UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, *Plaintiff*, v. PARKER–HANNIFIN CORPORATION, and CLARCOR INC., *Defendants*.	Civil Action No.:

COMPLAINT

On February 28, 2017, Parker-Hannifin Corporation acquired its only U.S. competitor in aviation fuel filtration systems and filter elements, CLARCOR Inc. By doing so, it eliminated all head-to-head competition between the only two domestic manufacturers of these products, effectively creating a monopoly in the United States. If permitted to stand, this unlawful merger will harm competition in the development, manufacture and sale of these critical aviation fuel filtration systems. The results would be higher prices, reduced innovation, less reliable delivery times, and less favorable terms of service for the American businesses and military that depend on these critical products.

Accordingly, the United States of America brings this civil antitrust action to unwind this unlawfully created monopoly by means of an order requiring defendant Parker-Hannifin to divest

either Parker-Hannifin's or CLARCOR's aviation fuel filtration assets. The United States alleges as follows:

I. INTRODUCTION

1. More than 87,000 flights travel through U.S. airspace on any given day. The safety of the passengers and cargo on each of those flights depends on access to uncontaminated fuel. Before aviation fuel is considered clean enough for use by commercial or military aircraft, contaminants and water must be removed using specialized fuel filtration systems. The failure to clean aviation fuel in this manner can cause plane engines to stall, with potentially catastrophic consequences.

2. In light of the importance of these fuel filtration products, the U.S. airline industry and the U.S. military have adopted standards to govern their use. Under these standards, U.S. airlines require their contracted refueling agents to use qualified aviation fuel filtration products to filter aviation fuel in the United States. To qualify, each manufacturer of aviation fuel filtration products must demonstrate that its products meet the Energy Institute's ("EI") specifications by passing a rigorous series of tests typically conducted in the presence of an aviation fuel expert from the EI.[1]

3. Prior to this merger, Parker-Hannifin and CLARCOR were the only suppliers of EI-qualified aviation fuel filtration systems and filter elements to U.S. customers. The only other manufacturer of such EI-qualified aviation fuel filtration products in the world is located in Germany. Because that manufacturer does not have a U.S. manufacturing facility and it lacks a

[1] The EI is an independent, international professional organization for the energy sector that publishes performance and testing standards for aviation fuel filtration products.

U.S. network for sales, warehousing, distribution, technical support and delivery, U.S. customers do not consider it a viable competitive alternative to the merged firms.

4. It is also unlikely that a new entrant to the market could remedy the competition lost as a result of this merger. As the former General Manager of Parker-Hannifin's aviation fuel filters business explained in a sworn statement only a few years ago, securing EI-qualification for aviation fuel filtration products is "expensive, time-consuming and difficult."

5. Parker-Hannifin was aware that it was acquiring its only U.S. competitor for these important aviation fuel filtration products. Just weeks before its $4.3 billion merger was announced, the Vice President of Business Development for Parker-Hannifin's Filtration Group wrote to the President of the Filtration Group, identifying "the notable area of overlap" between the merging parties in "ground aviation fuel filtration." He asked whether Parker-Hannifin should be "forthcoming" about this "aviation antitrust potential." Then, later in that same email, he stated that Parker-Hannifin was "preparing for the possibility that we may have to divest [CLARCOR's] aviation ground fuel filtration" business.

6. Because the transaction combines the only two sources of qualified aviation fuel filtration products in the United States, the effect of this merger would be substantially to lessen competition or tend to create a monopoly. Parker-Hannifin's acquisition of CLARCOR's aviation fuel filtration business thus violates the antitrust laws.

II. DEFENDANTS AND THE ILLEGAL TRANSACTION

7. Parker-Hannifin is an Ohio corporation headquartered in Cleveland, Ohio. It is a diversified manufacturer of filtration systems, and motion and control technologies for the mobile, industrial and aerospace markets with operations worldwide. In 2016, the company had sales revenue of $11.4 billion.

8. In 2012, Parker-Hannifin acquired Velcon Filters, LLC ("Velcon"), a manufacturer of EI-qualified aviation fuel filtration equipment. Velcon is a Delaware Limited Liability Company and an indirectly wholly-owned subsidiary of Parker-Hannifin. Parker-Hannifin continues to manufacture and sell aviation fuel filtration equipment under the Velcon brand. Parker-Hannifin has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

9. Prior to its acquisition by Parker-Hannifin, defendant CLARCOR was a Delaware corporation headquartered in Franklin, Tennessee. CLARCOR was a leading provider of filtration systems for diversified industrial markets with net sales of approximately $1.4 billion in 2016. CLARCOR manufactured and sold aviation fuel filtration products through its PECOFacet subsidiary. PECOFacet has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

10. On December 1, 2016, Parker-Hannifin and CLARCOR entered into an Agreement and Plan of Merger whereby Parker-Hannifin, through a newly formed Delaware corporation and wholly-owned subsidiary of Parker-Hannifin ("Merger Sub"), acquired 100% of the voting stock of CLARCOR for $4.3 billion.

11. On February 28, 2017, Parker-Hannifin completed its acquisition. Pursuant to the terms of the Merger Agreement, the Merger Sub merged with and into CLARCOR, with CLARCOR surviving the merger, and existing today as a Delaware-incorporated, wholly-owned subsidiary of Parker-Hannifin.

III. INDUSTRY OVERVIEW

A. Industry Standards

12. Aviation fuel originates from the refinery processing of crude oil. Following manufacture, batch production and certification, aviation fuel is released into the distribution system or sent directly by pipeline to an airport. The distribution system may use a number of transportation methods such as pipelines, barges, railcars, ships, and tankers, before it is delivered to airport storage tanks and then pumped into the aircraft.

13. Fuel contaminated by water, particulates or organic material creates unacceptable safety risks to aircraft. Because of the risks of such contaminants being introduced into the fuel at any point in the supply chain, it is critical that fuel be filtered properly at multiple stages in the process before being delivered into the airplane.

14. Due to safety concerns, filtration at airports in particular is subject to specific industry standards. The quality of aviation fuel in the United States is regulated by the Federal Aviation Administration, but airlines and their contracted refueling agents are responsible for the handling and filtration of aviation fuel at airports.

15. For more than 25 years, Airlines for America[2] ("A4A"), a trade association for U.S. passenger and cargo carriers, has published standards for aviation fuel quality control at airports, recognizing the "importance of using quality jet fuel for ensuring the highest degree of flight safety." In particular, ATA Specification 103 ("ATA 103") sets forth specifications, standards, and procedures in the United States for ensuring that planes receive uncontaminated aviation fuel. ATA 103 is the industry standard for aviation fuel handling in the United States and all U.S. commercial airlines have adopted ATA 103 into their operating manuals.

[2] Airlines for America was formerly known as the Air Transportation Association of America ("ATA").

16. A4A and the EI jointly ensure that fuel at airports remains safe and of the highest quality before it is loaded on an aircraft. Accordingly, in its fuel filtration specifications, ATA 103 requires that all aviation fuel be processed by filtration systems that are qualified to meet the latest EI standards.

17. In addition, ATA 103 requires that all aviation fuel be filtered at least three times before it is consumed in an aircraft engine: (1) as it enters an airport storage tank; (2) as it exits the airport storage tank and is pumped into a hydrant system, refueling truck or hydrant cart; and (3) as it is pumped from a hydrant cart or refueling truck into an aircraft.

18. The primary customers of EI-qualified aviation fuel filtration systems and filter elements include commercial airline ground fueling agents, fixed based operators at airports, airport fuel storage operators, and manufacturers of fueling equipment. These customers must follow ATA 103 and are therefore required to purchase and use EI-qualified filtration systems and filter elements. EI-qualified filtration systems and filter elements are also used by customers supplying aviation fuel to U.S. airports.

19. Aviation fuel-related performance standards for U.S. military jets are similar to those followed by commercial airlines. Like commercial airlines, the Department of Defense requires that fuel filtration suppliers meet EI specifications.

B. <u>Aviation Fuel Filtration Systems and Elements</u>

20. An aviation fuel filtration system is comprised of a pressurized vessel that houses consumable filter elements. Customers purchase filtration systems for new fixed installations, such as airport fuel storage facilities, or for mobile fueling equipment, such as refueling trucks or hydrant carts. While vessels can last for decades, the filter elements must be replaced pursuant

to a schedule set by ATA 103—or sooner, if contaminants in the fuel affect the filtration system's performance.

Interoperability Standards for Aviation Fuel Filtration Systems

21. Prior to the transaction, Parker-Hannifin and CLARCOR were the only two U.S. manufacturers of EI-qualified filter elements. Their respective filter elements are interoperable with each other's vessels. In fact, the parties marketed their products to U.S. customers with cross-references to each other's compatible part numbers. Thus, prior to the merger, U.S. customers could choose between Parker-Hannifin and CLARCOR filter elements for their vessels and benefited from competition between the two firms resulting in better pricing, terms, and service.

Types of EI-Qualified Aviation Fuel Filtration Systems

22. There are three types of aviation fuel filtration systems that must be qualified to EI standards pursuant to ATA 103: (i) microfilter systems; (ii) filter water separator systems; and (iii) filter monitor systems (collectively "EI-qualified aviation fuel filtration systems"). Each type of EI-qualified aviation fuel filtration system uses different filter elements.

23. A microfilter system is a filtration system comprised of a single vessel that houses consumable filter elements. Microfilter systems are sometimes referred to as pre-filters because they are designed to remove dirt and other particulate matter from aviation fuel before it reaches the next level of filtration, which is typically the filter water separator ("FWS") system.

24. A FWS system is typically comprised of a single vessel and two types of filter elements—coalescers and separators—that remove dirt and water from the aviation fuel to levels acceptable for use in modern aircraft. FWS are required at U.S. airports to filter aviation fuel

before entering and after exiting airport storage facilities. They also may be installed on mobile fueling equipment that ultimately connects to the wing of the aircraft to deliver the aviation fuel.

25. A filter monitor ("FM") system is a filtration system that is comprised of a single vessel that houses one type of consumable filter element, a filter monitor. FM systems are used exclusively on mobile fueling equipment and are often the last point at which aviation fuel is filtered before the fuel is pumped into the plane.

26. U.S. commercial aviation customers use microfilter systems, FWS systems, FM systems, and associated filter elements. Each system and its associated filter elements is qualified to separate EI standards. Filtration products come in dozens of sizes to meet a customer's own specific filtration requirements and design needs, and customers prefer a supplier to have a full line of EI-qualified products. Parker-Hannifin, for example, offers dozens of different FWS vessels—ranging from smaller vessels that weigh 360 pounds and support flow rates of 50 gallons per minute, to larger vessels that weigh 3,800 pounds and support flow rates of 2,500 gallons per minute. CLARCOR has a similarly broad product offering.

27. The U.S. military also uses microfilter systems, FWS systems, and associated filter elements, qualified to EI standards.

C. Importance of Technical Service and Support

28. Aviation fuel filtration is a specialized industry in which customers rely on expeditious service and technical support from the manufacturers of aviation fuel filtration products. Disruptions in the supply or performance of aviation fuel filtration systems and filter elements create significant risk, including grounding flights and potentially catastrophic accidents. And because contaminated fuel can imperil the safe operation of the aircraft, both the

fuel service provider and the airline itself could incur significant liability if aviation fuel is improperly filtered.

29. As a result, customers rely on manufacturers to provide a rapid response to technical issues. Customers rely on the manufacturer to provide a reliable supply of replacement filtration elements on an emergency basis when needed to resolve unanticipated fuel contamination issues. Customers also rely on manufacturers' trained scientists and custom laboratories to diagnose and repair problems that arise from malfunctioning filters. Recognizing this need, the merging parties provided service and technical support to U.S. customers, including on-site testing, lab testing, analysis services, and training classes.

IV. THE RELEVANT MARKETS THREATENED BY THE ACQUISITION

A. Relevant Product Markets

i. EI-Qualified Aviation Fuel Filtration Systems

30. EI-qualified aviation fuel filtration systems is a relevant product market and line of commerce under Section 7 of the Clayton Act. The filtration of aviation fuel at airports in the United States must be performed using aviation fuel filtration systems that are qualified to the latest EI standards. U.S. customers that process aviation fuel typically will accept no substitutes for EI-qualified aviation fuel filtration systems. A company that controls all EI-qualified aviation fuel filtration systems in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration systems in sufficient numbers to make that price increase unprofitable.

31. The EI-qualified aviation fuel filtration systems market consists of microfilter systems, FWS systems, and FM systems. Each of these aviation fuel filtration systems comes in a variety of sizes, configurations and technical capabilities to fit the specific needs of the

customer, which is unlikely to substitute between them. Each of these systems is offered under essentially the same competitive conditions by the same set of manufacturers, so all EI-certified aviation fuel filtration systems can be grouped together in a single market for purposes of analysis.

ii. EI-Qualified Aviation Fuel Filtration Elements

32. EI-qualified fuel filtration elements is a relevant product market and line of commerce under Section 7 of the Clayton Act. To comply with U.S. industry standards, only EI-qualified aviation fuel filtration elements may be used for the filtration of aviation fuel used at airports in the United States. U.S. customers that process aviation fuel typically will accept no substitutes for EI-qualified aviation fuel filtration elements. A company that controls all EI-qualified aviation fuel filtration elements in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration elements in sufficient numbers to make that price increase unprofitable.

33. EI-qualified aviation fuel filtration elements—microfilters, coalescers, separators, and monitors—consist of those replacement elements for EI-qualified aviation fuel filtration systems. Filter elements come in a variety of types and sizes, and customers typically need a specific type and size to fit a particular application, which makes customers unlikely to substitute among different types and sizes of filter elements. Each such element is offered by the same set of manufacturers and is sold under essentially the same competitive conditions, so all EI-certified aviation fuel filtration elements can be grouped together in a single market for analytical purposes.

B. Relevant Geographic Market

34. The United States is the relevant geographic market in which to assess the competitive harm that is likely to arise out of this transaction.

35. U.S. customers of aviation fuel filtration systems and filter elements rely on domestic sales and technical support, warehousing and distribution. Ready, available supply of filtration systems and elements is critical to ensuring the proper filtration of aviation fuel. Domestic service, including technical support and training, is also essential for many U.S. customers. Parker-Hannifin and CLARCOR recognize the need for local support and have U.S. facilities that provide sales, technical support and distribution to U.S. customers. These customers are unlikely to rely on a foreign supplier with no U.S. presence even in the event of a significant price increase.

36. In addition, suppliers of aviation fuel filtration products are able to price differently to U.S. customers than to customers located outside of the United States.

V. ANTICOMPETITIVE EFFECTS OF THE ACQUISITION

37. Prior to the acquisition, Parker-Hannifin and CLARCOR were engaged in head-to-head competition in each of the relevant markets. That competition enabled customers of the relevant products to negotiate better pricing, service and terms and to receive innovative product developments from Parker-Hannifin and CLARCOR. The acquisition eliminates this head-to-head competition in each of the relevant markets. This elimination of head-to-head competition will provide Parker-Hannifin with the power to raise prices without fear of losing a significant amount of sales.

38. The merger also reduces non-price competition and innovation. Prior to the acquisition, CLARCOR's PECOFacet brand had distinguished itself as the leading provider of services and non-price benefits, e.g., innovative product improvements, training programs,

customer service, and strong on-time delivery, while customers viewed Parker-Hannifin as weaker on customer service and less willing to provide additional non-price benefits. For instance, customers benefited from CLARCOR's free and timely training programs, favorable credit terms, free shipping, and re-stocking programs. Following the merger, Parker-Hannifin's need to compete with these CLARCOR programs and services is eliminated, to the detriment of customers.

39. Timely delivery of filter elements is important to customers. Parker-Hannifin, however, already has plans to shut down the CLARCOR facility used to manufacture the relevant products and consolidate it with Parker-Hannifin's existing facility. Such consolidation will result in reduced inventory and less timely deliveries during unanticipated future emergencies.

40. The only other firm that manufactures EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements is located in Germany. This company lacks a U.S. manufacturing facility and a U.S. network for sales, warehousing, distribution, technical support and delivery. Without that infrastructure, effective near-term expansion by that firm into the United States is unlikely.

41. Even if such expansion were to occur, however, such expansion likely would not be timely or sufficient to restore competition and restrain the anticompetitive effects resulting of the transaction. Customer acceptance is a high barrier to expansion. Parker-Hannifin's Velcon brand and CLARCOR's PECOFacet brand are the only two brands that most U.S. aviation fuel filtration customers have used. Given the critical public safety function that aviation fuel filtration products perform—and the legal liability to the operator should something go wrong—U.S. customers are reluctant to switch to a foreign company with which they are unfamiliar.

VI. ABSENCE OF COUNTERVAILING FACTORS

42. Barriers to entry for the relevant market are significant. They include the high costs and long time frames needed to design, develop, and manufacture the products, as well as the testing needed to obtain EI-qualification. Further, customers are unlikely to accept a new supplier in sufficient numbers to make entry effective if that supplier does not have a network for sales, warehousing, distribution, technical support and delivery. Accordingly, new entry or expansion in the relevant market is unlikely to occur in a manner that would counteract the harm to competition arising from this merger. Indeed, there has been no effective entry in the United States in the manufacture and sale of EI-qualified aviation fuel filtration systems and elements in decades.

43. Parker-Hannifin recognizes and admits to these entry barriers. In 2013, Parker-Hannifin and Velcon initiated litigation against Velcon's former owners for alleged violations of their non-compete agreements and for misappropriation of trade secrets. In this litigation, Parker-Hannifin submitted a sworn affidavit from Velcon's General Manager who attested that the process for obtaining EI-qualifications for aviation fuel filtration products was "expensive, time-consuming and difficult."

44. In addition, Parker-Hannifin averred that the technical information related to its products, including product designs and drawings were protected trade secrets, which "[o]thers would have to expend significant time and money to acquire and duplicate."

VII. JURISDICTION AND VENUE

45. The United States brings this civil antitrust action against defendants Parker-Hannifin and CLARCOR under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain defendants from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. § 18.

46. Parker-Hannifin develops, manufactures and sells EI-qualified aviation fuel filtration systems and filter elements in the flow of interstate commerce. Parker-Hannifin's activities in developing, manufacturing and selling these products substantially affect interstate commerce.

47. CLARCOR is a Delaware corporation and a wholly-owned subsidiary of Parker-Hannifin. The aviation fuel filtration assets that are the subject of this lawsuit are held by the surviving corporation, CLARCOR. This Court has subject matter jurisdiction over this action and over each defendant pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

48. Venue is proper in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. §1391(b) and (c).

49. This Court has personal jurisdiction over Parker-Hannifin and CLARCOR. CLARCOR is incorporated in the State of Delaware and resides in this District. Further, under the Merger Agreement, Parker-Hannifin "irrevocably" submitted itself "to the personal jurisdiction of each state or federal court sitting in the State of Delaware…in any suit, action or proceeding arising out of or relating to this [Merger] Agreement…" and agreed that "it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court." Parker-Hannifin's acquisition of CLARCOR will have effects throughout the United States, including in this District.

VIII. VIOLATIONS ALLEGED

Violation of Section 7 of the Clayton Act

50. The effect of Parker-Hannifin's acquisition of CLARCOR likely will be to substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

51. The transaction has or will have the following effects, among others:

a. Eliminating the head-to-head competition between Parker-Hannifin and CLARCOR in the development, manufacture and sale of EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements; and

b. Raising prices of the relevant products, lengthening delivery times, making terms of service less favorable and reducing innovation.

IX. REQUESTED RELIEF

52. The United States requests that this Court:

a. Adjudge and decree the acquisition of the assets of CLARCOR by defendant Parker-Hannifin to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Order Parker-Hannifin to divest tangible and intangible assets, whether possessed originally by CLARCOR, Parker-Hannifin, or both, sufficient to create a separate, distinct, and viable competing business that can replace CLARCOR's competitive significance in the marketplace, and to take any further actions necessary to restore the markets to the competitive position that existed prior to the acquisition;

c. Award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the dissipation of CLARCOR's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective permanent relief;

d. Award the United States the cost of this action; and

e. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

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