

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
Plaintiff,
v. Civil No.
MANUFACTURERS AIRCRAFT ASSOCIATION, 72 Civ. 1307:MEL
INC., et al.,
Defendants. Entered: 11/12/75
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FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on March 29, 1972, and plaintiff and defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or an admission by any of them in respect to any such issue.

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

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. Section 1 et seq.), commonly known as the Sherman Antitrust Act, as amended. Entry of this Judgment is in the public interest.

II.

As used in this Final Judgment:

A. "Amended Cross-License Agreement" shall mean the agreement among Manufacturers Aircraft Association, Inc., and its stockholders entitled The Amended Cross-License Agreement of December 31, 1928, as amended and supplemented, attached as Appendix I hereto, as interpreted and applied by Bulletins attached as Appendix II hereto.

B. "Airplane" shall mean any form of heavier-than-air craft using wing surfaces for sustaining it, including rotary wing aircraft, but not including any air cushion vehicle ground effect machine, hovercraft or like vehicle, incapable of flight without the support of an air or gas cushion.

C. "Airplane patent" shall mean existing or future United States patents covering inventions for or capable of use in or in connection with an airplane, but shall not include patents covering shop tools; manufacturing processes; auxiliary launching devices; engines and such engine accessories as propellers, propeller hubs, superchargers, starters, magnetos, mufflers, carburetors and reduction gears; materials per se; armament devices, ordnance or ordnance accessories unless the patent claims include the airplane or some structural feature or part thereof; electronic systems, components and elements thereof not used after installation in an airplane for the operation or control of the airplane; sound suppressors; or electric cells that convert the chemical energy of a fuel directly into electrical energy in a continuous process.

D. "Licensed airplane patent" shall mean existing airplane patents which a defendant has licensed under the pro-

visions of the Amended Cross-License Agreement but shall not include any patent which has a claim or claims readable on any part, article of manufacture, or device of a type which is generally sold to manufacturers of airplanes, rather than manufactured by them in the course of their airplane manufacturing operations for incorporation in airplanes of their manufacture, such as, and including but not limited to, parts, articles of manufacture or devices of the kind listed in Exhibit (A) hereto, unless one hundred (100) or more days after the effective date of this Final Judgment said patent is licensed (by agreement as opposed to by implication arising from the sale of a part, article of manufacture or device) to more than one defendant for use in the manufacture of airplanes. Exhibit (B) hereto is represented by each defendant to contain a complete listing, as of the effective date of this Final Judgment, of its licensed airplane patents issued prior to April 30, 1974.

E. "Industrywide agreement" shall mean any agreement or understanding, or group or series of agreements or understandings, providing for cross-licensing of, or mutual covenants not to sue or seek particular forms of relief under, existing and/or future airplane patents which involves (a) all or substantially all the domestic companies engaged in the manufacture of the types of airplanes to which the patents covered thereby relate, and (b) all or substantially all the existing and/or future airplane patents of primary significance in the manufacture of such types of airplanes.

F. "Person" shall mean an individual, partnership, corporation or any other entity.

III.

Except as may be provided by supplementary orders entered hereafter, the provisions of this Final Judgment applicable to any defendant shall be binding on each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to any transaction between a parent corporation and its subsidiaries, officers, directors, agents, servants or employees, or between any of them. Nothing in this Final Judgment shall apply to any activities of defendants outside the United States which do not substantially affect the interstate or foreign commerce of the United States.

IV.

Defendants are ordered and directed to terminate and cancel the Amended Cross-License Agreement, and each license issued pursuant thereto, within ninety (90) days of the effective date of this Final Judgment, provided, that said termination and cancellation shall not affect any royalty or other obligation accrued prior to the date of cancellation and termination, or the completion of any arbitration proceedings already instituted pursuant to the provisions of the said Agreement, or any obligations under Article VII of the Amended Cross-License Agreement until the termination of the existence of the defendant Manufacturers Aircraft Association, Inc.

Such arbitration proceedings may be conducted by or under the auspices of defendant Manufacturers Aircraft Association only for a period of one (1) year from the effective date of this Final Judgment.

V.

Defendants are ordered and directed, within ninety (90) days of the effective date of this Final Judgment, or within sixty (60) days of the completion of the conducting by defendant Manufacturers Aircraft Association of the arbitration proceedings contemplated by Article IV of this Final Judgment, whichever is later, to take appropriate steps to wind up the affairs, and to terminate the existence, of the defendant Manufacturers Aircraft Association, Inc.; provided, however, that nothing contained in this Article V shall prohibit the defendants, or any of them, from creating or joining any lawful association.

VI.

Each defendant is ordered and directed to grant to each person, including any other defendant, making written application therefor a nonexclusive, non-discriminatory license under any licensed airplane patent which such defendant has the power to license. Such license may include provisions for reasonable and non-discriminatory royalties and shall authorize the licensee to practice the inventions of the licensed patent for the making, using and selling of airplanes and components, parts or accessories therefor. With respect to any airplane patent licensed pursuant to the Amended Cross-License Agreement on the effective date of

this Final Judgment any license issued hereunder shall include royalties no less favorable to the licensee than those existing on the effective date of this Final Judgment pursuant to the Amended Cross-License Agreement, or thereafter established by arbitration pursuant to Article IV of this Final Judgment, provided that the licensor shall be entitled to charge reasonable royalties with respect to any airplane patent for which royalties have not been established as of the effective date of this Final Judgment, or thereafter by arbitration proceedings instituted prior to the effective date of this Final Judgment, but as to which the licensor has not irrevocably waived the right to receive royalties during the life of the patent. If the Court finds on application of a defendant that it would be equitable or in the public interest to permit imposition of such condition, that defendant shall have the right to require any person applying for a license pursuant to this Article VI, as a condition of receiving such a license, to grant to the defendant a non-exclusive, non-discriminatory license, on the terms specified for the grant of licenses in this Article VI, under any patent which such person has the right to license which would be a licensed airplane patent had such person on the effective date of this Final Judgment been a signatory to the Amended Cross-License Agreement. Any dispute as to royalties shall be resolved in accordance with the procedures set forth in Article VIII. Any person who is not a citizen of the United

States, or who is controlled directly or indirectly or beneficially owned to the extent of more than fifty percent (50%) by a person or persons who are not citizens of the United States, shall not be entitled to a license to practice the inventions of the patent with respect to products manufactured outside the United States. This Article VI shall not apply to any patent as to which the defendant acquires the right to grant licenses after the effective date of this Final Judgment.

. VII.

Each defendant is ordered and directed to furnish to each person, other than another defendant, licensed pursuant to this Final Judgment under a licensed airplane patent existing on the effective date of this Final Judgment, if the licensee has made a written application therefor within five (5) years of the effective date of this Final Judgment, such technical information which such defendant has the right to furnish (existing in written form and in the possession, custody or control of such defendant on the date of entry of this Judgment) as persons reasonably skilled in the art may need to practice the inventions claimed in the licensed patent by any mode used by the defendant in practicing such invention. The defendant shall only be required to furnish the information for use by the applicant in practicing the inventions claimed in the licensed patent to which the information pertains, during the term of the right to make under the license, in making airplanes, and components, parts and accessories therefor, and may require the payment

of reasonable and non-discriminatory royalties and/or other compensation. The defendant shall have no obligation under this Article VII to furnish technical information to any person unless and until such person shall have finally accepted a license under the patent to which the technical information pertains, and shall have agreed to pay reasonable royalties and/or other compensation for the right to receive and use said technical information. In furnishing any such technical information, the defendant shall have the right to require the person receiving the information to execute an appropriate agreement forbidding its unauthorized use or its disclosure to third parties, and shall have the right to apply restrictive legends to such information indicating its proprietary nature and to require the return of all copies of such information upon the termination of the right to use it. Nothing in this Article VII shall be deemed to require a defendant to make available or license technical information to any person unless such person intends to use such technical information in practicing the patent to which the technical information relates, or to prevent a defendant from requiring a licensee to agree not to use such technical information other than in practicing the inventions claimed in the licensed patent to which the technical information pertains, in making, using and selling airplanes and components, parts and accessories therefor, provided, however, that nothing in this Final Judgment shall immunize any agreement or understanding reflecting such requirement from the application of the antitrust laws. The defendant shall have no right to collect royalties on or restrict the licensee's use of the technical information if it lawfully falls within the public domain. The defendant

shall not be required to furnish technical information to a licensee if the Court finds on application of the defendant that to require the furnishing of technical information to that licensee would be inequitable or contrary to the public interest.

VIII.

Upon receipt of a written application for a patent license under Article VI of this Final Judgment, or for technical information under Article VII of this Final Judgment, the defendant to whom the application is made shall advise the applicant in writing within sixty (60) days of the royalties and/or other compensation which such defendant deems reasonable for use of the patent or technical information. If the applicant rejects the royalties and/or other compensation proposed by such defendant, and such defendant and applicant are unable to agree upon reasonable royalties and/or other compensation, or upon a method for determining the same, including arbitration, within sixty (60) days from the date such rejection is received in writing by such defendant, the applicant or defendant may, upon notice to the plaintiff and the other party to the dispute, apply to this Court for the determination of (a) reasonable royalties and/or other compensation, and (b) in the case of a patent, such reasonable interim royalties (pending the final disposition of the proceeding) as the Court may deem appropriate. In any such proceeding, the defendant shall have the burden of proof to establish the reasonableness of the royalties and/or other compensation requested by it. Pending the completion of negotiations or the final disposition of any such proceeding,

the applicant shall have the provisional right to practice the inventions of the patent to which his application pertains in making, using and selling airplanes, and components, parts or accessories therefor, subject to the payment of reasonable interim royalties. A final determination by the Court of the amount of reasonable royalties for the use of a patent shall be applicable from the date the applicant applied for a patent license. Unless otherwise ordered by the Court in a proceeding instituted under this Article, any final determination by the Court pursuant to this Article VIII shall thereafter be applicable to any other person having or thereafter obtaining the same rights under the same patent or technical information. If the applicant fails finally to accept a patent license after final determination by the Court of the amount of reasonable royalties with respect thereto in a proceeding under this Article VIII, such applicant shall pay any royalties found by the Court to be due to defendant with respect to the patent and such costs as the Court may determine to be just and reasonable. If the applicant fails to accept technical information after final determination by the Court of the amount of reasonable royalties and/or other compensation with respect thereto in a proceeding under this Article VIII, such applicant shall pay such costs as the Court may determine to be just and reasonable.

IX.

Each defendant is enjoined from entering into, adhering to, maintaining or claiming any rights under any provision

of any industrywide agreement, provided, that this Article shall not apply to any group or series of agreements or understandings where no more than two defendants are parties to any one of such agreements or understandings and which (a) pertains to inventions already made at the time of the agreements or understandings or (b) gives each party the unrestricted right to withdraw at any time, without penalty or forfeiture of accrued rights, from each agreement or understanding as to all patents for which application has not been made as of the date of the withdrawal.

X.

Each defendant is enjoined from entering into, adhering to, maintaining or claiming any rights under any agreement or understanding with any licensee under any airplane patent insofar as said agreement or understanding prevents both the defendant and its licensee from issuing additional licenses under said patent without the consent of the other.

XI.

Each defendant is enjoined and restrained from employing joint assessment with any competitor of the value of airplane patents offered by any third person, or of the value of airplane patents offered by the defendant or such competitor to any third person.

XII.

Nothing in this Final Judgment shall prohibit any defendant from entering into, renewing or performing under any agreement to which the Attorney General or the Assistant Attorney General in charge of the Antitrust Division consents in writing.

XIII.

The fact that an agreement or activity is not enjoined by this Judgment shall not bar, by reason of estoppel, acquiescence, implied consent, or otherwise a challenge to it under the antitrust laws.

XIV.

For the purpose of determining or 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, subject to any legally recognized privilege, 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 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. Said defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by the means provided in this Section 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 the plaintiff, 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.

XV

Jurisdiction of this cause 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 in relating to the construction of or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

November 12, 1975
Dated:

/s/ MORRIS E. LASKER
United States District Judge