

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice,
Washington, D. C. 20530,

Plaintiff,

v.

KARL ZIEGLER,
Director Max Planck Institut
fur Kohlenforschung,
Mulheim a.d. Ruhr,
Federal Republic of Germany,

HERCULES INCORPORATED,
818 18th Street, N.W.,
Washington, D. C. 20006,

STAUFFER CHEMICAL COMPANY,
1612 K Street, N.W.,
Washington, D. C. 20006, and

TEXAS ALKYL, INC.,
Battleground Road,
Pasadena, Texas 77502,

Defendants.

Civil No **1255-70**

Filed: 4/24/70

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The United States of America, plaintiff, brings this civil action against the defendants named in this complaint, and alleges:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Sherman Act (15 U.S.C. § 4) in order to prevent and restrain the defendants from violating Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2).

2. Karl Ziegler (hereafter referred to as "Ziegler"), a natural person, a citizen and resident of the Federal Republic of Germany, is the owner of various United States

patents (hereafter referred to as "the Ziegler patents"), which relate to the manufacture of aluminum trialkyls and are involved in this proceeding. Ziegler has not designated in the United States Patent Office any person on whom may be served process or notice of proceedings affecting the Ziegler patents or rights thereunder. Pursuant to Section 293 of the Patent Code (35 U.S.C. § 293), this Court has jurisdiction to take any action respecting such patents or rights thereunder, in the same manner as if Ziegler were personally within the jurisdiction of the Court.

3. Hercules Incorporated (hereafter referred to as "Hercules") and Stauffer Chemical Company (hereafter referred to as "Stauffer") maintain offices, transact business, and are found within the District of Columbia.

II. THE DEFENDANTS

4. Ziegler is named a defendant.

5. Hercules is named a defendant. It is a Delaware corporation, with its principal office located in Wilmington, Delaware. Hercules is engaged primarily in the manufacture and sale of chemicals. In 1968, Hercules had net sales of approximately \$700 million and total assets of approximately \$800 million.

6. Stauffer is named a defendant. It is a Delaware corporation, with its principal office located in New York, New York. Stauffer is engaged primarily in the manufacture and sale of chemicals. In 1968, Stauffer had net sales of approximately \$480 million and total assets of approximately \$430 million.

7. Texas Alkyls, Inc. (hereafter referred to as "Texas Alkyls"), is named a defendant. It is a Delaware corporation, with its principal production plant located in Pasadena, Texas. Hercules and Stauffer each own 50%

of the stock of Texas Alkyls.

III. DEFINITION

8. As used in this complaint, the term "aluminum trialkyl" means a compound consisting of an aluminum atom linked with three carbon atoms, each one of which is a member of an alkyl radical consisting of one, two, three, four, or n carbon atoms and three, five, seven, nine, or $2n + 1$ hydrogen atoms, respectively. Trimethyl aluminum, triethyl aluminum, tri-normal-propyl aluminum (also known as tri-propyl aluminum), and triisobutyl aluminum (also known as tri-butyl aluminum) are aluminum trialkyls in which the alkyl radicals each contain one, two, three and four carbon atoms, respectively.

IV. NATURE OF TRADE AND COMMERCE

9. Aluminum trialkyls are unpatented products. Aluminum trialkyls have been known for many years, some for over a century. Until the 1950's, however, aluminum trialkyls were not in commercial production or use because there was no known commercially feasible process for their production. Up to that time aluminum trialkyls had been produced only in laboratory quantities by complex and very expensive methods.

10. The only known commercially feasible processes for producing aluminum trialkyls (other than trimethyl aluminum, which is not a commercially significant product) are those invented by Ziegler and claimed in the Ziegler patents; no other process is economically competitive with those of Ziegler. The Ziegler patents claim only processes for making aluminum trialkyls. They do not claim aluminum trialkyls as products.

11. The principal uses of aluminum trialkyls at present are, among others:

- (a) As chemical intermediates in the synthesis of olefins, silicones, synthetic alcohols, and tetraethyl lead;
- (b) In the production of synthetic rubber;
- (c) As catalysts in the production of polyolefins; and
- (d) As chemical reducing agents and jet fuels.

12. In 1969 approximately three million pounds of aluminum trialkyls were sold in the United States, and the value of such shipments exceeded \$3 million; a substantial portion of such sales were made to customers located in different states from that in which such products were manufactured. It is anticipated that sales of aluminum trialkyls will greatly increase in the next few years.

13. Defendant Texas Alkyls manufactured, and defendant Stauffer sold (pursuant to the agreement described below in paragraph 18), approximately two-thirds of the aluminum trialkyls referred to in the preceding paragraph. The remaining one-third of such sales was accounted for by Ethyl Corporation, the only other seller of aluminum trialkyls in the United States. Various other chemical companies make and use, but do not sell, aluminum trialkyls.

V. VIOLATIONS CHARGED

14. Beginning in or about 1954 and continuing thereafter up to and including the date of filing of this complaint, the defendants have been engaged in a combination and conspiracy to restrain interstate trade and commerce in and monopolize the sale of aluminum trialkyls, in violation of Sections 1 and 2.

of the Sherman Act. The defendants are continuing and will continue said violation, unless the relief prayed for in this complaint is granted.

15. The aforesaid violations have consisted of an agreement, understanding, and course of dealing among defendants to secure to defendants Hercules, Stauffer, and Texas Alkyls (hereafter collectively referred to as "the corporate defendants") a monopoly over the sale of aluminum trialkyls; and to restrain, limit, prevent, and exclude other persons from selling aluminum trialkyls. In furtherance and pursuance of said violations, the defendants entered into the contractual agreements described below in paragraphs 16, 17, and 18 of this complaint, and did, among other things, the other acts alleged below in paragraphs 19, 20, and 21.

16. Ziegler and Hercules entered into an agreement, dated September 24, 1954, styled by them the "Technical Field Contract," pursuant to which Ziegler purported to grant to Hercules and all companies in which Hercules would own half or more of the voting stock "an exclusive license to sell in the United States the aluminum trialkyl produced" by the processes claimed in the Ziegler patents.

17. Hercules and Stauffer thereafter agreed with one another, and embodied their agreement, in part, in a document dated February 4, 1959, that:

- (a) They would form a new corporation (Texas Alkyls) as a 50-50 joint venture to manufacture and sell aluminum trialkyls made by the aforesaid processes;
- (b) Hercules would transfer to Texas Alkyls the license described in paragraph

16 of this complaint; and

- (c) Hercules would "preserve and defend" and take "all steps reasonably necessary to sustain and enforce the exclusive right to sell in the United States aluminum trialkyls made by Ziegler processes" against any challenges made by third parties.

18. By an agreement dated July 8, 1959, Hercules transferred to Texas Alkyls the exclusive selling license that Ziegler had purported to grant Hercules in the aforesaid Technical Field Contract. As of December 31, 1969, the following Ziegler patents and applications, among others, relating to aluminum trialkyl processes are within the scope of the said July 8 agreement: U. S. Pats. Nos. 2,691,668; 2,744,127; 2,786,860; 2,826,598; 2,835,689; 2,839,556; 2,930,808; 3,032,574; 3,074,986; 3,097,066; 3,100,219; 3,207,770; 3,207,771; 3,207,772; 3,207,773; U. S. Pat. Application Ser. Nos. 347,604; 528,117; 641,269; 683,002.

19. By agreements subsequent to the aforesaid Technical Field Contract, Ziegler granted other persons licenses to practice the processes claimed in the Ziegler patents, but purported (1) to withhold from such persons the power to sell the unpatented aluminum trialkyls produced by such persons by means of such patented processes, and (2) to limit such persons to using such processes for the production of aluminum trialkyls to be consumed or utilized solely by the manufacturer thereof.

20. The corporate defendants have falsely claimed and continue to claim that they enjoy the sole and exclusive lawful right to sell in the United States unpatented aluminum trialkyls produced by the processes

claimed in the Ziegler patents and that sales of such products by others are unlawful. The corporate defendants have asserted to other licensees of Ziegler, and to prospective customers of such licensees, that such licensees' sales of aluminum trialkyls to such customers were unlawful and in violation of said defendants' alleged exclusive legal right to sell the said unpatented products.

21. After asserting in litigation with Ethyl Corporation (hereafter referred to as "Ethyl") said claims of exclusive selling rights, the corporate defendants entered into agreements with Ethyl pursuant to which (1) Ethyl agreed to pay Texas Alkyls a 2% running royalty on all Ethyl's sales of the unpatented aluminum trialkyls produced by the aforesaid processes, and (2) said defendants agreed to stop asserting to Ethyl's customers that Ethyl's sales to such customers were unlawful and in violation of said defendants' alleged exclusive selling rights. Thereafter, said defendants have collected substantial royalties on Ethyl's sales of the said unpatented products; and have permitted Ethyl to share with them the alleged exclusive selling rights, while continuing to assert them against other licensees of Ziegler.

VI. EFFECTS

22. The effects of the foregoing violations have been and are among others:

- (a) To prevent and restrain competition in the sale of aluminum trialkyls;
- (b) To confer upon the corporate defendants the power to exclude others from the sales of aluminum trialkyls;

- (c) To confer upon the corporate defendants a dominant position in the sale of aluminum trialkyls;
- (d) To extend unlawfully the monopoly conferred by the Ziegler patents over processes for manufacturing aluminum trialkyls to a monopoly over the sale of the unpatented aluminum trialkyl products of such processes; and
- (e) To deprive the public of the benefits of free and open competition in the sale and distribution of aluminum trialkyls.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendants have combined and conspired to restrain trade and commerce in aluminum trialkyls and to monopolize the sale of aluminum trialkyls, in violation of Sections 1 and 2 of the Sherman Act.

2. That the defendants be permanently enjoined from attempting in any way to interfere with the sale by others of aluminum trialkyls.

3. That the defendants be permanently enjoined from attempting in any way to interfere with the use or disposition by any person of the unpatented product of a patented process-- whether by color of exclusive selling license, field restriction or condition in a license, quantity limitation in a license, or otherwise.

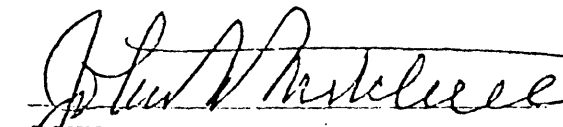
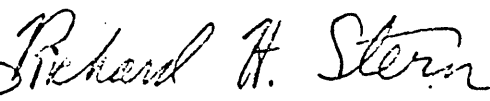
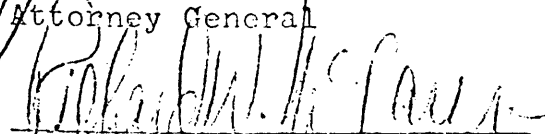
4. That the defendants be permanently enjoined from entering into or maintaining in effect any agreement pursuant to which any party thereto or third-party beneficiary thereof is promised or otherwise given freedom from competition in the sale of the unpatented product of a patented process, on the part of other persons licensed or to be licensed to practice such process.

5. That each defendant be ordered to grant a license, on reasonable and nondiscriminatory terms, to each applicant therefor, to practice in a free and unrestricted manner any and all inventions relating to the manufacture, use, or sale of aluminum trialkyls, claimed in any United States patent which, on the date of entry of the final judgment in this action, said defendant owns or under which it has any right to grant a license.

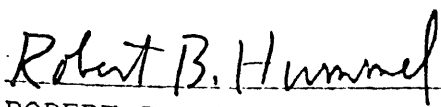
6. That each defendant be ordered to grant a license, on reasonable and nondiscriminatory terms, to each applicant therefor, to practice in a free and unrestricted manner any and all technology (whether in the form of know-how, trade secret, or otherwise) relating to the manufacture, use, or sale of aluminum trialkyls which, on the date of entry of the final judgment in this action, said defendant owns or which it has any right to license.

7. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

8. That plaintiff recover the costs of this suit.

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