

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

BIRD CORPORATION and  
INSTRUMENTATION ASSOCIATES, INC., :

Defendants. :

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Civil Action No. 72C-860

Filed: June 27, 1972

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This action is filed and these proceedings are instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

2. Each of the defendants transacts business and is found within the Eastern District of New York.

## II

### DEFINITIONS

3. As used herein:

- (a) "respirators" means mechanical devices of the type known as Intermittent Positive Pressure Breathing Devices;
- (b) "dealer" means a purchaser of respirators who resells such respirators to ultimate users; and
- (c) "Greater New York Area" means the geographic area comprised of the five boroughs of New York City, the counties of Nassau, Suffolk, Westchester, Putnam, Dutchess, Rockland, Sullivan and Orange in New York State, and the counties of Bergen, Essex, Hudson, Middlesex, Monmouth, Passaic and Union in New Jersey.

## III

### THE DEFENDANTS

4. Bird Corporation (hereinafter referred to as "Bird") is hereby made a defendant herein. Bird is a corporation organized in 1957 under the laws of the State of California as Bird Oxygen Breathing Equipment, Inc. as the successor to Forrest M. Bird & Associates. In 1960 it changed its name to Bird Corporation. Its principal place of business is at Palm Springs, California.

5. Instrumentation Associates, Inc. (hereinafter referred to as "IA") is hereby made a defendant herein. IA is a corporation organized in 1950 under the laws of

the State of New York as the successor to Instrumentation Associates. Its principal place of business is at New York City, New York.

#### IV

##### CO-CONSPIRATORS

6. Various dealers and other firms, corporations and individuals engaged in the sale of respirators, not made defendants herein, participated as co-conspirators with the defendants in the violation alleged herein, and performed acts and made statements in furtherance thereof.

#### V

##### TRADE AND COMMERCE

7. Respirators are electrically powered devices for introducing medicated or moistened air or oxygen into a patient's lungs at a preset pressure as predetermined by a physician. When the prescribed pressure is reached and the lungs are filled, the pressure automatically shuts off and the air exhaled by the patient's lungs is expelled through a special valve. Air is supplied to the respirator by a compressor motor, which is an integral part thereof. Alternatively, it may be attached to an oxygen tank for an enriched mixture, if the physician so directs. As the air or oxygen passes through to the patient's lungs, it is drawn through a nebulizer which converts the medication placed therein into a fine mist, enabling it to penetrate to the remotest bronchii and air sacs of the lungs. The patient wears either a mouthpiece or a breathing mask, as indicated by the doctor. Different models of respirators include specific features, each intended for a particular

need on the part of the patient, such as use by a chronic home patient, by a cardiac case, or by a patient under the supervision of an anesthesiologist.

8. Respirators find wide application in alleviating the symptoms of, and in the treatment of common pulmonary ailments such as emphysema, bronchitis and asthma. For use in such treatment, respirators are sold or rented to nonhospitalized patients for use in the home, as well as to hospitals for use in the treatment of patients under their care. They are also of critical importance in restoring, maintaining or assisting the breathing process when it is interrupted or attenuated by head or chest injuries, toxemia, cardiac conditions or during anesthesia. Hospital Intensive Care Units regularly employ respirators to help prolong life by assisting the patient during the critical stages of care. They may also be sold or rented to a nonhospitalized patient, but only upon a doctor's prescription. Because of the complex nature of respirators and the serious and possibly fatal consequences of misuse, proper training and instruction of the patient by a qualified therapist is essential. Hospitals employ such therapists as staff members; dealers also employ inhalation therapists to instruct home patients to whom they sell or rent respirators in the use of such equipment.

9. There are at least seven manufacturers of respirators who sell such devices in the United States. Bird is one of the two largest of such manufacturers. Bird manufactures respirators in Palm Springs and Richmond, California. It had sales of approximately \$6,800,000 in

1970, of which \$4,600,000 represented sales of respirators to dealers located in various states of the United States. Its sales of respirators to IA were approximately \$278,000 in 1970. A substantial number of the respirators manufactured by Bird are sold and shipped by Bird to dealers located in states other than the state in which such respirators are manufactured.

10. IA is the exclusive distributor of respirators manufactured by Bird in the Greater New York Area pursuant to a contract between it and Bird dated July 22, 1957 and renewed for an additional 10-year period on June 21, 1967. Pursuant to this contract, IA purchases respirators from Bird and in turn resells them to dealers, governmental agencies and hospitals located in the Greater New York Area. Its 1970 sales of such respirators in that area were approximately \$400,000.

11. Various dealers in the Greater New York Area have entered into agreements with IA whereby such dealers have been given the exclusive right to sell respirators manufactured by Bird in certain counties therein. Such dealers are authorized by IA to sell respirators only to customers for use in the home. A substantial number of the respirators purchased from Bird and sold by IA are purchased, sold and shipped by IA to dealers and other customers located in states other than the state in which such respirators were manufactured or delivered to IA.

VI

VIOLATION ALLEGED

12. Since in or about July 1957, the exact date being to the plaintiff unknown, and continuing up to and including the date of filing of this Complaint, the defendants and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in respirators, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). Said violation is continuing and will continue unless the relief hereinafter prayed for is granted.

13. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are that:

- (a) Bird shall not sell respirators to any person located within the Greater New York Area other than IA;
- (b) IA shall not sell respirators to any person located outside the Greater New York Area;
- (c) IA shall sell respirators in the Greater New York Area at prices specified by Bird;
- (d) IA shall not sell respirators other than those manufactured by Bird;
- (e) dealers located outside the Greater New York Area shall not sell respirators manufactured by Bird to persons located within the Greater New York Area;

- (f) dealers within the Greater New York Area shall not sell respirators manufactured by Bird outside territories within that area assigned to them by IA;
- (g) dealers within the Greater New York Area shall not sell respirators manufactured by Bird to classes of customers other than those specified by IA; and
- (h) dealers within the Greater New York Area shall sell respirators manufactured by Bird at prices specified by IA.

14. In furtherance of the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do.

## VII

### EFFECTS

15. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) patients, hospitals, governmental agencies and dealers, particularly in the Greater New York Area, have been deprived of a choice of suppliers in purchasing respirators manufactured by Bird;
- (b) dealers, particularly in the Greater New York Area, have been deprived of the opportunity to compete with one another in the sale of respirators manufactured by Bird;
- (c) the prices of respirators manufactured by Bird have been fixed and maintained at

- artificial and non-competitive levels in the Greater New York Area; and
- (d) competition generally in the sale of respirators has been substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in respirators as hereinbefore alleged, in violation of Section 1 of the Sherman Act.

2. That each of the defendants, its successors, assignees, and transferees, and its officers, agents and employees, be perpetually enjoined and restrained from:

- (a) continuing to carry out, directly or indirectly, the combination and conspiracy hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program or device having a similar purpose or effect;
- (b) directing, suggesting, promoting, counselling or advising any dealer in respirators as to the prices at which, the territories within which, or the classes of customers to which such dealer shall sell respirators;
- (c) refusing to sell respirators to any otherwise qualified person, firm or corporation on the ground that such person, firm or corporation has not agreed or will not agree as to the prices at which, the territories



within which, or the classes of customers to which it will sell respirators; and  
(d) entering into, or adhering to, any agreements, arrangements or understandings with any other persons, firms or corporations to eliminate or suppress competition in the sale of respirators.

3. That the plaintiff have such other, further and different relief as the Court may deem just and proper in the premises.

4. That the plaintiff recover the costs of this suit.



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