

ORDERED, ADJUDGED AND DECREED as follows:

I

That this Court has jurisdiction of the subject matter herein and of all of the parties hereto; that the complaint states a cause of action against each of the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and the acts amendatory thereof and supplemental thereto.

II

DEFINITIONS

When used in this decree, the following terms have the meanings assigned respectively to them below:

Corporations and Associations

"Sperry Corporation" means The Sperry Corporation, a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business in the Borough of Manhattan, City of New York, within the Southern District of New York.

"Sperry, Inc." means Sperry Gyroscope Company, Inc., a corporation organized and existing under the laws of the State of New York, and having its principal place of business in the Borough of Brooklyn, City of New York.

"Sperry, Ltd." means the Sperry Gyroscope Company, Limited, a corporation or association organized and existing under the laws of the United Kingdom of Great Britain, and having its principal place of business in the City of London, County of Middlesex, England.

"Askania" means Askania-Werke-Aktiengesellschaft, a corporation or association organized and existing under the laws of Germany, having its principal place of business in Berlin-Friedenau, Germany.

"Mitsui" means Mitsui Bussan Kaisha, Ltd., a corporation or association organized and existing under the laws of the Empire of Japan, having its principal place of business in Tokio, Japan.

U.S. vs. THE SPERRY CORP., ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

Civil Action No. 19-175.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

THE SPERRY CORPORATION, SPERRY GYROSCOPE COMPANY,
INC., THE SPERRY GYROSCOPE COMPANY, LIMITED,
THOMAS A. MORGAN, REGINALD E. GILLMOR, HERBERT
H. THOMPSON, ROBERT B. LEA, S. W. BEDELL, AND
PRESTON R. BASSETT, DEFENDANTS.

FINAL JUDGMENT.

The complainant, United States of America, having filed its complaint herein on September 1, 1942; all the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their attorneys herein having severally consented to the entry of this final judgment herein 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 any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

"Tokio" means Tokio Keiki Seisakusho, Ltd., a corporation or association organized and existing under the laws of the Empire of Japan, and having its principal place of business in Tokio, Japan.

"Tokio Kohku" means Tokio Kohku Keiki Kabushiki Kaisha, a corporation or association organized and existing under the laws of the Empire of Japan, and having its principal place of business in Tokio, Japan.

"La Filotecnica" means La Filotecnica, Societa Anonima, Ing. A. Salmoiraghi, a corporation or association organized and existing under the laws of the Kingdom of Italy, and having its principal place of business in Milan, Italy.

"L'Appareillage" means Societe L'Appareillage Aero-nautique, a corporation or association organized and existing under the laws of the Republic of France, and having its principal place of business in Paris, France.

Contracts

(Wherever an agreement is defined below, the definition shall be taken to include all amendments, renewals or extensions of the particular agreement defined.)

"Tokio Agreement of 1931" means the agreement between Sperry, Inc., Tokio and Mitsui.

"Tokio Agreement of January 1934" means the agreement dated January 6, 1934, between Sperry, Inc., Tokio and Mitsui.

"Tokio Agreement of February 1934" means the agreement dated February 3, 1934, between Sperry, Inc., Tokio and Mitsui.

"Tokio Kohku Agreements" means the three agreements dated August 25, 1937, each of which had the effect of revising one of the three above-mentioned Agreements, and of approving and ratifying the transfer of the rights and obligations of said agreement from Tokio to Tokio Kohku.

"Askania Agreement" means the agreement dated July 24, 1939, between Sperry, Inc. and Askania.

"La Filotecnica Agreement of 1934" means the agreement dated March 21, 1934, between Sperry, Inc. and La Filotecnica.

"La Filotecnica Agreement of 1937" means the agreement dated June 22, 1937, between Sperry, Inc. and La Filotecnica.

"La Filotecnica Agreement of 1938" means the agreement dated July 11, 1938, between Sperry, Inc. and La Filotecnica.

"L'Appareillage Agreement" means the agreement dated October 3, 1934, between Sperry, Limited and L'Appareillage.

Products

"Gyroscopic instruments" means and includes (1) instruments which indicate the bank or tilt angle of an airplane away from horizontal about its own longitudinal axis and which also indicate the climb or glide angle away from horizontal of the airplane about its own latitudinal axis known as artificial horizons and sometimes called "flight indicators", "gyro horizons" or "bank and climb gyros"; (2) instruments which act as indicators of direction for steering straight courses and for making course changes, and which indicate the amount of turn or angular deviation from course in azimuth, known as directional gyroscopes; (3) instruments which combine the artificial horizon and directional gyroscope with automatic control of the flight and altitude of the airplane, known as automatic pilots and sometimes called "gyro pilots" or "auto pilots."

III

The Tokio Agreement of 1931, the Tokio Agreement of January 1934, the Tokio Agreement of February 1934, the Tokio Kohku Agreements, the Askania Agreement, the La Filotecnica Agreement of 1934, the La Filotecnica Agreement of 1937, the La Filotecnica Agreement of 1938, and the L'Appareillage Agreement, and all other contracts, agreements, understandings, arrangements, plans, or programs of every nature whatsoever relating

to gyroscopic instruments between Sperry Corporation, Sperry, Inc., Sperry, Ltd., and Askania, Mitsui, Tokio, Tokio Kohku, La Filotecnica, and L'Appareillage, or any of them, or any of their subsidiaries, are hereby adjudged to be unlawful under the antitrust laws of the United States; and the defendants, their directors, officers, agents, employees, successors, and subsidiaries, and all persons acting under, through, or for any of them, are hereby individually enjoined and restrained from the further performance of any of their provisions; *provided, however*, that this declaration of invalidity and this injunction against further performance of said agreements shall not affect rights to manufacture, use, sell or to receive or pay royalties under existing patents and patent applications; *provided, further*, that Sperry, Inc. is hereby enjoined from claiming that its rights to manufacture, use, or sell under Askania patents and patent applications are other than nonexclusive rights.

IV

1. Each of the corporate defendants and their directors, officers, agents, employees, successors, subsidiaries and the individual defendants and all persons acting under, through, or for them or any of them, be and they hereby are enjoined and restrained from entering into, abiding by, carrying out, or enforcing, directly or indirectly with Askania or any of its successors, subsidiaries, or affiliates (a) any general plan or program to effect the transfer as between the parties of any rights under patents or future patents, United States or foreign, or of necessary operative techniques, manufacturing rights or other rights or information except with the prior approval of the court, and (b) any individual contract or agreement not forming a part of a general plan or program, to effect the transfer as between the parties of any rights under patents or future patents, United States or foreign, or necessary operative techniques, manufacturing rights, designs, or other rights or information without notifying the Attorney General or the Assistant Attorney General in charge of the Anti-

trust Division of the existence of such individual contract or agreement and filing a copy thereof with the Attorney General or the Assistant Attorney General in charge of the Antitrust Division within 30 days after execution of such individual contract or agreement.

2. The failure of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division to take any action following receipt of any information pursuant to this Section IV shall not be construed as an approval of the matter and things so filed or informed and shall not operate as a bar to any action or proceeding, civil or criminal, which may later be brought, or be pending, pursuant to any law of the United States based on matters or things so filed or informed.

V

For the purpose of securing compliance with this decree, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the defendants, be permitted (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matters contained in this decree; (2) without restraint or interference from the defendants, and subject to any legally recognized privilege, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters; and (3) the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; *provided, however*, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice

except in the course of securing compliance with this decree or as otherwise required by law.

VI

Nothing in this decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers, or employees in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as Exhibit "A"),¹ or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National War Agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto, or in compliance with Section 12 of the Act of June 11, 1942 (Public Law 603, 77th Congress).

VII

This decree shall have no effect with respect to operations or activities authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or by acts amendatory thereto.

VIII

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

Dated September 1, 1942.

Approved

SAMUEL MANDELBAUM
United States District Judge

EXHIBIT "A"

APRIL 29, 1941

JOHN LORD O'BRIAN, ESQUIRE,

*General Counsel, Office of Production Management,
Washington, D. C.*

DEAR JOHN: The marshaling of the nation's industrial assets for a maximum productive effort in the national defense will doubtless require the allocation of orders, the curtailment of some kinds of production so as to increase production in defense fields, and the establishment of priorities and price ceilings. Furthermore, many of these steps must necessarily affect the production of goods used to satisfy our normal needs, as well as the production of materials and implements used directly in our defense effort.

Some of these acts if accomplished by private contract or arrangement within an industry and carried on for private advantage would probably constitute violations of the anti-trust laws. On the other hand, it is obvious that in the present emergency acts performed by industry under the direction of public authority, and designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws. In these circumstances, the Department of Justice recognizes that business interests which are asked to comply with public plans for increasing production and preventing inflation are entitled to the cooperation of agencies of the Government in eliminating any uncertainties which may exist as to the application of the antitrust laws to their activities.

Accordingly, this Department has formulated a policy which it proposes to follow in its relations with the Office of Production Management and the Office of Price Administration and Civilian Supply and with all industries or contractors acting in compliance with the orders or request of either of these organizations. The important points of this policy are:

Meetings of the industry with the Office of Production Management and the Office of Price Administration and Civilian Supply or their representatives are not illegal. In-

dustrial committees may be formed at the request of the Office of Production Management or the Office of Price Administration and Civilian Supply, to work with representatives of such offices on problems involving defense. There will be nothing unlawful in the industry cooperating in the selection of its representatives or in selecting members for committees, or in the activities of such committees provided they are kept within the scope of this letter.

Questions as to whether there is need for such a committee, and if so, how it shall be chosen, and by whom constituted, shall be the sole responsibility of the Office of Production Management or the Office of Price Administration and Civilian Supply. This Department will not participate in these decisions beyond the suggestion now made that any such committee should be generally representative of the entire industry and satisfactory to the Office of Production Management or the Office of Price Administration and Civilian Supply.

Each industry committee shall confine itself to collecting and analyzing information and making recommendations to the Office of Production Management or the Office of Price Administration and Civilian Supply, and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce any one to comply with any request or order made by a public authority.

All requests for action on the part of any unit of an industry shall be made to such unit by the Office of Production Management or the Office of Price Administration and Civilian Supply and not by the industry committee. That is to say, the function of determining what steps should be taken in the public interest should in each case be exercised by the public authority which may seek the individual or collective advice of the industry. But the determination shall not be made by the industry itself or by its representatives.

Requests for action within a given field, such as the field of allocation of orders, shall be made only after the general character of the action has been cleared with the Department of Justice. If the general plan is approved, thereafter each request for specific action in carrying out such plan shall be

made in writing and shall be approved by the Office of the General Counsel of the Office of Production Management or the office of the General Counsel of the Office of Price Administration and Civilian Supply, but need not be submitted to the Department of Justice. In the case of any change in the personnel of such offices or if serious practical difficulties arise, this latter arrangement may be revoked upon notice from me.

Acts done in compliance with the specific requests made by the Office of Production Management or the Office of Price Administration and Civilian Supply and approved by their General Counsel in accordance with the procedure described in this letter will not be viewed by the Department of Justice as constituting a violation of the antitrust laws and no prosecutions will be instituted for acts performed in good faith and within the fair intendment of instructions given by the Office of Production Management or the Office of Price Administration and Civilian Supply pursuant to this procedure.

In the case of all plans or procedure, however, the Department reserves complete freedom to institute civil actions to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.

With kind personal regards,

Sincerely,

(S) ROBERT H. JACKSON,

Attorney General.