

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Aerofin Corporation, Carrier Corporation, B. F. Sturtevant Company and Buffalo Forge Company., U.S. District Court, S.D. New York, 1940-1943 Trade Cases ¶56,264, \(Mar. 5, 1943\)](#)

Federal Antitrust Cases

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶56,264

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United States v. Aerofin Corporation, Carrier Corporation, B. F. Sturtevant Company and Buffalo Forge Company.

1940-1943 Trade Cases ¶56,264. U.S. District Court, S.D. New York, Civil Action No. 20-458. March 5, 1943.

Headnote

In a consent decree terminating a suit brought under the anti-trust laws against manufacturers of air-conditioning equipment, all licenses and agreements based upon a certain patent are cancelled, and defendants are ordered to grant to any applicant an unrestricted and royalty free license. Defendants are enjoined from entering into agreements to fix prices for coils, to refrain from the development of any product, to refrain from competing, or to allocate customers; from granting patent licenses relating to coils only to persons who buy products or materials through any particular person or only to persons who sell exclusively products or materials purchased from any particular person; from discriminating against persons who do not buy products or materials from a particular person; from discriminating on the basis of whether a person holds a patent license relating to coils; from granting patent licenses which fix prices to be charged by the licensees; and from disclosing to competitors prices, sales, quotations or conditions of sale for named customers.

For the United States: Thurman Arnold, Assistant Attorney General; Samuel S. Isseks, Special Assistant to the Attorney General; Harold Lasser and John S. James, Special Attorneys.

For defendants: Herman Seid.

Decree entered before United States District Judge Alfred C. Coxe.

Final Judgment

The complainant, United States of America, having filed its complaint herein on March 5th, 1913; all the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; all parties hereto having consented to the entry of this final decree 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

Ordered and decreed:

I

[Jurisdiction and Cause of Action]

That this Court has jurisdiction of the subject matter and of all the parties hereto; that the complaint states a cause of action against 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 acts amendatory thereof and supplemental thereto

II

[Definitions]

As used in this decree the following terms have the following meanings:

- (a) The term “coil” means all types of tubes or pipes whether encased or unencased, with extended surfaces thereon in the form of fins, plates or other projections used for heat exchange;
- (b) The term “encased coils” means assembled units consisting of coils which are encased in frames with flanges or border pieces adapted to be assembled in banks of any size or arrangement;
- (c) The terms “unencased coils” means coils adapted to be housed in casings or unitary” apparatus, such as unit heaters, unit ventilators, unit humidifiers, and unit air conditioners;
- (d) The term “coil patent” means any patent issued on or before July 1, 1942, or any patent issued on an application filed on or before July 1, 1942, relating to coils and does not include any patent relating to machinery or process used in the manufacture of coils or relating to any application of coils;
- (e) The term “encased coil patent” means any patent issued on or before July 1, 1942, or any patent issued on application filed on or before July 1, 1942, whose claims or any of them relate to encased coils.

III

[Patent Agreements Cancelled]

All patent licenses, licensed distributors' agreements, manufacturers' license agreements and all other agreements to which the defendants or any defendant is a party, based upon or containing or embodying patent licenses or rights under or by virtue of United States Letters Patent No. 1,597,733, issued August 31, 1926, and owned by defendant Aerofin Corporation, and all agreements amendatory or supplementary to the foregoing licenses and agreements, are hereby cancelled and the defendants, their officers, directors, managers, employees, agents, attorneys, successors and subsidiaries and each of them, be, and they hereby are, perpetually enjoined and restrained from taking any action, either individually or in concert with each other, under or pursuant to such agreements and licenses, or any agreement amendatory or supplementary thereto; provided, however, that nothing contained in this paragraph shall affect any existing unrestricted and royalty-free license by any of the defendants to any company or person.

IV

[Unrestricted Patent Licenses to Be Granted]

Each of the defendants, its officers, directors, managers, employees, agents, successors and subsidiaries, is hereby ordered to grant to* any applicant therefor, to the extent which the defendants or any of them possess the power to do so, an absolutely unrestricted and royalty free license or sublicense to manufacture, use and sell under said United States letters patent No. 1,597,733, issued August 31, 1926, and under any coil patent and any encased coil patent.

V

[Agreements Enjoined]

Each of the defendants, its officers, directors, managers, employees, agents and attorneys, successors and subsidiaries is hereby enjoined and restrained from

- A. entering into, adhering to, maintaining or furthering, directly or indirectly any contract, agreement, understanding, plan or program among themselves or with any other manufacturer of coils or coil parts or any substitute for coils (1) to fix, establish, maintain or adhere to bids, quotations, prices, resale prices, or discounts or other terms or conditions of sale for coils or coil parts or any substitute for coils;
- (2) to provide for, publish, maintain or adhere to any basic, uniform or agreed upon method or formula for establishing prices or quotations for coils or coil parts or any substitute for coils; (3) to refrain from the development, manufacture, use or sale of any product or not to compete in any territory or for any group or class of customers; (4) to allocate customers or determine channels of distribution; (5) to provide for, establish, or maintain any provision to be included in licenses under patents or in agreements relating to licenses under patents, which fix or establish prices for coils or coil parts or any substitute for coils;
- B. granting any license, express or implied, for any patent relating to coils or coil parts or any substitute for coils only to persons who buy products or materials from or through any defendant or any other designated or particular person, or only to persons who sell exclusively products or materials manufactured by or purchased from any defendant or any *designated* or particular person;
- C. discriminating in the sale or distribution of any product or material in favor of, or against, any person on the basis of whether such person purchases, uses or sells other-products or materials sold or distributed by any defendant or any designated or particular person;
- D. directly or indirectly discriminating in the sale of any product or material in favor of or against any person on the basis of whether such person is licensed to manufacture, use or sell under any patent relating to coils or coil parts or any substitute for coils;
- E. granting any license or sublicense under any patent relating to coils or coil parts or any substitute for coils which fixes or specifies, directly or indirectly, prices to be charged by the licensee or sublicensee for any product or material;
- F. disclosing or disseminating, directly or indirectly to competitors prices, sales, quotations or conditions of sale for 8/20/2010.

VI

[*Department of Justice to Have Access to Records, Interviews and Reports*]

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

VII

[*Jurisdiction Retained*]

Jurisdiction of this action 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 or directions as may be necessary or appropriate for the construction or

carrying out of this decree, for the modification or termination of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

VIII

[*Nothing to Restrict or Prohibit War Activities*]

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") [reported at If 1151, and omitted here], or with any amendment or amplifications thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National Defense 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).