APPENDIX 1

LEXSEE 1952 TRADE CAS. (CCH) P67,248

United States v. The Liquid Carbonic Corporation, Air Reduction Company, Incorporated, Pure Carbonic, Incorporated, Wyandotte Chemicals Corporation, and International Carbonic Engineering Company.

Civil Action No. 9179.

United States District Court for the Eastern District of New York.

1952 U.S. Dist. LEXIS 1918; 1952 Trade Cas. (CCH) P67,248

March 7, 1952.

OPINIONBY: [*1]

RAYFIEL

OPINION:

Final Judgment

RAYFIEL, District Judge: Plaintiff, United States of America, having filed its complaint herein on June 24, 1948, and the defendants herein having appeared and filed their answers to the complaint, denying the substantive allegations thereof, and the plaintiff and defendants by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein,

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

The Court has jurisdiction of the subject matter herein and of all the 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," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Liquid" means defendant The Liquid Carbonic Corporation, a corporation organized and existing under the laws of the [*2] State of Delaware;

(B) "Airco" means defendant Air Reduction Company, Incorporated, a corporation organized and existing under the laws of the State of New York, and defendant Pure Carbonic, Incorporated, a corporation organized and formerly existing under the laws of the State of Delaware, said defendant Pure Carbonic, Incorporated, a wholly owned subsidiary of Air Reduction Company, Incorporated, having, since the filing of the complaint herein, been merged into Air Reduction Company, Incorporated, the business formerly carried on by such defendant now being carried on as a division of Air Reduction Company, Incorporated;

(C) "Wyandotte" means defendant Wyandotte Chemicals Corporation, a corporation organized and existing under the laws of the State of Michigan;

(D) "Engineering" means defendant International Carbonic Engineering Company, a corporation organized and existing under the laws of the State of Delaware;

(E) "CO(2)" means carbon dioxide in the form of gas, liquid or both;

(F) "dry ice" means solid carbon dioxide;

(G) "person" means any individual, firm, partnership, corporation, association, trustee or any other business or legal entity;

(H) "patents" means [*3] United States Letters Patent and applications thereof in so far as they relate to the manufacture or use of CO(2) or dry ice or both, and any method, material, equipment or process involved in such manufacture or use, including all reissues, divisions, continuations or extensions thereof;

(I) "emergency purchases" shall mean temporary purchases of CO(2) or dry ice, during a period not to exceed 90 consecutive days at any one time, and only in the amount necessary (a) to replace production lost by a defendant in one of its plants for reasons beyond its rea-

sonable control or (b) to replace quantities not obtained by reason of the complete or substantially complete failure of one of its normal sources of supply.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns and to each of their officers, directors, agents, employees and to all other persons acting under, through or for such defendant, but shall not apply to transactions solely between a defendant and a subsidiary or subsidiaries thereof. Each defendant is hereby ordered and directed to take such steps as are necessary to secure compliance [*4] by its officials, subsidiaries and such other persons, described above, with the terms of this Final Judgment.

IV

Defendants are jointly and severally enjoined and restrained from:

(A) Entering into, adhering to or claiming any rights under any combination, conspiracy, contract, agreement, understanding, plan or program which has the purpose or effect of:

(1) allocating or dividing customers, territories, markets or fields for the manufacture, sale or distribution of CO(2) or dry ice;

(2) determining, fixing, maintaining or adhering to prices, price lists, differentials, discounts or other terms or conditions for the sale or distribution of CO(2) or dry ice to third persons;

(B) Discussing, corresponding or otherwise exchanging any information with any person engaged in the manufacture, sale or distribution of CO(2) or dry ice as to the activities enjoined by subsection (A) of this Section IV;

(C) Restricting or attempting to restrict, in any manner, the use made of CO(2) or dry ice sold by any defendant or by any other person;

(D) Discriminating, in any manner, against any person purchasing dry ice for the purchase of converting it into CO(2);

(E) Requiring any [*5] jobber, distributor or other purchaser of CO(2) or dry ice to (1) furnish the name or address of any customer, (2) permit inspection of its records or books or (3) otherwise divulge any information as to the business practices or policies of any such jobber, distributor or purchaser, except that a defendant may require the maintenance of particular records showing the location of CO(2) cylinders owned by such defendant, which records may be examined by the defendant for the sole purpose of locating cylinders which have not been returned within a reasonable time;

(F) Without adjudicating, determining or affecting the legality or illegality of any existing practices of any defendant, selling, leasing, installing or otherwise making available to any purchaser of CO(2) or dry ice any storage tanks, converters or other equipment on or accompanied by any condition, agreement or understanding that such purchaser shall not purchase CO(2) or dry ice manufactured or sold by anyone other than the defendant;

(G) Causing, authorizing or knowingly permitting any officer, director or employee of a defendant to serve as an officer, director or employee of (1) any other defendant, or (2) except [*6] as to officers, directors, or employees of defendant Engineering, any other person engaged in the manufacture, sale or distribution of CO(2) or dry ice for the trade in the United States, its territories and possessions.

V

Defendants Liquid, Airco and Wyandotte are jointly and severally enjoined and restrained from:

(A) Voting or acquiring, directly or indirectly, legal title to or any beneficial interest in (1) any shares of the capital stock of, or (2) any bonds, debentures or other evidence of indebtedness issued by (a) defendant Engineering, (b) any person who may acquire any or all of the assets or capital stock of defendant Engineering or (c), except as permitted by subsection (D) of this Section V, any other person engaged in the manufacture, distribution or sale of CO(2) or dry ice in which any other defendant now has or may hereafter acquire a financial interest of any kind;

(B) Acquiring, directly or indirectly, legal title to or any beneficial interest in any patent owned or controlled by (1) defendant Engineering, (2) any person who may acquire any or all of the assets or capital stock of defendant Engineering or (3) any other person engaged in the manufacture, [*7] distribution or sale of CO(2) or dry ice in which any other defendant now has or may hereafter acquire a financial interest of any kind;

(C) Dominating, controlling or interfering with, or attempting to dominate, control or interfere with, the business, financial or promotional policies, practices, operation, management, expansion or other business policy or act of defendant Engineering or any other person engaged in the manufacture, distribution or sale of CO(2) or dry ice in the United States, its territories and possessions;

(D) After 90 days following entry of this Final Judgment, having any representative on the Board of Directors of, or voting any of the capital stock issued by, Liquid Carbonic Corporation of Cuba if any other defen-

dant has any representative on such Board or is entitled to vote any such stock of said Liquid Carbonic Corporation of Cuba.

VI

Defendants Airco and Liquid are severally enjoined and restrained from:

(A) Selling CO(2) or dry ice to each other unless it has CO(2) or dry ice available in excess of the current demands on such defendant therefor and then only to the extent of temporary purchases during a period not to exceed 90 consecutive days [*8] at any one time and

(1) during the months of June, July, August and September only in the amount necessary to replace production lost (a) in one of its plants because of fire, flood or other major disaster of similar nature, or (b) in the plant of a supplier because of reasons beyond the reasonable control of the supplier; and

(2) during the rest of the year, only in the amount necessary (a) to replace production lost in one of its plants for reasons beyond its reasonable control or (b) to replace quantities not obtained by reason of the complete or substantially complete failure of production of one of its normal sources of supply;

(B) Selling, or causing to be sold, CO(2) at any industry level at such prices, terms or conditions as will tend to eliminate jobbers or distributors of CO(2) purchasing CO(2) from such defendant as competitors, provided that nothing contained herein shall be construed to obligate defendants Airco or Liquid to sell CO(2) at a price below such defendant's cost of production and distribution of CO(2);

(C) Making emergency purchases for a period of 2 years from the date of entry of this Final Judgment, where it would be apparent to a reasonably prudent [*9] business man that the effect of such purchases would be to deprive jobbers or distributors of CO(2) or dry ice which they desire to obtain.

VII

(A) Each of the defendants Liquid and Airco, for a period of 10 years after entry of this Final Judgment, is

(1) ordered and directed, subject to subsection (A) of Section VI herein, to sell directly to any person who is engaged in, or who may desire to engage in, the sale and distribution of CO(2) (referred to in this Section VII as "Distributor" or "Distributors") meeting the minimum credit, quantity and business standards required by such defendant of any of its Distributors, and who offers to purchase same, CO(2) manufactured or purchased by such defendant for resale and which at the time of receipt of request to purchase such defendant has not already sold or contracted to sell in a bona fide transaction or allocated to meet specific request from regular customers, or current requests of such customers which its past experience has shown it may justifiably anticipate, on prices, terms or conditions of sale regularly offered to similarly situated Distributors meeting such standards. In addition, in times of industry shortage, where [*10] a defendant is engaged in selling CO(2) in competition with any Distributor or Distributors of such defendant, such defendant shall share, with such Distributor or Distributors, on a non-discriminatory basis and upon prices, terms and conditions of sale that are not less favorable than those extended to similarly situated Distributors not in competition with such defendant, the supplies of CO(2) in the possession of or under the control of such defendant;

(2) enjoined and restrained from selling or offering for sale CO(2) to any retail business establishment (*i.e.* , one customarily purchasing and using one cylinder at a time and doing business at a single location), in any area where the defendant is not regularly making such sales at the time of entry of this Final Judgment; *provided, however* , that any such defendant may make such sales in an area where a Distributor, through which it has sold, fails to adhere to such minimum credit, quantity and business standards or, without fault on the part of such defendant, ceases to act, or is disabled from acting, as a Distributor, but in any such event of failure, cessation or disability the defendant shall use its best efforts [*11] to sell through another Distributor or Distributors meeting such standards and, should the matter be brought to the attention of this Court by the plaintiff herein, the burden shall be upon the defendant to show to this Court that it has used such efforts.

(B) Defendant Wyandotte, for a period of 10 years after entry of this Final Judgment, is ordered and directed, subject to subsection (C) of Section IX herein, to sell directly to any person who is now engaged in, or who desires to engage in, the sale and distribution of CO(2) or dry ice, or both, meeting the minimum credit, quantity and business standards required by defendant Wyandotte of its distributors and jobbers, and who offers to purchase same, CO(2) or dry ice, or both, manufactured or purchased by defendant Wyandotte for resale and which at the time of receipt of request to purchase, Wyandotte has not already sold or contracted to sell in a bona fide transaction or allocated to meet specific requests from regular customers, or current requests of such customers which its past experience has shown it may justifiably anticipate, on prices, terms or conditions of sale regularly offered to similarly situated distributors [*12] and jobbers meeting such standards.

(C) Defendant Wyandotte is ordered and directed on January 2, 1953, to cancel its license with defendant Engineering, dated July 1, 1934, as amended.

(D) Each of the defendants is enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement, understanding, plan or program which has the purpose or effect of:

(1) appointing, designating or employing any person as sole jobber or distributor of CO(2) or dry ice for such defendant in any territory, area or locality;

(2) restricting or preventing any jobber or distributor of CO(2) or dry ice from selling, buying or dealing in CO(2) or dry ice manufactured or sold by anyone other than such defendant.

(E) Each of the defendants is enjoined and restrained from instituting, maintaining or continuing any action or proceeding which has the purpose or effect of preventing any person from using the words "dry ice" in connection with the manufacture, distribution or sale of CO(2) and dry ice.

VIII

(A) Each defendant is perpetually enjoined and restrained from acquiring, directly or indirectly, with any other defendant or any other person engaged [*13] in the manufacture, distribution or sale of CO(2) or dry ice in the United States, its territories and possessions, by purchase, merger, consolidation or otherwise after the entry of this Final Judgment, and from holding or exercising after such acquisition, ownership or control of the business, physical assets or good will, or any part thereof, any shares of the capital stock or securities of, or any evidence of indebtedness issued by, any person engaged in the manufacture, distribution or sale of CO(2) or dry ice;

(B) Defendants Liquid, Airco and Wyandotte, for a period of 10 years from the date of entry of this Final Judgment, and subject to Section IX herein, are each enjoined and restrained from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, and from holding or exercising after such acquisition, ownership or control of the business, physical assets (except goods or products bought or incidental to the ordinary course of business) or good will, or any part thereof, or any capital stock or securities (excepting the purchase, solely for the purpose of investment, by officers, directors, agents and employees of said defendants, of any capital [*14] stock of any person which does not manufacture CO(2) for the trade) of, any person engaged in the manufacture, distribution or sale of CO(2) or dry ice in the United States, its territories or possessions, until after the defendant has, upon reasonable notice to the Attorney General with an opportunity on the part of the latter to be heard, demonstrated to the satisfaction of this Court that the effect of the proposed acquisition may not be to substantially lessen competition in the manufacture, sale or distribution of CO(2) or dry ice, or to tend to create a monopoly in the manufacture, sale or distribution of CO(2) or dry ice;

(C) Defendants Liquid and Airco are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any producer of CO(2) or dry ice whereby such producer agrees not to produce or sell more CO(2) or dry ice than is purchased by the defendant, or agrees otherwise to limit or restrict production or sale of CO(2) or dry ice.

IX

(A) Subject to the provisions of subsection (F) of this Section IX, defendant Airco is enjoined and restrained after April 30, 1953 from purchasing [*15] or acquiring, directly or indirectly, from Delancey Chemical Corporation, Philadelphia, Pennsylvania, any CO(2) or dry ice except on the following basis:

(1) during each month of the period from April 30, 1953 through December 31, 1953 a volume by weight not exceeding 80% of the total specified for the corresponding month in the 1950 purchase contract between Delancey and Airco;

(2) during each month of the period from January 1, 1954 through December 31, 1954 a volume by weight not exceeding 70% of the total specified for the corresponding month in the said purchase contract;

(3) during each month after December 31, 1954 a volume by weight not exceeding 50% of the total specified for the corresponding month in the said purchase contract;

(B) Defendant Airco is ordered and directed to cancel after one year from the date of entry of this Final Judgment any contract, understanding or arrangement for the purchase of CO(2) or dry ice from California Carbonic Company, Los Angeles, California, and Carbonic Chemical Company, Mosquero, New Mexico;

(C) Subject to the provisions of subsection (F) of this Section IX, each of the defendants Airco and Liquid is enjoined from purchasing [*16] or acquiring from defendant Wyandotte, and Wyandotte is enjoined from selling or transferring to Airco or Liquid, directly or indirectly, any CO(2) or dry ice after December 31, 1954, and between March 1, 1952 and December 31, 1954 except as follows:

(1) during each month of the period from March 1, 1952 through December 31, 1952 a volume by weight not exceeding 80% of the total each purchased from Wyandotte during the corresponding month of the year 1951;

(2) during each month of the period from January 1, 1953 through December 31, 1953 a volume by weight not exceeding 50% of the total each purchased from Wyandotte during the corresponding month of the year 1951;

(3) during each month of the period from January 1, 1954 through December 31, 1954 a volume by weight not exceeding 33 1/3% of the total each purchased from Wyandotte during the corresponding month of the year 1951;

(D) Defendant Liquid is ordered and directed to cancel at the end of one year from the date of entry of this Final Judgment any contract, understanding or arrangement for the purchase of CO(2) or dry ice from Ideal Dry Ice Manufacturing Company, Ada, Oklahoma and Carbon Dioxide & Chemical Company, Price, [*17] Utah;

(E) (1) Within one year from the date of entry of this Final Judgment, defendant Liquid shall, pursuant to the terms and conditions of this subsection (E) of this Section IX, dispose of, as complete units, its existing plants located at Long Island City, New York, and Indianapolis, Indiana, hereinafter referred to singularly and collectively as "said plants." Reference to said plants in this Final Judgment shall include all real estate, buildings and improvements thereon; all machinery and other production equipment appurtenant thereto; all production, sales and engineering records relevant to the operation of said plants; and all other facilities and equipment used in the manufacture of CO(2) or dry ice.

(2) The disposal of said plants shall be effected through a trustee or trustees (hereinafter referred to as "The Trustee") appointed by the Court forthwith after entry of this Final Judgment. The term of appointment of The Trustee shall be one year. The Court may extend such term upon a showing that there may be persons who have an interest in purchasing the said plants. The Trustee is to act as an officer of the Court and shall have full powers to bring about the prompt [*18] and expeditious disposal of said plants in accordance with the terms and conditions of this subsection (E) of this Section IX of this Final Judgment. The compensation of The Trustee shall be fixed by the Court.

(3) Disposal of said plants shall be at such reasonable prices as shall be determined by the Court, having due regard to a value determination made by an independent appraiser appointed by the Court. In the event that any offer for the purchase of said plants for CO(2) purposes is received which is less than the value determination made by the said independent appraiser, both plaintiff and defendant Liquid may be heard on the reasonableness of such offer. Disposal of said plants shall be made to a person or persons other than (a) a defendant herein, (b) a stockholder, officer, director, employee, or agent of any defendant herein or (c) any person affiliated, directly or indirectly, with any defendant herein. Disposal of said plants by The Trustee shall be restricted to persons who intend to operate said plants in the manufacture of CO(2) or dry ice or both, and who file with the Court an undertaking so to do.

(4) Defendant Liquid shall take such steps as are necessary [*19] to maintain said plants, until the time of disposal thereof by The Trustee, at the defendant's best standards of operating performance applicable to said plants for the manufacture of CO(2) and (in the case of the existing plant located at Indianapolis, Indiana) dry ice. Pending such disposal, defendant Liquid shall not permit said plants to be diminished in capacity or turned to uses other than the manufacture of CO(2) or dry ice. Defendant Liquid shall at all times furnish to The Trustee and prospective purchasers of said plants all information regarding said plants, and permit them to have such access to, and to make such inspection of, said plants as is reasonably necessary. Defendant Liquid shall take all other actions which it is directed by the Court or The Trustee to take in order to disseminate and publicize the availability for sale, and to promote and effectuate the expeditious disposal, of said plants.

(5) During the entire period for which The Trustee serves, and at the end of such period, The Trustee shall render such reports to, and request such instructions from, the Court as may be necessary or appropriate.

(F) Defendants Airco and Liquid are perpetually jointly [*20] and severally enjoined, except as permitted in the above subsections of this Section IX and except for emergency purchases, from purchasing or attempting to purchase, directly or indirectly, any CO(2) or dry ice from (1) producers with whom either of said defendants is required by this Section IX of this Final Judgment to cancel contracts or limit purchases or (2) operators of any plant required to be divested by this Section IX of this Final Judgment;

(G) Defendants Airco and Liquid are jointly and severally enjoined from:

(1) increasing the total number of production units for CO(2) or dry ice now located in existing plants;

(2) increasing the aggregate volume of CO(2) and dry ice purchased during the calendar year of 1950 from

present suppliers, except for emergency purchases (including for the purposes of this clause purchases pursuant to subsection (A) of Section VI);

(3) erecting any production facilities for CO(2) and dry ice, the construction of which had not begun by the date of entry of this Final Judgment; and

(4) acquiring by purchase contract or otherwise CO(2) or dry ice from suppliers not presently supplying such defendant therewith, except for emergency purchases; [*21]

within 400 miles of any plant or production facility which is the subject of or affected by subsections (A) through (E) of this Section IX and which concerns the defendant in question, until such defendant shall have taken all steps required by the applicable provisions of subsections (A) through (E) to be taken by it in respect of such plant or production facility (which steps may be taken prior to the time provided for in this Final Judgment), and shall have filed with this Court a statement to that effect in each such instance; *provided* that defendant Liquid shall have the right to add one complete CO(2) and/or dry ice production unit to the facilities in existence on the date of entry of this Final Judgment at its plant located at Urbana, Ohio, *provided* that such unit shall not be put into operation until after the expiration of one year from the date of entry of this Final Judgment and until defendant Liquid has filed with this Court the statement referred to in this subsection (G) with respect to purchases by it from defendant Wyandotte; and *provided* that defendant Airco shall have the right to replace any of its existing regular sources of supply by any of the [*22] means specified in clauses (1) and (3) in the event that there is a permanent discontinuance of supply by any such source, any such replacement unit or units to be of no greater capacity than the unit or units that they replace, or to replace such sources in such event by obtaining CO(2) and/or dry ice from persons who prior thereto had not been engaged in the production thereof, in quantities not in excess of those usually obtained from the replaced source, *provided, further*, that Airco shall not so obtain CO(2) and/or dry ice from any such person if it would be apparent to a reasonably prudent business man that the effect thereof would be to deprive jobbers or distributors of CO(2) or dry ice which they desire to obtain.

X

(A) Defendant Engineering is hereby enjoined and restrained from issuing any license under, instituting or threatening to institute, maintaining or continuing any action or proceeding for acts of infringement, or to collect damages, compensation or royalties under, United States Patent No. *2,025,698* or any license or agreement issued or made in connection therewith except under the license between defendants Engineering and Wyandotte, dated July 1, 1934, [*23] as amended;

(B) Each defendant is hereby enjoined and restrained from instituting or threatening to institute, maintaining or continuing any action or proceeding for acts of infringement, or to collect damages, compensation or royalties alleged to have occurred or accrued prior to the date of this Final Judgment under any patent now owned or controlled by such defendant except actions by defendant Engineering for royalties claimed to be due under the license between defendants, Engineering and Wyandotte, dated July 1, 1934, as amended;

(C) Each of the defendants is enjoined and restrained from acquiring any license, sublicense, grant of immunity or similar right under any existing patent or any patent issued or applied for within 10 years from the entry of this Final Judgment unless such license, sublicense, grant of immunity or similar right grants to said defendant a full and unrestricted power to sublicense which said defendant exercises pursuant to the provisions of Section XI herein.

XI *

* [See the Supplement to Article XI (A) on page 67,387.]

(A) Each of the defendants (except defendant Engineering with respect to defendant Wyandotte prior to Jan. 2, 1953) [*24] is ordered and directed, in so far as each has the power to do so, to grant to any person, upon written application therefor, a non-exclusive license to make, use and vend under any, some or all patents (except United States Patent No. *2,025,698*) (1) now owned or controlled by such defendant (including those listed in Appendix A [not reproduced] attached to this Final Judgment which are so owned or controlled), or (2) which are issued or applied for by such defendant within 10 years from the date of the entry of this Final Judgment, or (3) now existing or which are issued or applied for within the aforesaid 10-year period and under which such defendant has the right to issue a license or sublicense;

(B) Each defendant is hereby enjoined and restrained from making any sale or other disposition of any of said patents which deprives the defendant of the power or authority to grant such licenses unless it sells, transfers or assigns such patents and requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of this Section XI and the purchaser, transferee or assignee shall file with this Court, prior to consummation [*25] of said transaction, an undertaking so to be bound;

(C) Each defendant is hereby enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense granted by it pursuant to the provision of this Section XI except that;

(1) the license may be non-transferable;

(2) a reasonable non-discriminatory royalty may be charged;

(3) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of CO(2) and dry ice produced under the licensed inventions and of the royalty due and payable thereon;

(4) 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 his books and records as hereinabove provided; and

(5) the license must provide that the licensee may cancel the license at any time upon 30 days' written notice to the licensor;

(D) Within 30 days after the date of application, issuance or acquisition of any patents, to advise this Court and the Attorney General, in writing, of the number and date of [*26] such application, issuance or acquisition;

(E) Upon receipt of a written request for a license under the provisions of this Section XI the defendant shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within 60 days from the date such request for a license was received by the defendant, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and the defendant shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the Attorney General. In any such proceeding, the burden of proof shall be on the defendant owning or controlling the patent or patents to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall be retroactive for the applicant and all other licenses under the same patent or patents to the date the applicant files his application with this Court. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use and vend under [*27] the patents to which the application pertains without payment of royalty or other compensation as above provided, but subject to the provisions of subsection (F) of this Section XI;

(F) Where the applicant has the right to make, use and vend under subsection (E) of this Section XI, said applicant or the defendant owning or controlling the patent or patents may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable rate. If this Court fixes such interim royalty rate, defendant shall then issue and the applicant shall accept a license or, as the case may be, a sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such license or sublicense or fails to pay the interim royalty rate in accordance therewith, such action shall be ground for the dismissal of his application and his rights under subsection (E) shall terminate. Where an interim license or sublicense has been issued pursuant to this paragraph, reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the [*28] applicant and all other licensees under the same patent or patents to the date the applicant files his application with this Court;

(G) Nothing herein shall prevent any applicant from attacking in the aforesaid proceedings or in any other controversy, the validity or scope of any of the patents, nor shall this Final Judgment be construed as importing any validity or value to any of the said patents. Nothing herein shall be construed to determine that existing royalty rates are reasonable;

(H) Each of the defendants Liquid, Airco, Wyandotte and Engineering is ordered and directed, for a period of 10 years from the entry of this Final Judgment, to give to each licensee under any patents owned or controlled by the defendant, upon written request therefor, all technical assistance and information in its possession disclosing the methods and processes used by the licensor in its commercial practice under the licensed invention. Wherever practicable such technical assistance and information shall be furnished in writing. However, where not practicable to furnish such assistance and information in writing, technical personnel shall be made available to help install and initiate the [*29] operation of the methods and processes by the licensee. Such technical assistance and information shall be charged for at no more than actual cost to the licensor, without allocating any overhead or general administrative expense.

XII

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendants made to their principal offices, be permitted:

(a) access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of said defendants relating to any of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of said defendants and without restraint or interference from them, to interview the officers and employees of defendants, who may have counsel present, regarding any such matters.

For the purpose of securing compliance [*30] with this Final Judgment, any defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section XII 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.

XIII

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 amendment of any of the provisions thereof, the enforcement of compliance therewith and the punishment of violations thereof.

Supplement [*31] to Article XI(A) of Final Judgment n1

n1 [Order dated March 7, 1952.]

RAYFIEL, District Judge: Whereas, upon consent of all the parties hereto, a Final Judgment was entered in this action on March 7, 1952; and

Whereas, Article XI(A) of said Final Judgment provides as follows:

"(A) Each of the defendants (except defendant Engineering with respect to defendant Wyandotte prior to Jan. 2, 1953) is ordered and directed, in so far as each has the power to do so, to grant to any person, upon written application therefor, a non-exclusive license to make, use and vend under any, some or all patents (except United States Patent No. *2,025,698*) (1) now owned or controlled by such defendant (including those listed in Appendix A attached to this Final Judgment which are so owned or controlled), or (2) which are issued or applied for by such defendant within 10 years from the date of the entry of this Final Judgment, or (3) now existing or which are issued or applied for within the aforesaid 10 year period and under which such defendant has the right to issue a license or sublicense;"

and

Whereas, the patents listed in Appendix A attached to the Final Judgment are believed by all [*32] the parties hereto to be all the patents (as defined in Article II(H) of the Final Judgment) owned or controlled by each defendant on March 7, 1952 except for United States Patent No. *2,025,698* owned by defendant International Carbonic Engineering Company; and

Whereas, all the parties to the Final Judgment herein have severally consented to a supplement thereto whereby any defendant who shall subsequent to March 7, 1952 discover that it owned or controlled on that date any patent (as defined in Article II(H) of said Final Judgment) not listed in Appendix A attached to said Final Judgment shall be required to file with this Court as a supplement thereto a statement containing the information with respect to such patent or patents as is set forth in said Appendix A with respect to the patents listed therein and that, upon any such filing, said Appendix A shall be deemed to be accordingly supplemented thereby, *nunc pro tunc*, effective as of March 7, 1952;

Now, therefore, upon the consent as aforesaid of all the parties hereto, it is hereby ordered, adjudged and decreed that Article XI(A) of the Final Judgment entered herein on March 7, 1952 be and hereby is supplemented so that [*33] each defendant shall, at any time or from time to time, upon the discovery that it owned or controlled on March 7, 1952 any patent (as defined in Article II(H) of said Final Judgment) not listed in Appendix A attached to said Final Judgment (other than United States Patent No. *2,025,698*), be required to file with this Court as a supplement thereto a statement containing the information with respect to such patent or patents as is set forth in said Appendix A [not reproduced] with respect to the patents listed therein and that, upon any such filing, said Appendix A shall be deemed to be accordingly supplemented thereby, *nunc pro tunc*, effective as of March 7, 1952; and further that the entry of this order shall be without prejudice to the rights of the plaintiff under Article XII and Article XIII of said Final Judgment.