

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	CIVIL ACTION No. 13772
v.)	
)	Filed: October 22, 1962
BORG-WARNER CORPORATION, et al.,)	
)	
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America., having filed its Complaint herein on July 27, 1961, each of the defendants having appeared and having filed their answers denying the substantive allegations of said Complaint, and the plaintiff and each of the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or admission by any party with respect to 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 of the plaintiff and each defendant, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a cause of action against the defendants, and each of them, upon which relief may be granted, 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," commonly known as the Sherman Act as amended.

II

As used in this Final Judgment:

(A) The term "jet process" means any process for exploding in oil well shafts, a shaped charge, forming a high velocity, high temperature jet, which burns its way through metallic objects, cement, and earth and rock strata, for the purpose of perforating well casings or pipe, severing cable, rod, or tubular material, or any elongated foreign object in a well, or blasting a penetration into the earth strata in the uncased portion of a well;

(B) "Jet process patent" means any, some or all claims in any of the following United States Letters Patent which, in any manner, cover any jet process, or any device, product, machine, equipment or method used in any jet process:

(1) Letters Patent owned or controlled by any defendant, or under which any defendant has a right to grant licenses or sublicenses to others, on the date of the entry of this Final Judgment;

(2) Letters Patent which may be granted on applications for Letters Patent, which applications are on file in the United States Patent Office and owned or controlled by any defendant on the date of the entry of this Final Judgment;

(3) Letters Patent which may be granted on applications for Letters Patent, which applications are filed and owned or controlled by any defendant in the United States Patent Office within a period of five (5) years following the date of the entry of this Final Judgment;

(4) Letters Patent under which any defendant may acquire any right to grant licenses or sublicenses to others, within a period of twenty (20) years following the

date of the entry of this Final Judgment, and reissues and extensions thereof;

(5) Divisions, continuations, reissues or extensions of any of the Letters Patent described in clauses (1), (2) and (3) above;

(C) "Jet process product" means any shaped explosive unit, charge or any other device, product, machine or equipment used, or useful, in any jet process.

(D) "Person" means any individual, partnership, firm, corporation, association, trustee or any other business or legal entity; a defendant, its parent, and any wholly owned and controlled subsidiary or subsidiaries thereof shall be deemed to be one person.

III

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

IV

Each defendant is enjoined and restrained:

(A) For a period of ten (10) years following the date of the entry of this Final Judgment from acquiring from any other person, by purchase, assignment, transfer or otherwise, any jet process patent, or any exclusive right, license or immunity under any such patent or patents, other than patents covering the inventions of bona fide full-time employees or patents covering inventions developed in the course of research conducted by professional research consultants engaged for such purpose and compensated by such defendant.

(B) After a period of ten (10) years following the date of the entry of this Final Judgment, and for an additional period of ten (10) years thereafter, from acquiring from any other person, by purchase, assignment, transfer or otherwise, any jet process patent, or any exclusive right, license or immunity under any such patent or patents, other than patents covering the inventions of bona fide full-time employees or patents covering inventions developed in the course of research conducted by professional research consultants engaged for such purpose and compensated by such defendant, unless, in advance of any such acquisition, defendant files with this Court and with the plaintiff an undertaking, in writing, to grant licenses, or sublicenses (as the case may be) under any such patent or patents to any applicant in accordance with the provisions of Section VI of this Final Judgment.

V

(A) Defendants, and each of them, are ordered and directed forthwith, and in any event no later than ninety (90) days after the date of the entry of this Final Judgment, to cancel each provision of every patent license or other contract or agreement to which it is a party whereby any defendant, or other person, is granted, as to any jet process or jet process product, an exclusive license, or exclusive right to sublicense others, under any jet process patent or patents.

(B) In lieu of the exclusive licenses and patent rights ordered to be cancelled by the preceding paragraph (A) of this Section V, defendants may substitute nonexclusive licenses and nonexclusive rights to sublicense others.

(C) In reforming each of the patent licenses, contracts or agreements in accordance with paragraphs (A) and (B) of this Section V, each defendant is ordered and directed to reserve unto itself a nonexclusive right to grant licenses under its own jet process patents

in accordance with this Final Judgment; provided that this paragraph (C) shall not be construed to prevent any defendant from, subject to Sections IV and VI(C)(2) of this Final Judgment, assigning or transferring any jet process patent.

(D) The provisions of this Section V shall not apply to United States Patent No. 2,494,256 issued January 10, 1950 to Gulf Oil Corporation.

VI

(A) Defendants Borg-Warner, Halliburton and McCullough are each ordered and directed:

(1) Insofar as any of them now has, or may hereafter acquire, the power or authority to do so, to grant to any applicant making written request therefor, a nonexclusive and unrestricted license, or sublicense (as the case may be) for the life of the patent or patents, to use any jet process and/or to make, use and vend any jet process product, under any, some or all (as the applicant may choose) of its jet process patents, without any limitation or condition whatsoever except that:

(a) a reasonable royalty may be charged and collected for the use of such jet process patent or patents, such reasonable royalty to be determined by a formula or calculation (i) based solely upon the use made by the licensee of each such patent or patents, and (ii) applied uniformly and without any discrimination as between licensees licensed under the same patent or patents;

(b) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor or other person acceptable to both the licensee and licensor, who shall report to the

licensor only the amount of the royalty due and payable and no other information;

(c) the license may be nontransferable;

(d) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as provided in this Section VI; and

(e) the license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving thirty (30) days' notice in writing to the licensor.

(2) Upon receipt of any written application for a license under any jet process patent, to advise the applicant within thirty (30) days of the royalty it deems reasonable for the patent or patents to which the application pertains. If such defendant and the applicant are unable to agree upon what constitutes a reasonable royalty, such defendant may apply to the Court for a determination of a reasonable royalty, giving notice thereof to the applicant and the plaintiff, and such defendant shall make such application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon such defendant to establish the reasonableness of any royalty requested. Pending the completion of any such court proceeding, the applicant shall have the right to use any jet process, and/or to make, use and sell any jet process product under the patent or patents to which its application pertain, without the payment of any royalty or other compensation, but subject to the following provisions: defendant may, with notice to the applicant and the plaintiff, apply to the Court to fix an interim royalty rate pending final determination of what

constitutes a reasonable royalty. If the Court fixes such interim royalty rate, a license shall then issue providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant; and whether or not such interim rate is fixed, any final order may provide for such adjustments, including retroactive royalties, as the Court may order after final determination of a reasonable and nondiscriminatory royalty, and such royalty rate shall apply to the applicant and to all other licensees under the same patent or patents. Nothing in this Final Judgment constitutes a determination or admission with respect to the reasonableness of any royalty rates set forth in any existing jet process license.

(B) Nothing herein shall prevent any applicant from attacking at any time the validity or scope of any of the jet process patents nor shall this Final Judgment be construed as imputing any validity or invalidity to any of said patents.

(C) Each defendant is enjoined and restrained from:

(1) Instituting or threatening to institute, after the date of the entry of this Final Judgment, any action, suit or proceeding for acts of infringement involving any jet process or jet process product occurring prior to the date of the entry of this Final Judgment under any jet process patents; provided, however, that this clause (1) shall not be deemed to affect, in any manner, any action, suit or proceeding pending on the date of the entry of this Final Judgment.

(2) Making any disposition of any jet process patents which deprives it of the power or authority to issue the licenses required by this Final Judgment unless such defendant requires as a condition of the sale, assignment

or grant that the purchaser, assignee or grantee shall observe the provisions of this Section VI of this Final Judgment with respect to the patents so acquired and that such purchaser, assignee or grantee shall file with this Court, prior to the consummation of such transaction, a written undertaking to be bound by the provisions of this Section VI of this Final Judgment with respect to the patents so acquired.

(3) Granting any license under any jet process patent which requires, and from requiring pursuant to any existing license under any jet process patent, that the licensee pay any royalty based upon said licensee's established price schedule for jet process operations.

(4) Conditioning, continuing or enforcing the grant of any right or license under any jet process patent or patents upon any condition or requirement that the licensee:

(a) will take any right or license under any other patent or patents; or

(b) will pay the same amount of royalty for a license under one patent or a limited number of patents as the licensee would pay for a license under a greater number of patents; or

(c) will grant back to the licensor, or any other defendant any right or license under any patent or patents owned or controlled by the licensee.

VII

(A) Each defendant is ordered and directed to offer to sell, and to sell, to any person upon request, any jet process product which, at the time of such request, it then manufactures, and which, at any time after the entry of this Final Judgment it has sold to any other person other than a government or agency or

instrumentality thereof. The sale of jet process products required hereunder shall be made upon reasonable, uniform and nondiscriminatory terms and conditions, and defendants are enjoined from refusing to sell any jet process product for the reason that the purchaser or prospective purchaser thereof is not licensed to perform any jet process under any patent or patents held by defendants or any other person.

(B) The defendants are enjoined and restrained from conditioning the sale of any jet process product pursuant to paragraph (A) above upon any term, condition, requirement, agreement or understanding that the purchaser, or prospective purchaser thereof, obtain any license under any jet process patent or patents; provided, however, that this paragraph (B) shall not be construed as prohibiting any selling defendant from giving purchasers or prospective purchasers thereof appropriate notice that the sale of such jet process products pursuant to this Section VII shall not, by itself, give to such purchaser any right or license, express, implied or otherwise, under any jet process patent or patents.

VIII

For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, 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 such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of

such defendant who may have counsel present, regarding any such matters; and upon such request such 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 VIII 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 of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: October 22, 1962

/s/ Joe McDonald Ingraham
United States District Judge