

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No. 14,126
v.	)	
	)	Equitable Relief Sought
UNITED AIRCRAFT CORPORATION,	)	
	)	Filed: May 24, 1971
Defendant.	)	

COMPLAINT

The United States of America, plaintiff, by its attorneys, brings this civil action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted against defendant 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 violation by the defendant as hereinafter alleged, of Section 2 of the Sherman Act (15 U.S.C. §2).

2. Defendant United Aircraft Corporation has its principal office, transacts business and is found within the District of Connecticut.

II

DEFENDANT

3. United Aircraft Corporation, hereinafter referred to as United, is made a defendant herein. United was organized under the laws of the State of Delaware in 1934.

4. In 1969, United had sales in excess of \$2.3 billion. United's principal business is the production of aircraft engines by its Pratt & Whitney Division (hereinafter Pratt & Whitney). Pratt & Whitney accounts for approximately 75% of United's total sales and is the largest producer of large jet aircraft engines in the free world. In addition, since 1959, United has been engaged in a program for the development of fuel cells.

### III

#### TRADE AND COMMERCE

5. As used herein, a fuel cell is a device for the production of electricity through a chemical reaction of fuels supplied from outside the cell. A fuel cell differs from a battery in that a fuel cell will supply electricity so long as fuels are supplied to the cell.

6. Fuel cells are more efficient methods for producing electricity than conventional methods. Fuel cells also produce insubstantial noxious by-products.

7. While there is presently no substantial commercial market for fuel cells, in the middle of 1961 there were many companies performing significant research for the development of various types of fuel cells.

8. Fuel cells have formed an essential part of each Gemini and Apollo space mission since 1961.

9. Since 1959, United has been and United now is engaged in the research and development of fuel cells for a commercial market. With the exception of research directed toward fuel cells for the large scale commercial production of electricity through a central power plant,

only one other company is presently making a substantial effort toward developing fuel cells for a commercial market.

10. As measured by total dollar value, since 1962 a substantial number of fuel cells have been manufactured by United in plants in the State of Connecticut, and sold and shipped to locations both in other states and outside the United States.

#### IV

##### BACKGROUND OF OFFENSE ALLEGED

11. In the middle of 1961, both United and TRW, Inc. (hereinafter TRW) were among the four companies regarded by the National Aeronautics and Space Administration (hereinafter NASA) as qualified, which made proposals to supply fuel cells for use in the Apollo space program.

12. In or about 1959 United had acquired exclusive North American patent rights for the Bacon Fuel Cell. By the middle of 1961, after the bidding on the Apollo project had begun, NASA had indicated a preference for the Bacon-type cell for use in the Apollo program.

13. On or before September 13, 1961 United learned that TRW was bidding a Bacon-type fuel cell which would be competitive with United's cell and would be acceptable to NASA for the Apollo project.

14. None of the other competitors for the Apollo fuel cell contract were bidding Bacon-type cells.

15. During the period of the bidding for the Apollo contract, purchases by United from TRW accounted for approximately 10% of TRW's gross sales.

16. From approximately September 26, 1961, through the termination of the contract negotiations on or about March 20,

1962, officials from both United and TRW in charge of the fuel cell efforts for their respective companies were in constant communication regarding their fuel cell competition.

17. As a result of the communications referred to in paragraph 16, TRW was concerned with retaining United as a customer and agreed to assist United in its efforts to obtain the Apollo fuel cell contract.

18. Subsequent to the understanding referred to in paragraph 17, TRW and United submitted "competing" fuel cell bids to North American Aviation, Inc. (the prime Apollo contractor).

19. United was the successful bidder for the aforesaid Apollo fuel cell contract, and signed the contract with North American Aviation, Inc., therefor, on March 20, 1962.

20. By July 16, 1962, United and TRW had reached an understanding that TRW was to refrain from fuel cell development activity which would be competitive with United, and TRW would perform fuel cell research and development for United. On December 31, 1962, a formal contract was executed embodying this understanding.

#### V

#### OFFENSE ALLEGED

21. Commencing in or about September 22, 1961 and continuously thereafter to the date of the filing of this complaint, the defendant has been engaged in an attempt to monopolize the aforesaid interstate trade and commerce in the research and development of fuel cells, in violation of Section 2 of the Sherman Act. The defendant will continue said attempt to monopolize unless the relief hereinafter prayed for is granted.

22. The offense alleged in paragraph 21 has consisted of a continuing program by the defendant to eliminate competition from TRW in the research and development of fuel cells. Pursuant to the aforesaid attempt to monopolize, the defendant has done the following things, among others:

- (a) Utilized its position as a major customer of TRW to suppress the competition of TRW as a potential supplier of fuel cells for NASA's Apollo spacecraft project;
- (b) Entered into an agreement with TRW, commencing on or about November 16, 1961 and continuing until on or about March 20, 1962, whereby TRW, then being in competition with the defendant for a contract to develop fuel cells for the Apollo spacecraft, undertook to assist the defendant in obtaining a contract from North American Aviation, Inc., for the production of fuel cells for the Apollo spacecraft;
- (c) Entered into an exclusive fuel-cell research and development agreement with TRW, commencing on or about July 16, 1962 and continuing until on or about January 1, 1969, the substantial terms of which were:
  - i. TRW would refrain from engaging in the research and development of fuel

- cells for any one but the defendant without first obtaining the defendant's approval (with insignificant exceptions);
- ii. TRW would disclose to the defendant all information regarding the research and development of fuel cells that it would obtain from engaging in such activities for any one else with the defendant's approval;
  - iii. TRW would grant to the defendant a royalty free license for all of TRW's fuel cell-related inventions existing prior to July 16, 1962;
  - iv. The defendant would become the exclusive owner of all TRW's inventions which would arise from work funded by United Aircraft.

## VI

### EFFECTS

23. The aforesaid offenses were intended by defendant to have and did have, among other things, the following effects:

- (a) Competition in the research and development of fuel cells has been substantially lessened;
- (b) United's opportunity to monopolize the potential commercial market for fuel cells has been enhanced;

- (c) The United States of America and the public have been deprived of the advantages of free and open competition in the development of fuel cells.

## VII

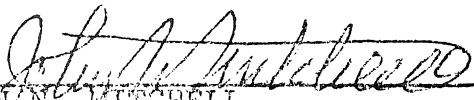
### PRAYER

WHEREFORE, the plaintiff prays:

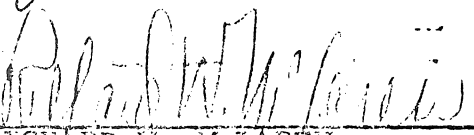
1. That the Court adjudge and decree that the defendant has been engaged in an attempt to monopolize interstate trade and commerce in the research, development, manufacture, and sale of fuel cells in violation of Section 2 of the Sherman Act.
2. That the defendant and all persons, firms, and corporations acting in its behalf or under its direction or control be permanently enjoined from engaging in, carrying out or renewing any fuel cell development contract with any other person, whereby any party to such contract is precluded by the terms of that contract from freely entering fuel cell development contracts with any other person.
3. That the defendant and all persons, firms, and corporations acting in its behalf or under its direction or control, be permanently enjoined from engaging in, carrying out, or renewing any agreement of acquisition, joint venture, or merger, through which United would be likely to obtain or strengthen a dominant position in the research, development, manufacture, or sale of fuel cells.
4. That defendant be required to dedicate to the public all existing fuel cell technology owned or controlled by it, including but not limited to, patents, inventions, trade secrets, manufacturing techniques, and theoretical research papers.

5. That the plaintiff have such other and further relief as the nature of the case may require, and the Court may deem proper in the premises.

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

  
JOHN N. MITCHELL  
Attorney General

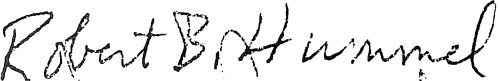
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