UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, :

Plaintiff, : Civil Action No. 14426

v. : Entered:

UNITED AIRCRAFT CORPORATION, :

Defendant. :

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FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on May 24, 1971, and defendant having filed its answer to said complaint and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue;

NOW THEREFORE, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby,

ORDERED, ADJUDGED AND DECREED, as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section 2 of the Act of Con-

gress of July 2, 1890, as amended (15 U.S.C. §2), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Defendant" shall mean United Aircraft Corporation, a corporation organized and existing under the laws of the State of Delaware with its principal offices at East Hartford, Connecticut.

(B) "TRW" shall mean TRW, Inc., a corporation organized and existing under the laws of the State of Ohio, formerly known as Thompson Ramo Wooldridge Inc.

(C) "Fuel Cell" shall mean a device having as its essential elements:

(1) Electrodes;

(2) An electrolyte; and

(3) A container;

which device generates electrical energy directly from a chemical reaction occurring within said device involving substances supplied from sources outside said device, said essential elements of said device not being intentionally consumed as part of the process.

(D) "Ancillary Equipment" shall mean equipment specifically designed for use with Fuel Cells, such as (by way of illustration and not by way of limitation) pumps, heat exchangers, and purging equipment specifically designed for use with Fuel Cells.

(E) "TRW Agreement" shall mean that research and development contract relating to Fuel Cells and Ancillary Equipment entered into between defendant and TRW as of July 16, 1962, as amended and supplemented.

(F) "Agreement Technology" shall mean: (1) United States letters patent owned or controlled by defendant or under which it has the right to grant licenses, covering inventions conceived or reduced to practice by TRW in the course of performing any project under the TRW Agreement; and (2) written reports received by defendant from TRW containing the results of research and development work on Fuel Cells or Ancillary Equipment done by TRW in the course of performing the TRW Agreement.

(G) "Apollo Contract" shall mean the contracts between defendant and North American Aviation Corporation funded by the National Aeronautics and Space Administration ("NASA"), covering research, design, development, testing, production, installation, delivery, and evaluation of Fuel Cells and Ancillary Equipment used in NASA's Apollo Space Program, and any subcontracts between defendant and others as subcontractors to defendant with respect to said contracts.

(H) "Apollo Technology" shall mean a written statement of technology with respect to Fuel Cells and Ancillary Equipment developed by defendant or others in the course of performing the Apollo Contract, but only to the extent that such technology is known to defendant and may be disclosed by defendant to third parties. Subject to the foregoing, Apollo Technology shall include pertinent blueprints, specifications, laboratory results, test and operating data, and manufacturing cost data (in terms of man hours and materials).

III

The provisions of this Final Judgment applicable to the defendant shall apply also to each of its

subsidiaries, successors, and assigns, to its directors, officers, agents, and employees when acting in such capacity, and, in addition, to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment defendant and its officers, directors, employees, agents, and subsidiaries, when acting in such capacity, shall be deemed to be one person.

IV

(A) Defendant is enjoined and restrained from entering into or adhering to any joint venture or research and development agreement with any United States citizen or domestic corporation unless the terms of such agreement preserve the rights of each of the contracting parties to do research and development work on Fuel Cells or Ancillary Equipment for any other person or for its own account; provided that this provision shall not prevent defendant from entering into or adhering to otherwise lawful consulting contracts with individuals which restrict the right of the consultant to work for a competitor during the existence of the contract and for two (2) years after the expiration or termination thereof; and further provided that defendant may enter into, adhere to and enforce reasonable provisions in contracts to prevent the use or disclosure by one contracting party of information disclosed to it by the other, or use or disclosure by one contracting party of patents or information developed in the course of performance of work funded by the other contracting party.

(B) For a period of ten (10) years from and after the effective date hereof, defendant is enjoined and restrained:

1. From acquiring 10% or more of the capital stock of, or from merging with, any domestic corporation which, immediately prior to such acquisition or merger, was engaged in Fuel Cell research and development, or in the commercial manufacture and sale of Fuel Cells; and
2. From acquiring from any domestic corporation which, immediately prior to such acquisition, was engaged in Fuel Cell research and development, or in the commercial manufacture and sale of Fuel Cells, any assets specifically designed for use in the research, development, or manufacture of Fuel Cells;

without the consent of the Department of Justice or the approval of this Court after a showing that such acquisition or merger will not substantially lessen competition or tend to create a monopoly in the research, development, manufacture, or sale of Fuel Cells; provided that:

a. Nothing contained in this Section IV(B) shall preclude or be deemed to preclude defendant from purchasing materials, components, or equipment from suppliers or manufacturers thereof; and
b. For purposes of this Section IV(B), no domestic corporation shall be deemed to be engaged in Fuel Cell research and development unless: (i) it has expended an annual average of two million dollars ($2,000,000) on Fuel Cell research and development during its last three (3) full fiscal years immediately prior to the acquisition or merger in question; or (ii) it has expended at least fifty per cent (50%) of its total research budget on Fuel Cell research and development

during each of its last three (3) full fiscal years immediately prior to the acquisition or merger in question.

(C) Defendant is enjoined and restrained from using, or threatening to use, its ability to purchase or refrain from purchasing goods or services for the purpose of restraining any person from engaging in research, development, or manufacture of Fuel Cells or Ancillary Equipment.

V

(A) Defendant shall grant to any United States citizen or domestic corporation making written application therefor a non-exclusive, unconditional, royalty-free license under any United States patent owned or controlled by it, or under which it has the right to grant licenses, claiming an invention which was made in the course of performing the Apollo Contract. Said license shall include a grant of immunity under any corresponding foreign patent as to which defendant has the right to grant such immunity for Fuel Cells and Ancillary Equipment manufactured in the United States.

(B) Subject to the payment provisions hereafter set forth, defendant shall deliver, in accordance with subparagraphs 1 or 2 below (as the case may be) a full and complete statement of Apollo Technology to any United States citizen or domestic corporation making written application therefor within one (1) year after the effective date of this Final Judgment.

1. If such application is accompanied by the applicant's payment of the sum of twenty-five thousand dollars ($25,000) for Apollo Technology, such statement shall be delivered to the applicant within one hundred eighty (180) days after defendant's receipt of the first application for such a statement under this subparagraph 1 or within ten (10) days after defendant's receipt of the particular application, whichever date is the later.

2. Otherwise, an applicant shall pay for Apollo Technology that amount equal to defendant's actual costs incurred (in man hours and materials) in the course of preparing Apollo Technology in documentary form divided by the total number of recipients of Apollo Technology under this Section V(B), to the extent of not more than twenty-five thousand dollars ($25,000) per applicant, in which event such statement shall be delivered to the applicant (provided that such applicant shall theretofore have made the payment specified in this subparagraph 2, the amount of which defendant shall promptly notify to applicants under this subparagraph 2 after being able to ascertain such amount) within one hundred eighty days after defendant's receipt of the first application under this Section V(B) or within three hundred seventy-five (375) days after the date of entry of this final judgment, whichever is the later.

(C) In the event that any person shall receive Apollo Technology pursuant to Section V(B) hereof, but not otherwise; defendant shall make available to any other United States citizen or domestic corporation making

written application therefor more than one (1) year after the effective date hereof, a full and complete statement of Apollo Technology provided that such written application shall be accompanied by the applicant's payment of the sum of twenty-five thousand dollars ($25,000) for Apollo Technology.

(D) For a period of three (3) years from and after the effective date hereof, defendant shall provide to any recipient of Apollo Technology under Sections V (B) or (C) hereof, upon written request, clarification, explanation or guidance in the utilization of Apollo Technology for commercial purposes; provided that any assisted recipient shall reimburse to defendant the actual costs incurred by defendant (in man hours and materials) in the course of providing such assistance; and further provided that defendant shall not be required to furnish assistance otherwise than in connection with an oxygen-hydrogen (Bacon) Fuel Cell or Ancillary Equipment specifically designed for use with an oxygen-hydrogen (Bacon) Fuel Cell.

VI

(A) Defendant shall grant to any United States citizen or domestic corporation making written application therefor a non-exclusive, unconditional, royalty-free license under any United States patent included in Agreement Technology. Said license shall include a grant of immunity under any corresponding foreign patent as to which defendant has the right to grant such immunity for Fuel Cells or Ancillary Equipment manufactured in the United States.

(B) Defendant shall make available to any United States citizen or domestic corporation making written application therefor, no more than thirty (30) days after defendant's receipt of such written application, unpatented Agreement Technology, provided that such written application shall be accompanied by the Applicant's payment of the sum of twenty-five thousand dollars ($25,000) for unpatented Agreement Technology.

VII

For a period of ten (10) years from the date of entry of this Final Judgment, the defendant is ordered to file with the plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (A) access during the office hours of defendant, who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of the defendant relating to any matters contained in this Final Judgment, and (B) subject to the

reasonable convenience of defendant, and without restraint or interference from it to interview directors, officers, members or employees of the defendant, who may have counsel present, regarding any such matters; and upon such request, defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: June 11, 1973

/s/ M. JOSEPH BLUMENFELD
United States District Judge