

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Civil No. 126-230

COMBUSTION ENGINEERING, INC.,  
Defendant.

Filed: November 1, 1957

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein; defendant, Combustion Engineering, Inc., having appeared and filed its answer to the complaint denying any violation of law charged therein; and plaintiff and defendant 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 and without admission by defendant 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 as aforesaid of plaintiff and defendant, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim upon which relief may be granted against defendant under Section I of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies", as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Defendant" shall mean Combustion Engineering, Inc., a

corporation organized and existing under the laws of the State of Delaware, having an office at 200 Madison Avenue, New York, N. Y.;

(B) "Foreign Company" or "Foreign Companies" shall mean any, some or all of the following:

1. France Tosi, S.p.A., a company organized under the laws of the Italian Republic, having an office in the city of Legnano, Italy.
2. Stein et Roubaix, S.A., a company organized under the laws of the French Republic having an office in the city of Paris, France.
3. International Combustion, Ltd., a company organized under the laws of the United Kingdom, having an office at 19 Woburn Place, London W.C. 1, England.
4. Meller-Goodwin, S.A., a company organized under the laws of the Republic of Argentina, having an office in the city of Buenos Aires, Argentina.
5. A. S. Kvaerner Brug, a company organized under the laws of the Kingdom of Norway, having an office in the city of Oslo, Norway.
6. Kohlenscheidungs-Gesellschaft, m.b.H., a company organized under the laws of the German Federal Republic, having an office in the city of Stuttgart, Germany.
7. Mitsubishi Nippon Heavy-Industries, Ltd., a company organized under the laws of Japan, having an office in the city of Tokyo, Japan.
8. Mitsubishi Heavy-Industries, Reorganized, Ltd., a company organized under the laws of Japan, having an office in the city of Kobe, Japan.

9. Mitsubishi Zosen-Kabuski Kaisha, a company organized under the laws of Japan, having an office in the city of Tokyo, Japan.
10. N. V. Koninklijke Maatschappij De Schelde, a company organized under the laws of the Kingdom of the Netherlands, having an office in the city of Vlissingen, the Netherlands.
11. The Superheater Company Limited, a company organized under the laws of the United Kingdom, having an office at 53 Haymarket, London S.W. 1, England.
12. A. B. Svenska Maskinverken, a company organized under the laws of the Kingdom of Sweden, having an office at Sodertalje, Sweden.
13. Any other Company, organized and existing under the laws of any foreign country, and having its office and principal place of business in such foreign country, which is engaged in the manufacture of Equipment;

(C) "Equipment" shall mean all apparatus, equipment, materials and parts therefor, of the types manufactured commercially by Defendant for the purpose of steam generation and fuel burning.

### III

The provisions of this Final Judgment shall apply to the Defendant and to its officers, servants, employees, agents and attorneys, and to all persons in active concert or participation with the Defendant who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

Defendant is hereby enjoined and restrained from the further performance or enforcement of those provisions in any existing Equipment licensing agreement between Defendant and any Foreign Company by which:

- (A) The Foreign Company agrees not to export Equipment to the United States or Defendant agrees not to export Equipment to any foreign country, or
- (B) The Foreign Company agrees to cross-license Defendant by granting to Defendant the exclusive right to manufacture, use and sell Equipment in the United States under any United States Letters Patent or application therefor presently owned by such Foreign Company, or
- (C) The Foreign Company grants Defendant the right to acquire title to any United States Letters Patent, relating to Equipment, which patent is presently owned by the Foreign Company and under which patent Defendant has been granted by the Foreign Company an exclusive license to manufacture, use and sell in the United States, or
- (D) Defendant agrees, when it exports Equipment into any country, to give the Foreign Company (i) any credit against any royalty based upon the value of the Equipment exported and payable by such Foreign Company to Defendant or (ii) any other credit, or
- (E) The Foreign Company agrees when it exports Equipment into any country in which there is another Foreign Company which is licensed by Defendant to manufacture, use and sell Equipment:
1. To secure parts for such Equipment from any designated source, or
  2. To use the Equipment installation service of such licensee in connection with the erection of such Equipment, or
- (F) The Foreign Company agrees not to use the products manufactured or sold by anyone other than Defendant.

V

Defendant is enjoined and restrained from entering into or adhering to any future contract, agreement or understanding with any Foreign Company:

(A) Allocating or dividing territories or markets for the manufacture, installation or sale of Equipment;

(B) Restricting or limiting imports into or exports from the United States of Equipment;

(C) Requiring any Foreign Company to purchase any Equipment from any designated source or requiring any Foreign Company to use the Equipment installation service of any other Foreign Company; provided, however, that this subsection shall not be construed to prohibit a specific sale of Equipment by Defendant to a Foreign Company;

(D) Not to buy or use Equipment manufactured or sold by anyone other than Defendant;

(E) Giving Defendant the continuing right to take title under any United States Letters Patent owned by the Foreign Company, and relating to Equipment, and licensed to the Defendant exclusively.

VI

Defendant is enjoined and restrained from:

(A) Giving any Foreign Company any commission or other credit when Defendant exports Equipment into any country or market except for actual services rendered in connection with a specific sale or a negotiation for a specific sale;

(B) Using any United States patent right, acquired by Defendant pursuant to any agreement prior to such acquisition, from a Foreign Company having at the time an Equipment patent license from Defendant, to prevent such Foreign Company itself from importing into, and selling in, the United States to an ultimate consumer Equipment covered by such patent; provided that this provision shall not be applicable if such Foreign Company comes under the direct or indirect control of any domestic Equipment competitor of Defendant.

## VII

(A) Defendant is ordered and directed within ninety days after the entry of this Final Judgment to furnish a true and complete copy of this Final Judgment to each of its officers and directors and to each of its employees engaged in licensing Equipment, and within fifteen days thereafter to file with the Clerk of this Court a statement as to the fact and manner in which Defendant has complied with the foregoing terms of this subsection (A) of Section VII;

(B) Defendant is ordered and directed within one hundred and twenty days after the entry of this Final Judgment to furnish a true and complete copy of this Final Judgment to each Foreign Company having at that time an Equipment licensing agreement with Defendant, and within fifteen days thereafter to file with the Clerk of this Court a statement as to the fact and manner in which Defendant has complied with the foregoing terms of this subsection (B) of Section VII.

## VIII

For the purpose of securing compliance with this Final Judgment 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 Defendant made to its principal office, be permitted, subject to any legally recognized privilege:

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

(B) Subject to the reasonable convenience of Defendant and without restraint or interference from Defendant, to interview officers or employees of Defendant, who may have counsel present, regarding any such

Upon such written request, Defendant shall submit such reports in writing with respect to the 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 permitted 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 Department of Justice except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

Jurisdiction is retained by this Court 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, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

The provisions of this Final Judgment shall become effective thirty days from the date of entry hereof.

Dated:     , November 1, 1957

Judgment Entered 11/1/57  
Herbert A. Charlson,  
Clerk

     /s/ RICHARD H. LEVET  
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

/s/ John D. Swartz

/s/ Victor R. Hansen  
VICTOR R. HANSEN  
Assistant Attorney General

/s/ John V. Leddy

/s/ Charles F. B. McAleer

/s/ W. D. Kilgore, Jr.

/s/ David Schwartz

/s/ Baddia J. Rashid

/s/ John H. Clark III

/s/ Richard B. O'Donnell

/s/ Bernard A. Friedman

Attorneys, Department of Justice

For the Defendant:

/s/ Thomas F. Fennell  
Thomas F. Fennell  
Shearman & Sterling & Wright  
Attorneys for Combustion  
Engineering, Inc.