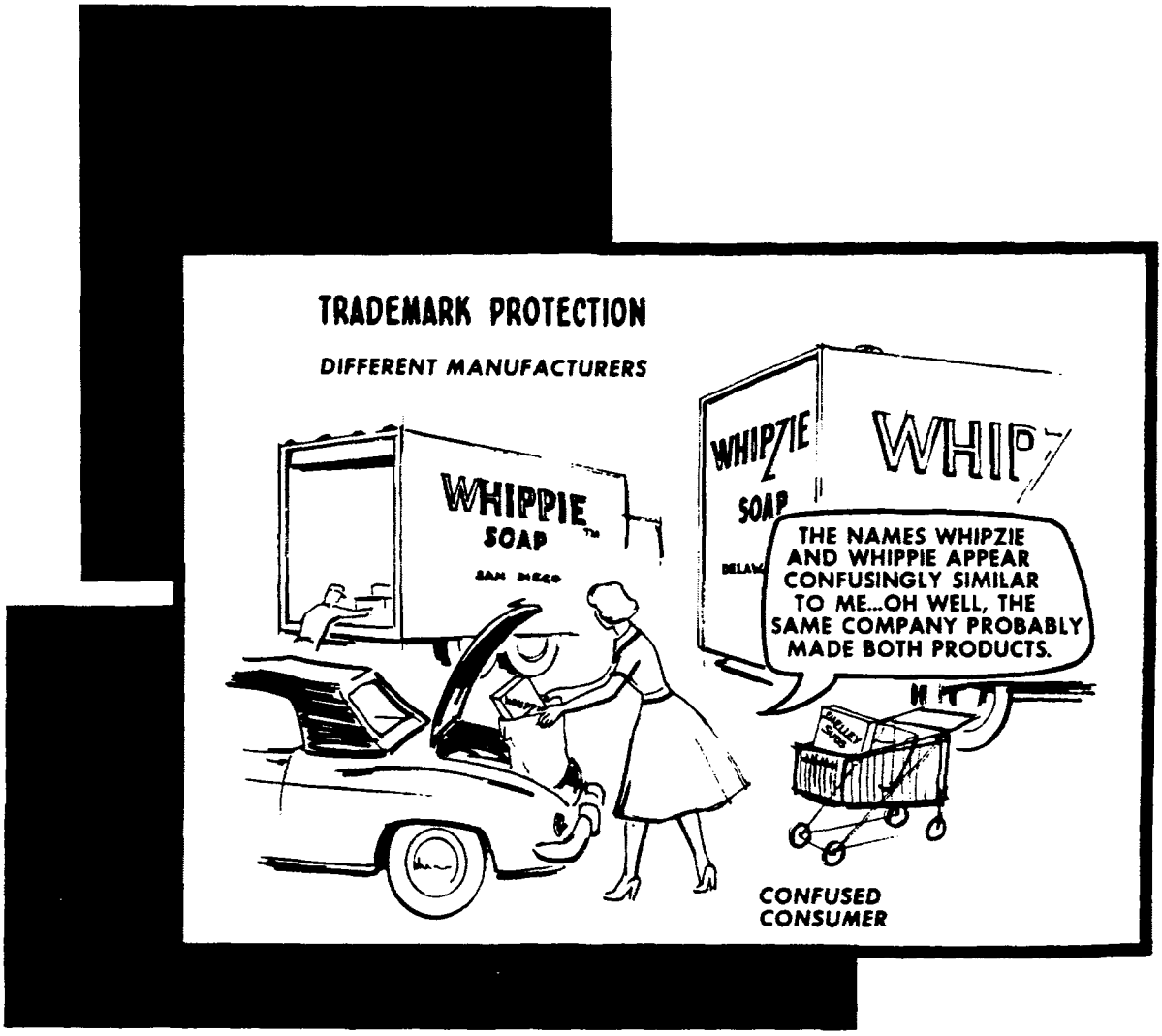

Figure 14–1. Trademark Protection

14–2. Title not used.

Paragraph not used.

Chapter 15
WHAT IS A TRADEMARK?

15–1. What is a Trademark?

a. A trademark may be a distinctive word, name or logo, emblem, symbol, device, or a combination thereof, providing the particular goods with an identification and/or distinctive appearance over similar goods of others. The

trademark law requires that the mark be actually adopted and used in interstate or foreign commerce to establish exclusive rights in a mark.

b. goodwill built through effective advertising and longstanding use of a trademark would soon be lost through imitation and downright piracy if it were not protected by the courts. So trademark rights prevent others from using the same or a confusingly similar name on the same or similar goods, but do not prevent others from making the same or similar goods without using the trademark.

c. In order for the Army to obtain trademark protection for goods, a trademark application must be filed in the U.S. Patent and Trademark Office. The right to enforcement is granted by the certificate of registration that is issued for twenty years and is renewable for additional twenty-year periods as long as the trademark remains in continuous use.

d. Some areas in which trademark protection should be considered include:

(1) names used to identify Army equipment such as airplanes, trucks; and

(2) communications media published by the Army such as newspapers or periodicals. In general, those areas of use in which the nongovernmental sector is likely to participate should be given consideration for trademark protection.

15–2. Title not used.

Paragraph not used.

Chapter 16
CONCLUSION

16–1. Conclusion

a. This booklet touches on some aspects of patent law. Its purpose is to kindle the reader's interest in patents.

b. Army policy is to encourage and stimulate the inventive talents of military and civilian personnel and to obtain

(1) patents on inventions or

(2) trademarks, considered to be of value to the Army mission.

c. The law does not permit a copyright in official works by Government employees. However, you are encouraged to consult Patent Counsel on copyright problems.

d. To get started on the road to PATENT PROTECTION the inventor(s) should complete a copy of

(1) "Invention Disclosure" form (app A) and

(2) Inventive Rights Questionnaire (DA Form 2871).

e. If you have unanswered questions, please contact

(1) the patent section for your command (see app B) or

(2) Chief, Intellectual Property Division, Office of The Judge Advocate General, Department of the Army, Washington, DC, 20310.

16–2. Title not used.

Paragraph not used.

DEPARTMENT OF THE ARMY
UNITED STATES OF AMERICA

INVENTION DISCLOSURE

(THIS FORM AND ACCOMPANYING DRAWING AND DESCRIPTION SHEETS ARE TO BE COMPLETED FOR EACH INVENTION PROMPTLY FORWARDED TO THE PATENT ACTIVITY.)

PATENT ACTIVITIES DOCKET NO.

ASSIGNED TO

SHORT TITLE OF INVENTION

FULL NAME(S) OF INVENTOR(S) (FIRST) (MIDDLE INITIAL) (LAST) HOME ADDRESS(ES) (DUTY) TEL. NO AREA CODE

(1)
(2)
(3)

INFORMATION AND DATES CONCERNING THIS INVENTION

NEEDED IN THE EVENT OF A CONTEST OF PRIORITY OF INVENTION IN THE US PATENT AND TRADEMARK OFFICE. ALL RECORDS CITED SHOULD BE DATED AND SIGNED BY TWO INDEPENDENT WITNESSES WHO HAVE READ AND UNDERSTOOD THE MATERIAL

ON WHAT DATE DID YOU FIRST THINK OF THIS INVENTION (WHAT RECORDS SHOW THIS?)
(4)

GIVE DATE OF AND IDENTIFY EARLIEST SKETCH OR DRAWING
(5)

WHEN/WHERE AND TO WHOM DID YOU MAKE THE FIRST DISCLOSURE TO OTHERS OF THE INVENTION EITHER ORALLY OR IN WRITING?
(6)

DESCRIBE DETAILS OF ANY WORK OR TESTS DONE TO PRODUCE OR OPERATE THE INVENTION (GIVE DATES AND WITNESSES (USE OTHER PAGES IF NECESSARY)
(7)

DESCRIBE AND GIVE DATES OF ANY OTHER SKETCHES, DRAWINGS OR REPORTS PERTINENT TO THIS INVENTION
(8)

USE, SALE OR PUBLICATION

NEEDED TO ESTABLISH THE DATE OF ANY PRINTED PUBLICATION, PUBLIC USE OR SALE SINCE NO PATENT APPLICATION MAY BE FILED AFTER ONE YEAR FROM SUCH DATE.

IF INVENTION HAS BEEN SOLD OR USED FOR PROFIT: WHEN AND TO WHOM DISCLOSED OR WHEN AND HOW USED?
(9)

HAS A DESCRIPTION OF THIS INVENTION BEEN MADE AVAILABLE TO PERSONS OUTSIDE THE ARMY? (WRITTEN OR ORAL) IF SO, HOW AND WHEN AND WAS USE RESTRICTED?
(10)

POTENTIAL MARKET INFORMATION

NEEDED FOR POSSIBLE MARKETING INVESTIGATIONS AND AS AN AID TO POTENTIAL LICENSING TO OTHERS.

DESCRIBE ANY POTENTIAL OR EXISTING MARKET FOR SALE OR LICENSE OF THIS INVENTION
(11)

A. GOVERNMENT

B. COMMERCIAL.

C. IDENTIFY ANY KNOWN FIRMS OR VENDORS WHO MAY BE INTERESTED IN THE INVENTION

CONTRACT INFORMATION

A DETERMINATION OF RIGHTS IN THIS INVENTION WILL BE NECESSARY (SEE AR 27-60)

IF THIS INVENTION WAS FIRST CONCEIVED OR CONSTRUCTED IN CONNECTION WITH:
(12)

A. MY DUTIES AS A GOVERNMENT EMPLOYEE

B. MY WORK UNRELATED TO MY DUTIES AS A GOVERNMENT EMPLOYEE (PRIVATE, OFF DUTY ACTIVITIES)

C. MY DUTIES AS A GOVERNMENT EMPLOYEE & WORKING WITH A CONTRACTOR

D. NEITHER A, B OR C, EXPLAIN

FOREIGN FILING CONSIDERATION

NEEDED TO DETERMINE THE POTENTIAL WORLDWIDE USE FOR THE INVENTION.

INDICATE THE POTENTIAL FOR USING THIS INVENTION IN FOREIGN COUNTRIES
(13)

[] POOR

[] GOOD

[] EXCELLENT

SECURITY CLASSIFICATION

PLEASE INDICATE THE SECURITY CLASSIFICATION IF KNOWN
(13A)

[] CLASSIFIED
LEVEL

[] UNCLASSIFIED

[] CLASSIFICATION UNKNOWN

DA Form 4734-R (Oct 1 1978)

Figure A–1. Invention Disclosure Form

DEPARTMENT OF THE ARMY
UNITED STATES OF AMERICA

INVENTION DISCLOSURE

(DRAWING AND DESCRIPTION SHEET)

PATENT ACTIVITIES DOCKET NO

(14) PROVIDE THE FOLLOWING INFORMATION CONCERNING THE DISCLOSED INVENTION AND IN THE INDICATED SEQUENCE

A. SPECIFICALLY DESCRIBE THE INVENTION AND ITS OPERATION. YOU MAY USE AND ATTACH COPIES OF SKETCHES, PRINTS, PHOTOGRAPHS, PAPERS AND ILLUSTRATIONS, WHICH SHOULD BE SIGNED, WITNESSED AND DATED. USE NUMBERS AND DESCRIPTIVE NAMES IN DESCRIPTIONS AND DRAWINGS.

B. STATE THE ADVANTAGES OF THE INVENTION OVER PRESENTLY KNOWN DEVICES, SYSTEMS OR PROCESSES.

C. DISCUSS THE PROBLEMS WHICH THE INVENTION IS DESIGNED TO SOLVE, REFERRING TO ANY PRIOR INVENTION OF A SIMILAR NATURE WITH WHICH YOU MAY BE FAMILIAR.

D. LIST ALL KNOWN AND OTHER POSSIBLE USES FOR THE INVENTION.

E. LIST THE FEATURES OF THE INVENTION THAT ARE BELIEVED TO BE NOVEL.

USE AS MANY OF THESE SHEETS AS NECESSARY AND ATTACH TO COMPLETED INVENTION DISCLOSURE

SIGNATURE(S) AND ORGANIZATION OF INVENTOR(S) (USE INK)	DATE:	THE DESCRIBED INVENTION HAS BEEN WITNESSED, READ, AND UNDERSTOOD BY:	DATE:
(15) _____	_____	(18) _____	_____
ORGANIZATION _____			
(16) _____	_____	(19) _____	_____
ORGANIZATION _____			
(17) _____	_____	(20) _____	_____
ORGANIZATION _____			

P NOTE THIS FORM AND ANY OMITTED INFORMATION BECOMING AVAILABLE AT A LATER TIME SHOULD BE FORWARDED TO:

HQDA CHIEF, INTELLECTUAL PROPERTY DIV. OFFICE OF THE JUDGE ADVOCATE GENERAL DEPT. OF THE ARMY WASHINGTON, D.C. 20310

DARCOM ATTN: PATENT COUNSEL; OR CHIEF OF ENGINEERS ATTN: PATENT COUNSEL

DA Form 4734-R (Oct 1 1978)

PAGE ___ OF ___ PAGES

Figure A–2. Invention Disclosure Form

Appendix B
Addresses for Obtaining Assistance in Intellectual Property Matters

Army commands which have patent sections are DARCOM and Chief of Engineers; other commands should contact Chief, Intellectual Property Division.

B–1. HQDA

Chief, Intellectual Property, Division
Office of The Judge Advocate General
Department of the Army
Washington, DC 20310

B–2. DARCOM

Assistant Command Counsel
Patent Law Division
US Army Materiel Development and Readiness Command
5001 Eisenhower Avenue
Alexandria, Virginia 22333

B–3. CHIEF OF ENGINEERS

Assistant Counsel, Patents
DAEN-GCP
Washington, DC 20310