

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PARKER-HANNIFIN CORPORATION
and CLARCOR INC.

Defendants.

C.A. No. 17-1354-JEJ

**[PROPOSED] ORDER STIPULATING TO MODIFICATION OF ORDER
TO PRESERVE AND MAINTAIN ASSETS**

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that the October 16, 2017 Stipulation and Order to Preserve and Maintain Assets (D.I. 20) shall be modified to read as follows:

1. Plaintiff United States filed a complaint on September 26, 2017, alleging that defendant Parker-Hannifin Corporation's ("Parker-Hannifin") acquisition of certain aviation fuel filtration assets of CLARCOR Inc. ("Clarcor") violated Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Plaintiff seeks an order requiring Parker-Hannifin to divest either Parker-Hannifin's or Clarcor's qualified aviation fuel filtration assets and such other temporary or permanent relief as may be necessary to preserve the possibility of effective permanent relief. Plaintiff and defendants have agreed to settle the United States' allegations through the divestiture of Clarcor's Facet Filtration Business.

3. Defendant Parker-Hannifin has agreed to preserve and maintain the Divestiture Assets pending entry of the Final Judgment in this action.

4. Parker-Hannifin agrees to this Order.

WHEREFORE, for good cause shown, it is hereby ORDERED:

I. DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

- A. “Acquirer” means the entity to whom the defendants divest the Divestiture Assets.
- B. “Aviation Fuel Filtration Products” means the systems and elements that include and comprise microfilters, filter water separators and filter monitor components that are used in aviation ground fuel filtration and sold to customers under the Facet or PECOFacet brands.
- C. “Parker-Hannifin” means defendant Parker-Hannifin Corporation, an Ohio corporation with its headquarters in Cleveland, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.
- D. “Clarcor” means defendant CLARCOR Inc., a Delaware corporation, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.
- E. “Divestiture Assets” means the Facet Filtration Business.
- F. “Divestiture Products” means: (1) Aviation Fuel Filtration Products, including clay filter systems and elements used in aviation ground fuel filtration; (2) sewage water treatment systems, fuel/water separator and filter components systems and elements, and bilge water separators, that, in each instance are used in commercial marine, offshore drilling, and military marine filtration applications, and sold to customers under the PECOFacet brand; and

(3) oil/water filtration and separation systems and sewage treatment systems, that, in each instance are used in environmental water filtration applications, and sold to customers under the PECOFacet brand.

G. “Facet Filtration Business” means all assets of Parker-Hannifin used in the design, development, manufacturing, testing, marketing, sale, distribution or service of Divestiture Products, including:

1. The facilities, to the extent leased or owned, located at:
 - a. 470555 E 868 Road, Stilwell, OK 74960;
 - b. 5935 S 129th E Ave, Suite A, Tulsa, OK 74134;
 - c. Avenida da Ponte, 16, 15142, Arteixo, La Coruña, Spain;
 - d. 22, Avenue des Nations, ZI Paris Nord II, BP 69055, 95972 Roissy CDG Cedex, France;
 - e. C. so IV Novembre n. 58, 10070 Cafasse (Torino), Italy;
 - f. Units 4.3 and 4.4, Treforest Industrial Estate, Pontypridd, Mid Glamorgan, CF37 5FB, United Kingdom; and
 - g. Damsluisweg 40A 1332 ED, Almere, The Netherlands;
2. The 2,080 sq. ft. aviation fuel filtration testing lab building located at 8439 Triad Drive, Greensboro, NC 27409, including rights to reasonably access the facility;
3. All tangible assets used by the Facet Filtration Business, including all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists,

contracts, accounts, and credit records; all repair and performance records and all other records, but excluding: (i) PECOFacet Quick Response Centers and all assets therein, (ii) Parker-Hannifin offices located in Australia, Brazil, Canada, China, Germany, Malaysia, Mexico, and Morocco, and all assets therein, and (iii) Clarcor-owned distributors that sell Divestiture Products;

4. All intangible assets owned, licensed, controlled, or used primarily by the Facet Filtration Business, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding any trademark, trade name or service mark, or service name containing the names “Clarcor,” “PECO,” or “PECOFacet,” except to the extent the Acquirer is required under existing U.S. military contracts for EI-qualified Aviation Fuel Filtration Products to use the name “PECOFacet,” but in no event shall such use extend beyond one year following the entry of this Final Judgment), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals and technical information defendants provide to their own employees, customers, suppliers, agents, or licensees, and research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

H. “Transaction” means Parker-Hannifin Corporation’s acquisition of CLARCOR Inc. pursuant to the Agreement and Plan of Merger dated as of December 1, 2016.

I. “Velcon Filtration Business” means the business responsible for the design, development, manufacture, testing sale and service of Aviation Fuel Filtration Products but sold under the Velcon brand.

It is FURTHER ORDERED that:

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the development, manufacture, and sale of EI-qualified Aviation Fuel Filtration Products as alleged in the Complaint, in order to remedy the effects that the United States alleges would otherwise result from Parker-Hannifin’s acquisition of Clarcor. This Order modifying the Order to Preserve and Maintain Assets (D.I. 20) ensures, prior to such divestiture, that the Divestiture Assets remain economically viable.

III. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court’s own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Parker-Hannifin and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than

three (3) business days after defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the final order of the Court.

C. This Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event (1) the United States has withdrawn its consent as provided in Paragraph III(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Order, and the making of this Order shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or

difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

IV. PRESERVATION AND MAINTENANCE OF ASSETS

Until the divestiture required by the Final Judgment has been accomplished:

A. Parker-Hannifin, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Parker-Hannifin who receive actual notice of this Order by personal service or otherwise, are hereby ordered to preserve and maintain the Divestiture Assets, unless the United States consents in writing, and are restrained from:

1. licensing or encumbering any such asset;
2. transferring or reassigning to other facilities of Parker-Hannifin, or dismissing (except for cause or ordinary performance-related reasons), employees necessary to the Divestiture Assets;
3. idling any fabrication, assembly or testing lines (or equipment comprising those lines) other than in the ordinary course of business; or
4. causing or assisting others in carrying out any of these prohibited activities.

B. Unless the United States consents in writing, Parker-Hannifin, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Parker-Hannifin who receive actual notice of this Order by personal service or otherwise, are hereby ordered:

1. not to dismiss (except for cause or ordinary performance-related reasons) current employees involved with the development, design, manufacturing, testing and sale of products or management related to the Divestiture Assets;

2. to take all commercially reasonable steps necessary to ensure that the Divestiture Assets are fully maintained in an operable condition at no less than the capacity on February 28, 2017 and to maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets;
3. to take all commercially reasonable steps necessary to ensure that the Divestiture Assets retain all regulatory approvals, including but not limited to certifications and qualifications;
4. to take all reasonable efforts to maintain and increase the sales and revenues of the Facet Filtration Business, and shall use reasonable best efforts to maintain at levels in place on February 28, 2017 all promotional, advertising, sales, technical assistance, marketing and merchandising support for such products;
5. to provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive ongoing businesses; and
6. not to, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

C. Parker-Hannifin is hereby ordered to appoint person(s) to oversee the Divestiture Assets who will be responsible for Parker-Hannifin's compliance with this Order and shall have managerial responsibility for such assets, which includes managerial responsibility with respect to sales, marketing, prices, discounts, output, customers, and inputs related to the Facet Filtration

Business. Any such person(s) shall not have any responsibilities for the management of any Parker-Hannifin business, other than the Facet Filtration Business.

V. FIREWALLS

A. Defendants shall implement and maintain procedures to prevent the sharing by personnel of the Facet Filtration Business of competitively sensitive information from the Facet Filtration Business with personnel with responsibilities relating to Parker-Hannifin's Velcon Filtration Business.

B. Parker-Hannifin shall, within thirty (30) calendar days of the Court's entry of this Order stipulating to modification of the Order to Preserve and Maintain Assets, submit to the United States a document setting forth in detail the procedures implemented to effect compliance with this Section. Within ten (10) calendar days following Parker-Hannifin's submission, the United States shall notify Parker-Hannifin with specificity of any objections to Parker-Hannifin's compliance plan. Parker-Hannifin and the United States will attempt to resolve the United States' reasonable objection(s) as promptly as possible. In the event that Parker-Hannifin and the United States cannot mutually resolve the United States' objection(s), either party may request that the Court rule on the proposed compliance plan.

VI. DURATION OF PRESERVATION AND MAINTENANCE OF ASSETS AND FIREWALLS PROVISIONS

Defendants' obligations under Section IV and V of this Order Stipulating to Modification of Order to Preserve and Maintain Assets shall remain in effect until (1) consummation of the divestiture required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, defendants are released from all further obligations under this Order Stipulating to Modification of Order to Preserve and Maintain Assets.

This Order is considered executed and binding once signed by both parties and filed with the Court.

Dated: December 18, 2017

BY:

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IT IS SO ORDERED.

Date

Judge John E. Jones III