

865

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE TIMKEN ROLLER BEARING COMPANY,

Defendant.

CIVIL ACTION

NO. 24214

C O M P L A I N T

To the Honorable, the Judges of the District Court of the United States
for the Northern District of Ohio.

The United States of America, Plaintiff, by its attorneys, acting
under the direction of the Attorney General of the United States, brings
this action against the defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted
against the defendant under Section 4 of the Act of Congress of July 2,
1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade
and commerce against unlawful restraints and monopolies," commonly known
as the Sherman Antitrust Act, in order to prevent and restrain continuing
violations by defendant, as hereinafter alleged, of Sections 1 and 3 of
the Sherman Antitrust Act.

2. Defendant The Timken Roller Bearing Company is incorporated
under the laws of the State of Ohio and is an inhabitant of the Northern
District of Ohio. It maintains offices and transacts business within
the Eastern Division of the Northern District of Ohio.

II

THE DEFENDANT

3. The Timken Roller Bearing Company, hereinafter referred to as "Timken", a corporation organized under the laws of the State of Ohio and having its principal offices and place of business in Canton, Ohio, is named a defendant herein. It is engaged in the manufacture of tapered roller bearings at plants located in Canton, Gambrinus and Columbus, Ohio.

III

CO-CONSPIRATORS

4. British Timken, Limited, hereinafter referred to as "Limited", a joint stock company organized and existing under the laws of the United Kingdom, with its head office and principal place of business at Birmingham, England, is not named as a defendant but is named as co-conspirator herein. Limited is engaged in the manufacture and sale of ball bearings and straight and tapered roller bearings. Defendant Timken owns 29% of the capital stock of Limited.

5. Societe Anonyme Francaise Timken, hereinafter referred to as "Francaise", a corporation organized and existing under the laws of France, with its head office and principal place of business at Asnieres, France, is not named as a defendant but is named as co-conspirator herein. Francaise is engaged in the manufacture and sale of tapered roller bearings. Defendant Timken owns 50% of the capital stock of Francaise.

IV

THE NATURE OF TRADE AND COMMERCE INVOLVED

6. Antifriction bearings are rotating devices for reducing friction between moving mechanical parts. Their usual employment is between a shaft and rotating body, such as an automobile axle and wheel. Balls or rollers are inserted between containers called "races" which are, in turn, affixed to the moving parts. Rollers vary in shape from straight or tapered cylinders to configurations resembling spools and barrels.

7. Ball bearings are generally utilized where high speeds and light loads are required; roller bearings, where a heavy load must be supported; tapered roller bearings, where both a heavy load and side thrust are encountered, as on truck wheels and axles. Otherwise, all types may be used interchangeably.

8. The anti-friction bearing is distinguished from the plain bearing in that the plain bearing employs no rolling objects but depends upon lubrication alone. The anti-friction bearing has much greater load-carrying ability, endurance, and freedom from friction.

9. Whenever the term "anti-friction bearings" is employed in this complaint, it will include ball bearings, and straight and tapered roller bearings, and accessories for, and parts of such bearings.

10. Anti-friction bearings are a necessity in the functioning of a modern industrial economy. Aircraft, trucks, automobiles, railroad cars and locomotives, gun mounts, machine tools, rolling mills, mining machinery, power generating and transmission equipment, household appliances and other machinery and engines of all types, require and utilize tapered roller bearings and other types of anti-friction bearings. They are currently in great demand, both in the United States and for shipment abroad in connection with the postwar reconversion and expansion of industry and the rehabilitation of war areas.

11. Defendant Timken is now and for many years has been the largest manufacturer of tapered roller bearings in the world. In 1944 Timken produced approximately eighty per cent of all the tapered roller bearings manufactured in the United States, and its gross sales of bearings amounted to approximately \$75,000,000.

12. Bearings manufactured by Timken are shipped from its plants in Ohio to customers located in other States and Territories of the United States and, subject to limitations hereinafter alleged, in certain foreign countries. Timken transacts business in Canada through its wholly-owned subsidiary, Canadian Timken, Limited, and in South America through its

wholly-owned subsidiary, S. A. Timken Roller Bearing Company of South America.

13. Timken sells the bearings manufactured by it directly to manufacturers of automobiles, railroad equipment, machine tools, machinery, and other products containing bearings. It also sells large quantities of bearings to distributors for resale to bus and truck owners, garages, repair shops, factories, and others for replacement of worn-out or damaged bearings in vehicles and machinery. Such bearings are known as "service" or "replacement" bearings.

14. The co-conspirators Limited and Francaise have been, since 1928, the principal manufacturers of tapered roller bearings in Great Britain and France, respectively. Limited and Francaise export their products to various countries throughout the world. Since 1933, Limited has also manufactured and sold ball bearings and straight roller bearings.

V

BACKGROUND OF THE CONSPIRACY

15. On June 16, 1909, defendant Timken entered into an agreement with the Electric and Ordnance Accessories Company, Ltd. of England, granting the latter an exclusive license to manufacture and sell roller bearings in the United Kingdom under certain letters patent. Timken agreed not to manufacture or sell any roller bearings in the United Kingdom or sell to others for shipment into the United Kingdom except as parts of complete automobiles, assembled and manufactured in the United States. Electric and Ordnance Accessories Company, Ltd., agreed not to sell any roller bearings directly or to others for shipment outside the United Kingdom, except as parts of complete automobiles manufactured in the United Kingdom.

16. On July 16, 1909, Timken entered into a second agreement with Electric and Ordnance Accessories Company, Ltd., whereby the latter received an exclusive "license" to manufacture and sell roller bearings of all kinds in Europe and the British Empire (except Canada), whether

patents were secured in such countries or not. Timken agreed not to manufacture or sell directly or to others for shipment into the territory allocated to Electric and Ordnance Accessories Company, Ltd., and the latter agreed not to manufacture or sell directly or indirectly outside the territory allocated to it.

17. The rights of Electric and Ordnance Accessories Company, Ltd., under the aforesaid contracts were subsequently assigned to Limited. By 1927, Limited was manufacturing and selling large quantities of tapered roller bearings of the same types and sizes as those manufactured and sold by Timken.

18. In 1927 Timken and H. B. U. Dewar, Esq., a British businessman, acquired all of the capital stock of Limited, and Dewar became Limited's managing director. Thereafter, Limited together with Timken organized Francaise for the manufacture of tapered roller bearings in France. Throughout the period from 1928 to the date of the filing of this complaint, Dewar has held voting control of Limited and Francaise, and has supervised and controlled the management and operations of these companies.

VI

OFFENSES CHARGED

19. Beginning in or about the year 1928 and continuously thereafter up to and including the date of the filing of this complaint, defendant Timken and the co-conspirators Limited and Francaise have been engaged in an unlawful combination and conspiracy in restraint of trade and commerce in anti-friction bearings among the several states of the United States and with foreign nations, and between territories of the United States and foreign nations, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Antitrust Act. Such offenses will continue, unless the relief hereinafter prayed for in this complaint is granted.

21. The said combination and conspiracy has been formed and effectuated by the means, methods, agreements, and understandings hereinafter set forth.

22. On January 1, 1928, Timken and Limited entered into a contract referred to by them as a "business agreement" under which the United Kingdom, North Ireland, all countries of Europe, and all colonies and dependencies of the United Kingdom and European countries (except those in North or South America) were allocated to Limited and the rest of the world was allocated to Timken, as exclusive territory for the manufacture and sale of anti-friction bearings. Limited agreed not to manufacture, sell, or deal in any bearings except under the terms of the agreement and under the trademark "Timken." Each party agreed not to sell bearings directly or to others for shipment into the other party's territory, except (a) as assembled parts of completed articles of manufacture manufactured in its own territory; and (b) for bearing replacement purposes in such completed articles of manufacture, and then only on payment to the other party of 10% of the net sale price as a penalty.

23. In or about June 1928, Limited, on its own account and on behalf of and with the approval of Timken, entered into an agreement with Francaise, allocating France and its colonies, dependencies, and mandates (except those in North and South America) as the exclusive territory of Francaise for the manufacture and sale of anti-friction bearings. Limited and Timken agreed not to sell in this territory and Francaise agreed not to sell outside of this territory except under terms and conditions similar to those set out in the Limited-Timken contract of January 1, 1928, hereinbefore referred to in paragraph 22.

24. In or about February 1932, it was agreed between Limited and Timken that Limited would not quote on any inquiry for service or replacement bearings coming from Timken's territory, but would advise the customers that the product should be obtained from Timken unless (a) the customer demanded a British product, or (b) "SKF or F.S. are in competition." It

was also agreed that Hong Kong, formerly allocated to Limited, was now to be the territory of Timken.

25. On December 29, 1934, a new contract was entered into between Timken and Limited, superseding the contract of January 1, 1928, hereinabove referred to in paragraph 22. The contract specifically applied to anti-friction bearings of all kinds and was to be in effect for fifteen years. It contained substantially the same terms as the 1928 contract for the division of sales and manufacturing territories, but with the following modifications: (a) service or replacement bearings, which each company was permitted to sell in the other's territory could henceforth be sold only at prices approved by the company into whose territory the bearings were to be sold and the penalty payments on such sales were reduced to 5%, and (b) Russia was to be considered open territory into which both Limited and Timken could sell at prices and terms mutually agreed upon.

26. On or about July 15, 1935, Limited, on its own account and on behalf of and with the approval of Timken, entered into a new agreement with Francaise revising the earlier agreement of June 1928, hereinabove referred to in paragraph 23, so as to permit sales of bearings for replacement or service purposes by Limited and Timken in the territory allocated to Francaise, and by Francaise into the territories of Limited and Timken, at prices satisfactory to the company into whose territory the bearings were being sold.

27. On or about November 28, 1938, Timken, Limited, and Francaise entered into a contract, hereinafter referred to as the Tripartite Contract, embodying substantially the allocations of territory and other terms and conditions contained in the agreements of December 29, 1934 and July 15, 1935 hereinabove referred to in paragraphs 25 and 26. The Tripartite Contract, which superseded the previous agreements, provided that it should continue in effect for a period of twenty-seven years from January 1, 1938. A copy of this contract, attached hereto and marked

"Exhibit A", is made a part of this complaint as if herein set forth in full.

28. The Tripartite Contract was supplemented by an agreement dated November 29, 1938 between Timken, Limited, and H. B. U. Dewar, Esq., which provided that Russia would be considered joint territory in which both Timken and Limited could sell anti-friction bearings at prices agreed upon between them. This agreement was coterminous with the Tripartite Contract.

29. As a result of the outbreak of war and the requirements of the British armament program, Limited, in 1939, became increasingly unable to supply the requirements of its overseas markets. In September 1939, therefore, Limited arranged with Timken to transmit to Timken certain of its orders from the territory allocated to it. Under this arrangement, Timken shipped bearings manufactured in the United States to Limited's customers, charging prices determined by Limited, and paying the latter a commission on all such sales. Limited refused to permit Timken to accept orders directly from customers located in Limited's territory, with the exception of unsolicited orders for replacement bearings in accordance with the Tripartite Contract. In the case of replacement bearings, it was agreed that Timken, rather than make inquiry on each order as to the price agreeable to Limited, could make quotations based upon a "protective discount" off Timken's export price list on standard bearings. As a result, Timken sold replacement bearings for use in Limited's territory at prices approximately 65 per cent higher than Timken's regular export price for such bearings.

30. In 1940, the largest distributor of anti-friction bearings in Australia urged Timken to break its agreement with Limited, so that said distributor could purchase its requirements of tapered bearings from Timken rather than from Limited. Timken refused, and the distributor was required to send its orders to Limited, which filled such parts of the orders as it could and then transferred the balance to Timken. This

procedure caused delays in the transmission and filling of orders, and in some cases Limited wholly failed to refer to Timken Australian orders which Limited was unable to supply. Finally, Limited agreed to permit Timken to handle orders from Australia direct for the duration of the war, but only at prices established by Limited.

31. Defendant Timken, throughout the period of the conspiracy herein alleged, has not accepted orders for anti-friction bearings for shipment to the territory allocated to Limited and Francaise, except with the consent of Limited and at prices agreed upon with Limited, and has referred to Limited and Francaise all inquiries relating to agency or distribution arrangements in said territories. Limited, in turn, has not accepted orders for anti-friction bearings for shipment to the territory allocated to Timken, except with Timken's consent and at prices agreed upon with Timken.

32. The Tripartite Contract and supplemental agreement hereinbefore referred to in paragraphs 27 and 28 are in full force and effect and the defendant and its co-conspirators threaten to and will continue the aforesaid illegal practices and arrangements, unless the relief prayed for in this complaint is granted.

VII

EFFECTS OF THE CONSPIRACY

33. As a result of the combination and conspiracy in restraint of trade hereinbefore alleged, the defendant and its co-conspirators have:

- (a) unreasonably restrained the manufacture and sale of anti-friction bearings in the United States and its territories;
- (b) unreasonably restrained the importation of anti-friction bearings into the United States;
- (c) unreasonably restrained the importation of anti-friction bearings into the territories of the United States from foreign countries;
- (d) unreasonably restrained and prevented the sale and

export of anti-friction bearings from the United States to purchasers in foreign countries, despite the demand for lower price American-made bearings;

(e) unreasonably restrained and prevented American manufacturers of automobiles, and their dealers in foreign countries, from purchasing American-made anti-friction bearings for shipment or sale outside the United States to territories allocated to Limited and Francaise as hereinabove alleged, and have caused such firms to buy British or French bearings at substantially higher prices; and

(f) arbitrarily and unreasonably increased the prices of replacement bearings sold to American manufacturers and exporters and to foreign purchasers for shipment or sale outside the United States to territory allocated to Limited and Francaise as hereinabove alleged.

34. The current world shortage of anti-friction bearings and the decrease of European bearing production caused by World War II has created large potential export markets for anti-friction bearings of American manufacture. Due to the demands of the war effort, Timken has expanded its productive facilities. The continuation of the combination and conspiracy herein alleged will have the effect of restraining and preventing Timken from seeking and acquiring many foreign markets with the eventual consequence of reducing Timken's production of bearings and employment of labor.

P R A Y E R

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant Timken has combined and conspired with its co-conspirators Limited and Franciase to restrain trade and commerce among the States and with foreign nations, and between territories of the United States and foreign nations, in violation

of Sections 1 and 3 of the Sherman Antitrust Act; and that the contracts, understandings, arrangements, and practices alleged in this complaint are in violation of the Sherman Antitrust Act.

2. That the defendant and its officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from combining, conspiring or agreeing to restrain commerce in anti-friction bearings among the several states of the United States and with foreign nations, and between territories of the United States and foreign nations; and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving or renewing any of the violations of the Sherman Antitrust Act, in the complaint set forth and described.

3. That the contracts, understandings, and arrangements between defendant Timken and its co-conspirators Limited and Francaise, heretofore alleged, be adjudged to be illegal and ordered terminated and cancelled.

4. That the defendant, its officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of it, be perpetually enjoined from carrying out, claiming any rights under, or entering into any contract, agreement, or understanding, in any manner restricting the defendant's exports of anti-friction bearings from the United States, or dividing export markets, allocating territories, fixing prices for export sales, or in any manner restricting or affecting the importation of anti-friction bearings into the United States and its territories.

5. That the defendant Timken be enjoined from transferring, selling or assigning the trademark "Timken" to or for the use of co-conspirators Limited or Francaise, or the successors and assigns thereof, so as in any manner to exclude the defendant from using the trademark "Timken" anywhere in the world.

6. That defendant Timken be ordered to divest itself of its stock holdings and other financial interests, direct and indirect, in Limited and Francaise, upon such terms and conditions as shall be approved by the Court; and that until such time as said divestiture shall have been effected, the defendant Timken, its officers, directors, agents and representatives and all persons and corporations acting or claiming to act on behalf of such defendant, be enjoined from refusing to sell anti-friction bearings to the extent available in the normal course of such defendant's business to any person, partnership, or corporation ordering such commodities for export, and exporting the same from the United States, where such persons, partnerships, or corporations make appropriate payment or tender of payment at defendant's current export prices.

7. That the plaintiff have such other, further, general and different relief as the nature of the case may require and the Court shall deem proper.

8. That the plaintiff recover its taxable costs.

Dated: Cleveland, Ohio

TOM C. CLARK
Attorney General

ROBERT A. NITSCHKE
Special Assistant to the
Attorney General

WENDELL BERGE
Assistant Attorney General

JOSEPH RAND
Special Attorney

GEORGE B. HADDOCK
Special Assistant to the
Attorney General

DON C. MILLER
United States Attorney

20. Timken and the co-conspirators Limited and Francaise have entered into contracts, agreements, and understandings, and have continuously planned and acted together to eliminate competition between them in the manufacture and sale of anti-friction bearings in all markets of the world, including the United States, by:

(a) allocating to each party a designated territory for the manufacture and sale of anti-friction bearings as follows:

1. France, its colonies, mandates and dependencies except those in South America--to co-conspirator Francaise;
2. Great Britain, Ireland, and all countries other than France and Russia on the continent of Europe and all colonies, dominions, mandates, and dependencies of the United Kingdom and other European countries, except France, in any part of the world, except in North and South America--to co-conspirator Limited;
3. Russia--jointly to defendant Timken and co-conspirator Limited;
4. The rest of the world--to defendant Timken;

- (b) preventing each party from selling or shipping anti-friction bearings into the territory allocated to any other party, except in completed articles of manufacture and for replacement of bearings therein;
- (c) fixing and agreeing upon prices of replacement bearings sold and shipped into the territory allocated to any other party;
- (d) fixing and agreeing upon prices of anti-friction bearings sold and shipped to Russia.

Dated 28th November 1938

THE TIMKEN ROLLER BEARING COMPANY

BRITISH TIMKEN LIMITED

and

SOCIETE FRANCAISE TIMKEN

BUSINESS AGREEMENT

STIBBARD, GIBSON & CO.,

21, Leadenhall Street,

London, E.C.3.

AN AGREEMENT made the Twenty Eighth day of November one thousand nine hundred and thirty-eight BETWEEN THE TIMKEN ROLLER BEARING COMPANY a Corporation organized under the Laws of the State of Ohio in the United States of America and having its principal office in the City of Canton in the said State (hereinafter for convenience called "the American Company") of the first part BRITISH TIMKEN LIMITED a Joint Stock Company incorporated under the Laws of the United Kingdom of Great Britain and Ireland and having its principal office in the City of Birmingham in the United Kingdom of Great Britain and Northern Ireland (hereinafter for convenience called "the British Company") of the second part and SOCIETE FRANCAISE TIMKEN a Societe Anonyme incorporated under the Laws of France and having its principal office in Asnieres in the Department of Seine France (hereinafter for convenience called "the French Company") of the third part

WHEREAS

(A) The American Company in the United States aforesaid the British Company in the United Kingdom of Great Britain and Northern Ireland and the French Company in France carry on business as manufacturers of anti-friction bearings (hereinafter called "bearings") and the American Company in the United States aforesaid also carries on business as manufacturers of steel used in the manufacture of bearings

(B) The Companies parties hereto for their mutual advantage and convenience in working have agreed to make arrangements for an interchange between them of information and facilities and in connection therewith to define their respective territories and for other purposes in manner hereinafter appearing

(C) A Company party to this Agreement covenanting agreeing or undertaking with or to the other Companies parties to this Agreement or either of them is hereinafter sometimes referred to as a covenantor Company and the Companies or Company with or to which the covenanting Company covenants agrees or undertakes are hereinafter sometimes referred to as covenantee Companies or a covenantee Company

NOW

THE COMPANIES PARTIES HERETO AGREE AS FOLLOWS:--

1. FOR the purpose of this Agreement

(A) The territory of the French Company means the territories of the Republic of France on the Continent of Europe and its Dominions Colonies Dependencies and Mandatory Territories in any part of the world except in or adjacent to North or South America

(B) The territory of the British Company means the United Kingdom of Great Britain and Northern Ireland Eire and all countries other than France on the Continent of Europe and all Dominions Colonies Dependencies and Mandatory Territories of the United Kingdom aforesaid and other European countries except France in any part of the world except in or adjacent to North or South America but does not include any part of the territory of the French Company

(C) The territory of the American Company means the rest of the world outside the territories of the French Company and the British Company

(D) The foregoing territories and the corresponding meanings shall be subject to alteration from time to time by agreement between the parties hereto by letter or other writing

2. (A) Each of the Companies parties hereto as fully and freely as its patent and contractual rights and obligations permit and free of expense to the other Companies parties hereto except as to out of pocket expenses will inform the other Companies parties hereto as to all inventions discoveries improvements and practises useful in connection with the manufacture of bearings whether patented or not

(B) The British Company in its territory and the French Company in its territory shall be at liberty during the life of this Agreement to manufacture and sell bearings under any Letters Patent or other patent rights now or hereafter from time to time owned by the American Company or in the case of the French Company by the British Company and pertaining to the manufacture or sale of bearings so far as the owning Company's patent and contractual rights permit and free of expense except as to out of pocket expenses

(C) Each of them the British Company and the French Company as a covenantor Company so far as its patent and contractual rights and obligations permit and free of expense except as to out of pocket expenses will assign absolutely and for all time to the American Company or the British Company as a covenantee Company all Letters Patent or other patent rights now or hereafter from time to time owned by the covenantor Company and pertaining to the manufacture or sale of bearings in the territory of the covenantee Company

(D) The French Company as a covenantor Company if and when requested by the British Company as a covenantee Company and each of them

the British Company and the French Company as a covenantor Company if and when requested by the American Company as a covenantee Company and in each case at the expense of the covenantee Company will execute and do or cause to be executed and done all deeds acts and things which the covenantee Company may consider to be necessary or desirable in order that any inventions discoveries improvements or practises useful in connection with the manufacture of bearings which may come to the knowledge of the covenantor Company and which such Company shall be entitled to communicate to the covenantee Company for this purpose may be protected by Letters Patent or other patent rights in such parts of the territory of the covenantee Company and in such names as the covenantee Company shall specify with a view to such patent rights being assigned to or otherwise vested in the covenantee Company or its nominees in accordance with the provisions hereinbefore contained

(E) Each of the covenantor Companies hereinbefore mentioned hereby irrevocably appoints the covenantee Company with power of substitution to be its Attorney for and in its name and on its behalf but at the expense of the covenantee Company to execute and do all deeds acts and things which the covenantee Company or its substitutes from time to time may consider to be necessary or desirable for the purpose of giving effect to the agreements on the part of the covenantor Company contained in this clause

(F) Provided however that nothing in this Agreement contained shall obligate any party to acquire or enlarge its interest in any Letters Patent or other patent rights

3. (A) Each of the Companies parties hereto will use its best endeavours to maintain the distinctive character of the trade mark "Timken" and refrain from any act calculated to prejudice the rights of the parties hereto in respect thereof as now existing

(B) Each of them the British Company and the French Company as a covenantor Company upon the termination of this Agreement if and so far as it may be requested in writing the British Company by the American Company as a covenantee Company or the French Company by the American Company or the British Company as a covenantee Company and if and so far as the provisions of this clause are binding upon the covenantor Company will cause the name "Timken" to be eliminated from its corporate name and from the name of any person firm or company controlled by it and will refrain, and will cause any person firm or company controlled by it to refrain from using the name "Timken" as part of or in connection with his their or its name or as a trade mark or trade name or otherwise and from any act calculated to obstruct or delay the covenantee Company in any steps which it may take with a view to establishing the exclusive right of the covenantee Company to the said name in the territory of the covenantor Company and so far as practicable the covenantor Company will assign or cause any person firm or company controlled by it to assign to the covenantee Company or as it may direct any trade mark or other rights in respect of the said name in its ownership or control and in the meantime after the termination of this Agreement will authorise the covenantee Company to use the name Timken in any way in the territory of the covenantor Company

4. From time to time during the life of this Agreement so long as the British Company or the French Company shall be actually engaged in the manufacture of bearings the American Company will give advice to the British Company or the French Company and the British Company will give advice to the French Company as the case may require with respect to the manufacture of bearings and particularly in connection with the quality of steel used and its composition and analysis the method of case hardening the machinery and processes for grinding gauging sizing quenching die working forging upsetting forming sorting plating and other operations and in connection with any special tools and machinery

5. (A) Each of them the British Company in the British Company's territory and the French Company in the French Company's territory as a covenantor Company by itself or others if and when required the British Company by the American Company as a covenantee Company and the French Company by the American Company or the British Company as a covenantee Company will manufacture bearings in such quantities and in such States within the territory of the covenantor Company and will exercise all such rights in connection with the manufacture of bearings as shall be required to maintain all Letters Patent from time to time owned by the covenantee Company in any State or States within the territory of the covenantor Company

(B) If the covenantor Company desires to be relieved of the obligation contained in paragraph (A) of this clause with respect to any State it shall be entitled to give notice in writing to the covenantee Company

that it excludes such State from the territory of the covenantor Company and thereupon for the purposes of this clause such State shall be withdrawn from the territory of the covenantor Company and shall be added to and included in the territory of the covenantee Company

(C) For the purposes of this clause a State shall mean a territorial area in which there is separate jurisdiction for patent purposes

6. Each of the Companies parties hereto as a covenantor Company hereby covenants with each of the other Companies parties hereto as a covenantee Company that during the life of this Agreement the covenantor Company will not directly or indirectly make or sell or authorise others to make or sell bearings in the territory of the covenantee Company or in the territory of the covenantor Company knowing them to be for shipment into the territory of the covenantee Company save and except as follows to wit:--

(A) The covenantor Company may make or sell or authorise others to make or sell in its territory bearings for delivery or shipment into the territory of the covenantee Company as assembled component parts of completed articles of manufacture manufactured in the territory of the covenantor Company or as assembled component parts of completed units of manufacture manufactured in the territory of the covenantor Company for incorporation into such completed articles of manufacture.

(B) The covenantor Company in its territory may accept and execute orders for bearings for ultimate destination in the territory of the covenantee Company for use for bearing replacement purposes in such completed articles of manufacture but such right shall not authorise sales to

or known to be destined for manufacturers in the territory of the covenantee Company or sales at prices in conflict with the wishes of the covenantee Company and the covenantor Company from time to time will notify the covenantee Company of the details of the sales authorised under this paragraph and will pay to the covenantee Company an amount equal to five per centum of the net sale price received under any sales so authorised not being sales made through or at the request of the covenantee Company.

(C) The American Company may authorise not more than four manufacturers or producers of vehicles in the United States of America to import into the territory of the covenantee Company bearings manufactured by the said producers in the territory of the American Company for incorporation in new products or for bearing replacement purposes for products previously manufactured or assembled by the said manufacturers or producers or their subsidiaries in the territory of the covenantee Company PROVIDED that they are not stamped with or identified by the name Timkon.

(D) For the purposes of this clause a holding Company as for instance General Motors Corporation and its constituent and subsidiary Companies shall be deemed to be one manufacturer or producer

(E) The parties hereto recognise and approve the mutual licensing Agreement entered into between the American Company and International Harvester Company dated the thirty-first day of December one thousand nine hundred and twenty-seven and the American Company when requested will supply to the British Company or the French Company a copy of the said Agreement.

7. Notwithstanding anything in this Agreement the American Company shall be at liberty to authorise manufacturers to make and sell in the territory of the British Company or the French Company steel and/or tubes under Patents or according to methods and processes belonging to the American Company provided always that the American Company will make arrangements so that any royalty or charge which may be payable by any such authorised manufacturer in respect of steel and/or tubes supplied to the British Company or the French Company shall be credited to the British Company or the French Company as the case may be.

8. (A) Each of the Companies parties hereto as a covenantor Company during the life of this Agreement will pay all renewal fees required to maintain and keep on foot all Letters Patent with respect to bearings in the territory of the covenantor Company which are owned by either of the other Companies parties hereto as a covenantee Company and of which particulars from time to time have been supplied to the covenantor Company by the covenantee Company.

(B) Provided however that if the covenantor Company shall desire to discontinue or refrain from maintaining any such Letters Patent the covenantor Company shall be at liberty to give not less than three months written notice to the covenantee Company and upon the expiration of the said period of three months the Letters Patent to which such notice relates shall belong to and be at the disposal of the covenantee Company free from any rights of the covenantor Company under this Agreement and the covenantor Company shall be under no obligation to maintain and keep on foot such Letters Patent.

(C) The covenantor Company at its own cost will defend every action or proceeding instituted for the purpose of revoking any Letters Patent with respect to bearings in the territory of the covenantor Company owned by the covenantee Company so long as such Letters Patent is being maintained and kept on foot by the covenantor Company under the provisions of this Agreement.

(D) If any of the said Letters Patent shall be revoked solely on some ground which would not have been available if the covenantor Company had duly performed its obligations under this Agreement then and in any such case the covenantee Company in addition to any other rights which it might have against the covenantor Company shall be entitled to recover from the covenantor Company all costs charges and expenses reasonably incurred by it in defending the action or proceeding in which such Letters Patent is revoked.

9. Upon the termination of this Agreement so far as regards any of the Companies parties hereto whether under the provisions hereof or otherwise howsoever such Company shall be at liberty to complete and sell its stock of bearings on hand at the date of the said termination upon the terms which would have ruled if this Agreement had not been so terminated.

10. In the event of liquidation of the British Company or the French Company (except for the purpose of capital reorganisation) or the appointment of a Receiver of the undertaking of either of these Companies this Agreement except the last previous clause hereof shall immediately terminate and cease as between such Company and the other companies parties hereto.

11. This Agreement unless otherwise terminated as herein provided shall continue in full force and effect for a period of twenty-seven years from the first day of January one thousand nine hundred and thirty-eight.
12. If for any reason this Agreement shall be terminated during the said period of twenty-seven years as regards any of the Companies parties hereto such termination shall not affect the continuance of this Agreement as regards the other Companies parties hereto.
13. This Agreement shall be construed and take effect according to English law.

IN WITNESS whereof The Timken Roller Bearing Company by the authority of its Board of Directors has caused these presents to be executed in triplicate by its Secretary and its Corporate Seal to be thereto affixed all in Canton Ohio United States of America British Timken Limited by the authority of its Board of Directors has caused its Common Seal to be affixed to these presents in triplicate and two of its Directors and its Secretary to execute the same all in Birmingham England and Societ  Francaise Timken under the authority of its Board of Directors has caused these presents to be signed in triplicate by its Managing Director all in Paris France the day and year first above written.

SIGNED AND SEALED by or on	(THE TIMKEN
behalf of THE TIMKEN ROLLER	(ROLLER BEARING COMPANY
BEARING COMPANY in the presence of	((s) Wm. E. Umstatted President.
(s) Bessie E. Stokey	((s) R. C. Brower Secretary.
Canton, Ohio, USA	
Clerk.	

THE COMMON SEAL of BRITISH)
TIMKEN LIMITED was hereunto)
affixed in the presence of)

(s) Wm. Dallow)
(s) F. T. Vaeur) Directors.
(s) R. O. Squire Secretary.

WITNESS to the signature of) (s) M. B. U. Dewar
Michael Bruce Urquhart Dewar) Administrateur Delege
for and on behalf of SOCIETE) S.A Francaise Timken.
FRANCAISE TIMKEN.)