

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 6935
TELESCOPE CARTS, INC., ET AL.,)	
)	Filed September 24, 1953
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on May 21, 1951, and the defendants having appeared and filed their answers to said complaint denying the substantive allegations thereof; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue,

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Telescope cart" means a cart and basket, and parts thereof, in combination, consisting of a wheeled carriage which will telescope one within the other, and a basket or baskets which telescope in a horizontal sliding direction when the baskets are in their normal position without the removal of the basket or baskets from the carriage. The basket is provided with a hinged rear gate to permit a like basket to telescope therethrough.

(B) "Person" means an individual, partnership, firm, association, corporation or other legal entity.

(C) "Patents" means United States Letters Patent and applications therefor, all re-issues, continuations, divisions, or extensions thereof, and patents issued upon said applications, relating to telescope carts.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its successors, subsidiaries, assigns, officers, directors, agents, employees, and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Each defendant is ordered and directed, in so far as it has or may acquire the power or authority to do so to grant to any applicant making written request therefor a license or sublicense to manufacture, use and sell telescope carts under United States Letters Patent No. 2,479,530 and any patent which may issue to or be acquired by any such defendant on telescope carts upon the Goldman patent applications Nos. 25262 and 71703 assigned to Orla E. Watson, or under any continuation, reissue or extension thereof or any other patent covering telescope carts issued to or acquired by any such defendant within five years from date hereof, such license or sublicense to be for the full unexpired term of the patent or patents. Said licenses or sublicenses shall contain no restriction whatsoever except that:

- (1) The license or sublicense may be transferable or nontransferable.
- (2) A uniform, nondiscriminatory, reasonable royalty may be charged;
- (3) Reasonable provisions may be made for the periodic reporting and payment of any royalties due from the licensee or sublicensee and for periodic inspection of the books and records of the licensee or sublicensee by an independent auditor or any person acceptable to the licensee or sublicensee who shall report to the licensor only the amount of the royalty due and payable;
- (4) Reasonable provision may be made for cancellation of the license or sublicense upon failure of the licensee or sublicensee to pay the royalties found to be due and payable or to permit the inspection of his books and records as hereinabove provided;
- (5) The license must provide that the licensee or sublicensee may cancel the license or sublicense at any time by giving thirty days' notice in writing to the licensor;
- (6) The license must provide that the licensee or sublicensee shall immediately have the benefit of any more favorable terms contained in any license or sublicense which is in existence at the time of the license or which is granted thereafter to any other licensee or sublicensee.
- (7) The license or sublicense may provide that the licensee or sublicensee shall affix to any product manufactured or sold under such license or sublicense

the number or numbers of the patent or patents under which the product is so manufactured or sold.

(B) Upon receiving any application for a license or sublicense in accordance with the provisions of this Section IV, the defendant shall advise the applicant of the royalty it deems reasonable for the patent or patents to which the application pertains. If the parties are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date application for the license was received by the defendant, the applicant therefor may apply forthwith to this Court for the determination of a reasonable royalty, and the said defendant shall, upon receipt of notice of filing such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon the defendant or its assignee, vendee, or transferee, to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to the holders of all other licenses or sublicenses issued under the same patent or patents. Pending the completion of negotiations or of any such Court proceeding, the applicant shall have the right to make, use, and vend under the patent or patents to which its application pertains, without payment of royalty or other compensation, but subject to the following provisions: The defendant may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, the defendant shall then grant, and the applicant shall accept, a license or sublicense as the case may be, providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant. If the applicant fails to accept such license or sublicense or fails to pay the interim royalty therein

provided, such action shall be ground for the dismissal of his application. Where an interim license or sublicense has been issued pursuant to these provisions, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and all other licensees or sublicensees under the same patent or patents to the date the applicant filed his application with the Court for the fixing of a reasonable royalty.

V

The defendants are jointly and severally enjoined and restrained from making any disposition of any of the patents or patent applications covered by Section IV of this Final Judgment or any rights with respect thereto, which deprives such defendant of the power or authority to grant licenses or sublicenses as hereinbefore provided for in Section IV, unless it requires as a condition of such disposition, that the purchaser, transferee, assignee, or licensee, as the case may be, shall observe the requirements of Sections IV and V hereof, as applicable, and such purchaser, transferee, assignee, or licensee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by said provisions of this Final Judgment.

VI

Defendants Telescope Carts, Inc. and Orla E. Watson are jointly and severally enjoined and restrained from maintaining, adhering to or enforcing any contract, agreement or patent license existing on the date of this Final Judgment between such defendants, or either of them, and John Chatillon & Sons which grants or purports to grant to said John Chatillon & Sons any rights under any of the patents or patent applications to which Section IV of this Final Judgment may apply.

VII

That certain written contract dated June 2, 1949, entered into by and between Orla E. Watson, as inventor, Telescope Carts, Inc., as licensee, and Folding Carrier Corp., as sublicensee, to the extent, if any, that the same may still be in force and effect, is hereby declared to be cancelled, null and void, and the defendants are jointly and severally enjoined and restrained from renewing, adhering to, maintaining or continuing, or claiming any rights under, any of the provisions thereof.

VIII

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program to allocate or divide territories or markets for the manufacture, distribution or sale of telescope carts.

IX

The defendants Orla E. Watson and Telescope Carts, Inc., are ordered and directed within sixty days after the entry of this Final Judgment to send a copy of this Final Judgment to each present licensee or sublicensee under any patent or patents to which Section IV of this Final Judgment may apply and to each applicant who has heretofore applied for and has not received a license to manufacture, use and sell telescope carts under any such patent or patents. In the case of applicants who may apply for a license or sublicense to make, use and sell telescope carts pursuant to Section IV of this Final Judgment, a copy of this Final Judgment shall be sent promptly to each such applicant immediately after receipt of any such application.

X

For the purpose of securing compliance with this Final Judgment, 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 any defendant, made to its principal office, be permitted (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and (3) upon such request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

Jurisdiction is retained 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 thereof, and for the purpose of enforcement of compliance therewith and the punishment of violations thereof.

XII

The provisions of this Final Judgment shall take effect thirty (30) days after the date of its entry.

September 24, 1953
Date

/s/ Albert L. Reeves
United States District Judge