

In Equity No. — E-66-2157

In the United States District Court for
the Southern District of New York

UNITED STATES OF AMERICA, PETITIONER

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
REMINGTON RAND INC., THE TABULATING MA-
CHINE COMPANY AND REMINGTON RAND BUSINESS
SERVICE, INC., DEFENDANTS

PETITION

GEORGE Z. MEDALIE,

United States Attorney.

WILLIAM D. MITCHELL,

The Attorney General.

JOHN LORD O'BRIAN,

The Assistant to the Attorney General.

RUSSELL HARDY,

CHARLES H. WESTON,

JAS. MAXWELL TASSETT,

Special Assistants to the Attorney General.

Filed March 26 1932

**In the United States District Court for
the Southern District of New York**

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THE UNITED STATES OF AMERICA, PETITIONER

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Remington Rand Inc., The Tabulating Machine
Company, and Remington Rand Business Serv-
ice, Inc., defendants

PETITION

The United States of America, by George Z. Medalie, United States Attorney for the Southern District of New York, acting under the direction of the Attorney General, files this petition in equity against the above-named defendants and for cause of action alleges:

1. This petition is filed and the jurisdiction of the court invoked to obtain equitable relief against the defendants because of their violation jointly and severally, as hereinafter alleged, of the anti-trust laws of the United States.

2. The defendant, International Business Machines Corporation, hereinafter referred to as International Company, is a corporation organized

and existing under the laws of the State of New York and has a principal office and transacts business in the Southern District of New York.

3. The defendant, The Tabulating Machine Company, hereinafter referred to as Tabulating Company, is a corporation organized and existing under the laws of the State of New Jersey and has an office and transacts business in the Southern District of New York.

4. The defendant, Remington Rand Inc., hereinafter referred to as Remington Rand, and the defendant, Remington Rand Business Service, Inc., hereinafter referred to as Remington Business Service, are corporations organized and existing under the laws of the State of Delaware, and each has an office and transacts business in the Southern District of New York.

5. During the period covered by this petition International Company has owned all or substantially all of the capital stock of Tabulating Company and by means of said stock ownership has dominated, controlled, and directed, and still dominates, controls, and directs, the business affairs, policies, and activities of Tabulating Company, especially in respect of the subject matter of this petition and of the allegations herein contained.

6. During the period covered by this petition Remington Rand has owned all, or substantially all, of the capital stock of Remington Business Service, and by means of said stock ownership has

dominated, controlled, and directed, and still dominates, controls, and directs, the business affairs, policies, and activities of Remington Business Service, especially in respect of the subject matter of this petition and of the allegations herein contained. Throughout said period Remington Business Service has acted as an agent for the sale or lease of products manufactured by Remington Rand, including tabulating machines and tabulating cards.

7. Tabulating Company and Remington Rand have been for several years and now are engaged in the business of manufacturing machines and mechanical devices for tabulating, computing, and recording statistical information. Such machines and mechanical devices are referred to herein as tabulating machines.

8. Petitioner has heretofore manufactured a small number of tabulating machines for its own use which have been used by it in the Bureau of the Census; but all tabulating machines now manufactured and leased commercially in the United States are manufactured and leased by Tabulating Company or Remington Rand, and said defendants or their predecessors have made and now own substantially all of the more than 20,000 tabulating machines which are being used in the United States by numerous business concerns and by various departments, bureaus, and administrative establishments of petitioner, United States of America.

Approximately 88% of all said machines are owned by Tabulating Company and approximately 12% by Remington Rand.

9. Because of the increasing volume and complexity of the statistical data which the petitioner and many individuals, partnerships, and corporations are required by modern methods of business organization to assemble, classify, and tabulate, and, further, because of the excessive cost of performing the mechanical operations required for such purposes when each separate act involved in the making, sorting, classification, and tabulation of such data is performed by hand, tabulating machines have become and now are a practical business necessity for the petitioner and for many such individuals, partnerships, and corporations.

10. In order to tabulate or record statistical facts and other data by means of tabulating machines, cards, referred to herein as tabulating cards, are first perforated by certain tabulating machines known as punches. The perforations indicate numerical or other data by their several locations or by their respective positions in relation to each other. Thereafter the sorting, tabulation, computation, recording, or other desired arrangement or classification of the statistical facts and other data contained on the tabulating cards is effected by passing the tabulating cards through the various mechanical or electrical processes of the tabulating machines.

11. Tabulating Company and Remington Rand have been for several years and now are engaged in the business of manufacturing tabulating cards, and in recent years have manufactured approximately 2,000,000,000 such cards annually.

12. Tabulating cards are manufactured from special varieties of paper or light cardboard, are necessary accessories or supplies required for the useful operation of tabulating machines, and are purchased or otherwise dealt in only for use in connection with tabulating machines.

13. The processes, formulæ, and other methods and means of manufacturing tabulating cards and the special varieties of paper or light cardboard from which tabulating cards are manufactured are not the subject of any letters patent of the United States, the cards embody no patented features, and anyone may manufacture such cards and sell them for use in tabulating machines without infringing any United States patent.

14. For many years the defendants have been and now are engaged (1) in leasing large numbers of tabulating machines and selling large quantities of tabulating cards to users of tabulating machines; (2) in shipping such machines and cards between different States of the United States; and (3) in delivering such machines and cards in interstate commerce to lessees or purchasers thereof located in the State of New York, including the Southern District of New York, and in various other States of the United States.

15. Commencing some time prior to March, 1931, and continuously since that time, Tabulating Company, International Company, and Remington Rand engaged in and have since continued to participate in a combination and conspiracy to restrain trade and commerce among the several States in the leasing and shipment of tabulating machines and in the sale and shipment of tabulating cards, and to monopolize such trade and commerce, in the manner and by the means hereinafter alleged. Remington Business Service has acted as the agent for Remington Rand in leasing tabulating machines and in selling tabulating cards pursuant to the terms of said combinations and conspiracy, and has been a party thereto.

16. On or about March 4, 1931, Tabulating Company and Remington Rand entered into a written agreement, a copy of which is annexed hereto, made a part hereof, and marked "Exhibit 1," by which the said parties agreed in substance and effect, subject to certain territorial limitations as to foreign trade, that (1) each should license the other under all its patents relating to tabulating machines; (2) neither party should sell, but should only rent or lease, tabulating machines; (3) neither party should rent or lease tabulating machines at less than the rentals, or sell tabulating cards at less than the prices, set forth in an exhibit attached to the agreement, which minimum rentals and minimum sales prices Tabulating Company might change, upon six months' prior notice to Reming-

ton Rand, by not more than 10% above or below those set forth in said exhibit; (4) so long as it might be lawful so to do, neither party should rent any tabulating machine except upon condition that the lessee will purchase tabulating cards from its lessor at prices not less than those fixed by the agreement, or, in the alternative, that if such lessee uses other cards in connection therewith, it shall pay the cost of repair and maintenance of such leased machine in addition to and above the prevailing rental for such machine; (5) both parties should use their best endeavor to promote the sale of their respective cards to their respective lessees and not to promote (so far as they may legally do so) the sale to their respective lessees of cards manufactured by others; (6) neither party should solicit any card business from a lessee of the other in the United States or Canada unless such lessee uses the machines of both parties; and (7) the agreement should continue until March 4, 1936. For the full terms and conditions of this agreement reference is made to Exhibit 1.

17. On March 4, 1931, International Company executed an instrument, a copy of which is annexed hereto, made a part hereof, and marked "Exhibit 2," by which it assented to the foregoing agreement of March 4, 1931, between Tabulating Company and Remington Rand, and covenanted and agreed on behalf of itself and of its subsidiary and controlled companies (including Tabulating

Company) that they would be bound by the terms, covenants, and conditions of said agreement. For the full terms and conditions of said instrument reference is made to Exhibit 2.

18. When Tabulating Company and Remington Rand entered into the foregoing agreement of March 4, 1931, each of said companies owned competing patents relating to tabulating machines, and no efficient tabulating machine could be manufactured, leased, or sold in the United States except by said defendants without infringing either patents owned by Tabulating Company or patents owned by Remington Rand. By said agreement Tabulating Company and Remington Rand cross-licensed each other under their competing patents relating to tabulating machines for the purpose of eliminating competition between themselves in the leasing of tabulating machines and extending by combination the scope of their individual patent monopolies. The parties to said agreement, by agreeing to exercise unitedly their individual patent monopolies, combined to monopolize and restrain interstate commerce in tabulating machines.

19. Pursuant to the terms and provisions of the foregoing agreement of March 4, 1931, between Tabulating Company and Remington Rand, the defendants have entered into, and they are now entering into, various written agreements (denominated leases, licenses, or agreements for tabulating-machine service) whereby tabulating machines

are leased or licensed to numerous partnerships and corporations, as well as to different departments, bureaus, and administrative establishments of the petitioner, all of which lessees or licensees are herein referred to as machine users.

20. All said written agreements entered into by Tabulating Company provide in substance and effect, among other things, that (1) the company reserves title to the tabulating machines covered by the agreement; (2) the machine user acquires only the right to possess and a license to use said machines; (3) the machine user shall use in connection with said machines only tabulating cards manufactured by the company; and (4) the machine user shall pay to the company a monthly rental. Except in the case of agreements with the petitioner, said agreements permit Tabulating Company forthwith to resume possession of said machines if the machine user fails to observe the covenant to purchase tabulating cards for use in said machines exclusively from Tabulating Company. Said written agreements with petitioner provide that if the petitioner shall use in said machines tabulating cards not purchased from or manufactured by Tabulating Company, the monthly rental shall be increased in a large and substantial amount.

21. All said written agreements entered into by Remington Rand or Remington Business Service provide in substance and effect, among other things,

that (1) the lessee acquires no title to the leased tabulating machines; (2) in cities where the lessor has an office, or headquarters of a representative, the lessor shall keep the said machines in working order and make all necessary repairs except those occasioned by the lessee's negligence; (3) if the lessee uses with said machines any tabulating cards which have not been purchased from the lessor, the lessee shall pay the cost of repairing and maintaining the machines; (4) the lessor may terminate the lease at any time for failure of the lessee to comply with any of its terms and conditions; and (5) the lessee shall pay to the lessor a monthly rental. Said written agreements with petitioner provide that if the petitioner shall use in said machines tabulating cards not purchased from the lessor, the monthly rental shall be increased in a large and substantial amount.

22. Defendants have at all times since March 4, 1931, refused to lease or license tabulating machines except upon said terms and conditions, including those which directly or indirectly require machine users not to purchase or use tabulating cards of a competitor of the lessor or licensor except by incurring special obligations or paying excessive and noncompensatory additional rental, in the nature of a penalty. Because of these terms and conditions which the defendants have, by agreement between themselves, imposed upon all those who

desired to use tabulating machines, the defendants have restrained and prevented each machine user, except the petitioner, from purchasing tabulating cards except from its lessor; and the defendants have by means of said unlawful terms and conditions collected from the petitioner large and substantial additional rentals.

23. By the foregoing means and methods the defendants have combined and conspired to monopolize, and have monopolized and attempted to monopolize, the interstate leasing and shipment of tabulating machines and the interstate sale and shipment of tabulating cards, and have combined and conspired to restrain all competition between themselves in said interstate commerce and to restrain the interstate commerce of others in tabulating cards, in violation of the Act of Congress of July 2, 1890 (26 Stat. 209), known as the Sherman Antitrust Act.

24. By the foregoing means and methods the defendants have leased tabulating machines for use within the United States and fixed the price charged therefor, or discount from or rebate upon such price, on the condition, agreement, or understanding that the lessee thereof shall not use or deal in tabulating cards of any competitor of its lessor, with the effect of substantially lessening competition and tending to create a monopoly in interstate commerce in tabulating cards, in violation of the

Act of Congress of October 15, 1914 (38 Stat. 730), known as the Clayton Act.

WHEREFORE PETITIONER PRAYS:

That writs of subpoena issue directed to each defendant commanding said defendant to appear and answer under oath the allegations of this petition, and to abide by and perform such orders and decrees as the court may make in the premises;

And, further, that the court order, adjudge, and decree as follows:

That the combination, conspiracy, and agreements between the defendants described in this petition, including those intended to require or induce every lessee of a tabulating machine to purchase tabulating cards exclusively from its lessor, constitute a conspiracy to restrain and to monopolize interstate trade and commerce, and constitute a monopolization of and an attempt to monopolize interstate trade and commerce, and are illegal and in violation of the Act of Congress approved July 2, 1890, known as the Sherman Antitrust Act;

That the defendants and each of them, and each and all of their respective officers, directors, agents, employees, and all persons acting or claiming to act on behalf of them, or any of them, be perpetually enjoined, individually and collectively, from further engaging in, agreeing to perform, or in fact performing, said conspiracy and mo-

nopoly or any part thereof, or any other conspiracy or monopoly of like character or effect;

That all provisions in the leases or licenses of tabulating machines made by the defendants, or any of them, on the condition, agreement, or understanding that the machine user shall not use or deal in tabulating cards of a competitor of its lessor, and all provisions of every such lease or license which fix the rental, or discount from or rebate upon the rental, on such condition, agreement, or understanding, as described in this petition, are illegal and null and void and in violation of the Act of Congress approved October 15, 1914, known as the Clayton Act;

That the defendants and each of them, and each and all of their respective officers, directors, agents, employees, and all persons acting or claiming to act on behalf of them, or any of them, be perpetually enjoined, individually and collectively, from further making or enforcing any of the above-described illegal provisions in leases or licenses of tabulating machines, or any other provision in such a lease or license of like character or effect;

That within thirty days of the entry of a final decree herein each defendant shall openly abrogate, cancel, and declare to be null and void any and all provisions in every outstanding lease or license of a tabulating machine made by it which shall by

any decree entered herein be adjudged to be null and void, and shall thereupon furnish to each user of its tabulating machines a formal notice in writing of such abrogation and cancellation.

That the petitioner have such other, further, general, and different relief as the nature of the case may require and the court may deem proper in the premises.

That the petitioner recover its taxable costs.

GEORGE Z. MEDALIE,

*United States Attorney for the
Southern District of New York.*

WILLIAM D. MITCHELL,

The Attorney General.

JOHN LORD O'BRIAN,

The Assistant to the Attorney General.

RUSSELL HARDY,

CHARLES H. WESTON,

JAS. MAXWELL FASSETT,

Special Assistants to the Attorney General.

DISTRICT OF COLUMBIA, ss:

Jas. Maxwell Fassett, being first duly sworn, deposes and says that he is a Special Assistant to the Attorney General of the United States; that he has read the foregoing petition and knows the contents thereof; and that the allegations made therein are true to the best of his information and belief; that the source of his information and the grounds of his belief are copies of the agreements described therein, official reports of Government investigators, and letters and other similar papers and documents contained in the files of the Department of Justice.

JAS. MAXWELL FASSETT.

Subscribed and sworn to before me this 4th day of March, 1932.

[Notarial Seal.]

HAROLD L. SCHILZ,
Notary Public, District of Columbia.

EXHIBIT 1

Agreement made in duplicate this 4th day of March, 1931, between The Tabulating Machine Company, a corporation of New Jersey (hereinafter called "Tabulating Company"), and Remington Rand Inc., a corporation of Delaware (hereinafter called "Remington Rand");

Whereas, Tabulating Company is the owner of patents and applications for patents of the United States and certain foreign countries which relate to sorting and tabulating machines the inventions of some of which it believes Remington Rand is now using; and,

Whereas, Remington Rand is the owner of patents and applications for patents relating to the same subject-matter the inventions of some of which it believes Tabulating Company is now using; and,

Whereas, Tabulating Company entered into a certain written agreement with Powers Accounting Machine Corporation, a corporation of the State of Delaware, dated August first, 1922, and Remington Rand has become the owner of the assets and going business of said Powers Corporation; as to which agreement certain disputes have arisen between Tabulating Company and Remington Rand with respect to the amount of monies claimed by Tabulating Company as being payable thereunder; and,

Whereas, Tabulating Company and Remington Rand have been and now are involved in certain

litigations with respect to patents and patented inventions; and,

Whereas, Remington Rand is desirous of acquiring a license under Tabulating Company's patents aforesaid and patents and inventions hereafter to be issued to or acquired by Tabulating Company to the extent and in the manner hereinafter specified, and Tabulating Company is desirous of acquiring the right to use present and future patents and inventions of Remington Rand to the extent and in the manner hereinafter specified; and both parties are desirous of settling the disputes and litigations aforesaid, and of discharging all liabilities and obligations which may have arisen or might hereafter arise under said agreement of August 1st, 1922, and of avoiding as far as possible future controversies over patented inventions:

Now, therefore, in consideration of the terms and conditions herein and for other good and valuable considerations, the receipt whereof is hereby acknowledged the parties have agreed and by these presents do agree as follows:

DEFINITIONS

A "sorting machine" or "sorter" is a machine for separating, sorting, or re-sorting cards into groups.

A "tabulating machine" or "tabulator" is a machine for deriving data from cards under the actuation or control of perforations or marks, therein or thereon, and for assembling, and/or calculating, and/or recording such derived data.

"Hollerith" is used to indicate the "electric" style of machine (whether tabulator or sorter) that

has been developed by Tabulating Company, as the same may be modified or improved, and in which the machine is controlled as to its differential action for tabulating, calculating and/or sorting, by electric circuits which generally are completed under the control of a mark or hole on or in the card.

"Powers" is used to indicate the "mechanical" style of machine (whether tabulator or sorter) that has been developed by the predecessor companies of Remington Rand Inc.; *viz.*, Powers Accounting Machine Corporation, and its predecessors, as the same may be modified or improved, and in the differential action of which there are no electric circuits completed under control of marks or perforations in the cards, but in which control of the machine as to its differential action for tabulating, calculating, and/or sorting is entirely mechanical under the direct control of the mark or hole in the card.

A "card" is a piece or strip of record material; for example, pasteboard, designed to be marked, punched or perforated with one or more marks or perforations, or to have one or more marks or index points placed thereon indicating numerical or other data by their several locations or relative positions, and to be utilized in the sorting or tabulating machines, or both.

LICENSE TO REMINGTON RAND

Tabulating Company for itself, its present and/or future affiliated and/or controlled companies, hereby grants to Remington Rand, subject to the provisions and limitations hereinafter set

forth, each and all of which are conditions of such grant, a nonexclusive and indivisible license (except in Germany and the British Empire and its possessions outside of Canada) under all of the patents it or they now own or control directly or indirectly and under any patents that may hereafter issue to or which may be acquired by it or them during the term of this agreement, on or relating to tabulators and sorters, or parts thereof only for use in "Powers" tabulating machines and "Powers" sorting machines. Nothing herein contained shall be deemed to create in Remington Rand any license for the use of Tabulating Company's patents or any of them in machines in which the differential action for tabulating, calculating and/or sorting is controlled by one or by more than one electric circuits completed under the control of a hole or mark in the card.

Remington Rand agrees not to sell any such licensed tabulating or sorting machines for use in the United States and/or Canada, but only to rent or lease the same upon terms of rental not less than those stated in the schedule annexed hereto and marked "Exhibit A". Excepting, however, that Tabulating Company recognizes that Remington Rand has sold machines in Canada and has heretofore entered into certain agreements to lease machines in Canada with an option to the lessees thereof to purchase the same and agrees that Remington Rand shall have the right (1) to fulfill such existing agreements, and (2) to sell other machines where required by customers in Canada who have heretofore purchased such machines, but in the case of the Canadian Government, each department or bureau shall be regarded as a separate customer.

CARDS

Remington Rand and Tabulating Company severally agree, each for itself, that so long as it may be lawful so to do they will not, in the United States or Canada, rent or lease any tabulating or sorting machines except on condition that the lessee thereof will purchase cards from the lessor thereof at not less than the prices stated in Schedule A hereto, or, in the alternative, that if such lessee does not use therewith cards purchased from such lessor the cost of repair or maintenance of such leased machine shall be charged against and paid by the lessee in addition to and above the prevailing rental for such machine; and Tabulating Company and Remington Rand severally agree to use their best and utmost endeavor to promote the sale of their respective cards to their respective users of punching, tabulating and/or sorting machines and not to promote (so far as they may lawfully do so) or to encourage directly or indirectly the sale to their respective lessees of cards manufactured by others. Tabulating Company and Remington Rand further severally agree each for itself that it will not solicit business from any such user of the other party in the United States or Canada for cards, unless such user is a user of machines of both parties.

LICENSE FROM REMINGTON RAND TO TABULATING
COMPANY

As a part consideration for the foregoing license Remington Rand does for itself, its present and/or future affiliated and/or controlled companies, hereby grant to Tabulating Company, subject to

the provisions and limitations hereinafter set forth, each and all of which are conditions of such grant, a nonexclusive and indivisible license under all of the patents it or they now own or control directly or indirectly and under any patents that may hereafter issue to or which may be acquired by it or them during the term of this agreement, on or relating to tabulators or sorters, or parts thereof, only for use in "Hollerith" tabulating and "Hollerith" sorting machines; except that no rights are granted hereby in Germany, Denmark, Spain, Portugal, Portuguese Africa, Argentine Republic, the British Empire and its dominions, colonies, dependencies and mandates, including Egypt (other than the dominions, colonies, dependencies and mandates of such British Empire in North America, Central America, the West Indies, South America and Hong Kong), to which this license does apply. Nothing herein contained shall be deemed to create in Tabulating Company any license for the use of Remington Rand's patents or any of them in machines in which the differential action for tabulating, calculating and/or sorting is entirely mechanical under the direct control of a hole or mark in the card.

Tabulating Company agrees only with respect to the United States and Canada, to lease and not to sell its tabulating and sorting machines coming under this agreement and to comply fully with the restrictions described in "Exhibit A" with reference to tabulating machines, sorting machines, the rental thereof, and the sale of cards.

Tabulating Company, however, reserves the right to change from time to time, in each instance on at least six (6) months' notice in writing to licensee,

the minimum rentals of tabulating machines or sorting machines shown in the annexed "Exhibit A", and to fix rentals upon any new types or classes of machines involving any of its patents coming under this agreement, and Tabulating Company also reserves the right from time to time upon like notice in writing to Remington Rand to change the minimum prices at which cards shall be sold, shown on the annexed "Exhibit A", but such changes in minimum rentals and prices shall not exceed in total or aggregate ten per cent. (10%) above or below those stated in "Exhibit A": *Provided, however*, that no such change in minimum rentals and/or card prices shall apply to any lease of either of the parties hereto in force at the time of giving any such notice.

TERMS OF PAYMENT

Remington Rand agrees to pay to Tabulating Company, upon the execution and delivery of this agreement, the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00); and the further sums of Twenty-five Thousand Dollars (\$25,000.00) per year for five (5) years hereafter, one of such further sums to be paid on each of five (5) successive anniversaries of the day of execution of this agreement.

DURATION AND FORFEITURE

This agreement and the licenses hereunder shall continue in existence for the term of five (5) years from the date hereof and shall thereupon cease and determine, except as and to the extent hereinafter specifically provided. *Provided, however*, that Tabulating Company shall have the right and op-

tion to terminate and cancel it upon failure of Remington Rand to make any of the annual payments of Twenty-five Thousand Dollars (\$25,000.00) when due, or by thirty (30) days' notice in writing of the failure of Remington Rand to comply fully with the restrictions set forth in "Exhibit A" with reference to tabulating machines, sorting machines, the rentals thereof, and the sale of cards; and in the event of such termination all of the annual payments then unpaid shall forthwith become due and payable. *And provided further* that Remington Rand shall have the right and option to terminate and cancel it by thirty (30) days' notice in writing of the failure of Tabulating Company to comply fully with the restrictions set forth in "Exhibit A" with reference to tabulating machines, sorting machines, the rentals thereof, and the sale of cards; and in the event of such termination all of the annual payments then unpaid shall forthwith become due and payable.

The licenses granted hereunder are indivisible and unassignable; *Provided, however*, that each party hereto shall have the right to sell, assign and transfer its entire interest in this agreement to the successor of its entire business in tabulators and sorters.

It is further mutually agreed that upon the termination of this agreement at the end of five (5) years each party shall thereafter have the right, notwithstanding any patent of the other party unexpired at the termination of this agreement, (a) to continue to lease or rent but not to sell in the United States and Canada any and all machines embodying any of such unexpired patents or pending applications which shall have been manufac-

tured theretofore and actually installed and put into use in accordance with the terms of this agreement, and (b) to continue to manufacture for leasing or rental but not for sale machines of the same construction embodying any of such unexpired patents or pending applications [except as to the limited right of Remington Rand to sell in Canada as hereinbefore provided]. *Provided, however,* that such continuance of manufacture and leasing or rental shall be conditioned upon proof by the party so claiming it of its manufacture and the commercial use by a lessee or lessees of such party of at least twenty-five (25) machines embodying the construction involved continuously for a period of at least six (6) months prior to the end of said five (5) years.

INTERFERENCES

It is mutually agreed that all patent interference controversies now pending in the United States Patent Office and/or in the Federal Courts of the District of Columbia and Delaware and/or in the Court of Customs and Patent Appeals shall be terminated and settled, by proper concessions of priority or otherwise without further contest, upon the basis of the awards heretofore made by the tribunals of the Patent Office; the party in whose favor such award has been made, however, to give to the adverse party an irrevocable simple license as applied to such adverse party's machine as heretofore described, for the life of the patent, which or the application for which has been involved in such interference; and both parties hereto shall instruct their respective patent counsel forthwith to carry out this provision.

Remington Rand and Tabulating Company further agree that in the event of future patent interferences being declared upon applications owned or controlled by the respective parties, such interferences shall be referred forthwith to the respective patent counsel of both parties with instructions to use their best endeavors to settle the same by concession and without contest in the Patent Office and/or Courts.

MISCELLANEOUS

It is mutually and severally agreed that upon the execution and delivery of this agreement and the payment by Remington Rand of the aforesaid sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00), Remington Rand Inc. and/or Powers Accounting Machine Corporation on the one hand, and Tabulating Machine Company on the other, shall be and remain severally released and forever discharged from any and all claims or demands of whatsoever kind or description, by reason of the conduct of any of the parties thereto, their successors or assigns, of the business in card punching, sorting and tabulating machines and cards prior to the date of this present agreement, arising out of said contract dated August 1, 1922, and the prior contract of July 22, 1914, between Tabulating Machine Company and the other parties thereto and/or the amendments thereto, and any understandings or agreements with respect or relating thereto, and from any claims or demands, by reason of any such conduct prior to the date of this agreement, arising out of or under any Letters Patent (except German Patents) owned or held

by either of the parties thereto and/or their affiliated, controlled or subsidiary companies and any and all demands or claims which may have arisen or might arise hereafter with respect to said contracts; and it is further agreed that the releases hereby given shall extend to all and every of the affiliated or controlled companies of the parties to said agreement of August 1, 1922, and of the parties to this agreement. *Excepting, however,* that it is expressly understood that nothing contained in this agreement shall release Remington Rand or its subsidiaries from royalties now or heretofore due or hereafter accruing to Deutsche Hollerith Machines Gesellschaft, a corporation of Germany subsidiary to or affiliated with Tabulating Company, with respect to certain license or licenses under patents of Germany known and designated as the Laurant and Hollerith patent licenses, which licenses are not affected by this agreement.

It is mutually and severally agreed that neither party hereto shall in conducting its business hereunder furnish free cards or free use of a machine of any kind whether tabulator, sorter or otherwise to a customer or prospective customer except for strictly demonstrating and educational purposes, or give any rebate, concession or consideration which would tend directly or indirectly to reduce the cost of cards and/or rentals of machines below those specified in "Exhibit A".

It is further mutually and severally understood and agreed that except as otherwise specifically provided hereinbefore, Tabulating and/or Sorting Machines if sold in the United States or Canada by

either of the parties hereto shall not be considered as made, sold, used, or licensed under or by virtue of this agreement.

It is further mutually understood that, in the event of Remington Rand's devising or acquiring during the period of five (5) years from the date of this agreement a new type or types of tabulating and/or sorting machine not coming in whole or in part under any of the then existing patents or applications for patent of Tabulating Company, Remington Rand shall have the right to fix the minimum prices at which Tabulating Company shall rent or lease machines of such new type or types; *Provided, however,* that Remington Rand shall itself maintain and observe such minimum prices for its own rentals or leases.

In witness whereof, the parties have hereunto caused these presents to be executed in duplicate in their corporate names by their respective Presidents, and their corporate seals to be hereunto affixed and attested by their Secretaries, all the day and year first above written.

THE TABULATING MACHINE COMPANY,
By THOS. J. WATSON,

President

Attest:

J. G. PHILLIPS,

Secretary.

REMINGTON RAND INC.,
By W. F. MERRILL,

President

Attest:

WILLIAM S. ADAMSON,

Assistant Secretary

EXHIBIT "A"

The following is the schedule of the minimum rentals made a part of the annexed License Agreement between The Tabulating Machine Company and Remington Rand Inc.

The minimum rentals for each Tabulating Machine and Sorting Machine shall be as follows, in all cases where the lessee agrees to purchase cards from the lessor:

Tabulating machines (Nonlisting and non-total-printing):

- (a) For each machine with not more than 3 counters—Not less than \$25.00 per month.
- (b) For each machine with 4 counters—Not less than \$30.00 per month;
- (c) For each machine with 5 counters—Not less than \$35.00 per month.

Tabulating machines (Total-printing):

Not less than \$60.00 per month for each machine for numerical printing.

Tabulating machines (Listing and total-printing):

Not less than \$75.00 per month for each machine for numerical printing;

Not less than \$100.00 per month for each machine for alphabetical printing.

Sorting machines:

Noncounting—Not less than \$20.00 per month;

Counting—Not less than \$10.00 per month additional.

The minimum prices for cards shall be as follows:

Size $7\frac{3}{8}$ " by $3\frac{1}{4}$ ", \$1.00 per 1000,

Size $6\frac{5}{8}$ " by $3\frac{1}{4}$ ", 85 cents per 1000,

Size $6\frac{5}{8}$ " by $3\frac{1}{4}$ ", 70 cents per 1000.

Other sizes at proportionate prices.

EXHIBIT 2

International Business Machines Corporation, a corporation of the State of New York, being the owner of all of the capital stock of The Tabulating Machine Company, a corporation of the State of New Jersey, in consideration of Remington Rand Inc., a corporation of the State of Delaware, entering into an agreement on the 4th day of March, 1931, with the said The Tabulating Machine Company, a copy of which agreement is annexed hereto, hereby assents to and acquiesces in the execution by The Tabulating Machine Company of said agreement and covenants and agrees by and with Remington Rand Inc., that The Tabulating Machine Company will faithfully perform the obligations assumed by it in said agreement, and further covenants and agrees on behalf of itself and of its subsidiary and controlled companies, that they will be bound by the terms, covenants and conditions of said agreement.

As to the grants or rights extended by said agreement from The Tabulating Machine Company, International Business Machines Corporation hereby acknowledges itself to be an affiliated grantor, as set forth therein, and further covenants and agrees on behalf of itself and its subsidiary and controlled companies to be bound by the terms of the mutual release clause contained in the paragraph headed "Miscellaneous" in said agreement.

In witness whereof International Business Machines Corporation has hereunto caused these presents to be executed in its corporate name by its President, and its corporate seal to be hereunto affixed and attested by its Secretary, all on the 4th day of March, 1931.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,
By THOMAS J. WATSON
President.

Attest:

J. G. PHILLIPS,
Secretary.