

VF109-4

January 24, 1954

Mr. J. F. Byrne  
1114 New York Ave.  
Brooklyn 3, New York

Dear Mr. Byrne:

Jack was here for dinner Friday evening, and in the course of our discussion regarding the chaocypher, we agreed that it would be desirable for me to write to you in order that we might establish a more personal relationship. To further this objective, I would like to propose that we play a postal chess game. There is, of course, no doubt as to your ability to win handily, but I think that I can give you a reasonably good game. Should you be interested, I will play white as a reward for being willing to take on a blindfold player, and will open with 1. P-K4.

With regard to the chaocypher, Howard Lewis and I are greatly excited about the possibilities of such a device, and are anxious to promote it for you although we are well aware of the many difficulties involved. Incidentally, we would like to make one change in the general proposal that Jack outlined in his letter to you. We would expect our commission only if the chaocypher were sold to our contact. At the time the agreement was signed, you would specify as being your contact any current contacts which you then had, and subsequent to that date, a contact would belong to the party that first brought the matter to the contact's attention. Instead of a true exclusive of 18 months as originally suggested, we would like an 18-months exclusive only in the sense that we would be the only party authorized by you to promote the device until that period had expired.

We have discussed the subject of patentability at great length, and there is considerable doubt in my mind as to whether a patent can be obtained. As you know, a principle cannot be patented, and there is little point in patenting a device unless the patent can be written so broadly as to cover all possible or practical methods of reducing the principle to practice. Jack's first thought was that there were a great variety of ways in which the principle involved could be applied (which would make the value of a patent somewhat questionable), but now feels that there may be one step in the process, a mechanical movement I believe, which must be accomplished in one certain way. If this is so, the value of a patent would be substantial. However, it is my understanding that a patent cannot be obtained on a device which has been offered for sale for more than one year, in

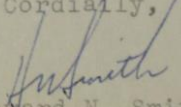
which case it would now be impossible to obtain a patent on the chaocypher. This might not apply, on the other hand, if the basic principle of the device itself has not been revealed to others who were potential buyers. Being offered for sale to others may actually mean being revealed to others. Since Jack feels that all was revealed on at least one occasion, however, I am afraid that it would be impossible to patent the chaocypher at this late date, assuming that a strong patent could be written.

In my opinion, these questions should be referred to a patent attorney of the highest competence and integrity. I am far from expert in such matters, and should we reach an agreement regarding the promotion of the chaocypher, we would want to do this immediately. Obviously, our strategy and bargaining position would be largely determined by the ability to obtain a strong patent. A weak patent is not worth the patent office fee, not to mention the lawyer's.

I do not believe, however, that the lack of a patent is anything more than a minor handicap. What you may be really selling, in the last analysis, is an exclusive on the chaocypher. This concept may make the device of most value in the immediate financial sense.

I hope that you will find it possible to carry on a chess game at this time. I have enjoyed Phila, Jack, and Silent Years so much that I am sure that this would be most enjoyable as well.

Cordially,

  
Howard N. Smith

41 Roosevelt Circle  
Palo Alto, California