II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 December 1975

relating to a proceeding under Article 85 of the Treaty establishing the EEC

(IV/26.949 AOIP/Beyrard)

(Only the French text is authentic)

(76/29/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 [1], and in particular Articles 2, 3, 4 and 5 thereof,

Having regard to the complaint filed pursuant to Article 3 of Regulation No 17 on 28 October 1971 by the Association des Ouvriers en Instruments de Précision (AOIP),

Having regard to the application for negative clearance and to the notification, both submitted by Mr Beyrard on 12 June 1973 pursuant to Articles 2, 4 and 5 of Regulation No 17, concerning a patent licensing agreement of 15 and 17 September 1951 and a patent co-ownership agreement of the same date,

Having on 19 June 1973 and 10 December 1974 heard the undertaking concerned as required by Article 19 (1) of Regulation No 17 and by Regulation No 99/63 [2],

Having regard to the opinion obtained of the Advisory Committee on Restrictive Practices and Dominant Positions on 26 June 1975 pursuant to Article 10 of Regulation No 17,

WHEREAS :

I. The facts

(a) *The patent licensing agreement*

On 15 and 17 September 1951 Mr Beyrard, a self-employed inventor having his permanent residence in Paris, and the Association des Ouvriers en Instruments de Précision, a *société anonyme* with a variable share capital having its registered office in Paris, concluded an agreement whereby Mr Beyrard granted to AOIP an exclusive licence to manufacture and market, in France and the countries of the former French Union, automatic and manual starter rheostats and rheostats of all types, speed changers for electric motors, control and switching devices, covered by the following patents obtained in France by Mr Beyrard :

1. No 996.359 dated 29 September 1949, entitled :
   Liquid variable resistor device ;
2. No 1.023.115 dated 8 August 1950, entitled :
   Liquid variable resistor device ;
3. No 1.035.665 dated 5 February 1951, entitled :
   Liquid variable resistor electrical devices ;
4. No 1.035.666 dated 5 February 1951, entitled :
   Improvement to electrical heating equipment, particularly cookers ;

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No 127, 20. 8. 1963, p. 2268/63.

5. No 1.088.565 dated 7 August 1951, entitled :

Liquid resistor electrical device.

A supplementary agreement dated 31 December 1953 added two improvement patents lodged in France by Mr Beyrard :

6. No 1.055.545 dated 7 May 1952, entitled :

Switching device ;

7. No 1.072.765 dated 29 January 1953, entitled :

Liquid resistor electrical relay ;

and, under Article 8 of the licensing agreement, the following further improvement patents were added :

8. No 1.492.814 dated 14 December 1965, entitled :

Variable-level liquid resistor device ;

9. No 1.566.687 dated 27 March 1968, entitled :

Liquid resistor electric current reducer ;

10. No 69.29313 dated 27 August 1969, entitled :

Variable-value liquid resistor reducer ;

together with Patent No 1.262.636 dated 19 April 1960, entitled :

Variable impedance usable notably as speed changer for low-powered electric motors ; this patent bears no technical relation to the others listed above.

Apart from the monopoly manufacturing and selling rights granted by Mr Beyrard to AOIP (hereinafter the licensor and the licensee respectively), the clauses of the agreement which are the most significant from the competition point of view are the following :

The licensee may export to any country where no licence has been granted nor the patent assigned to a third party (Clause 1 (2)).

As consideration for the exclusive licence, the licensee undertakes to pay the licensor the agreed royalties, calculated by reference to its net turnover in respect of any equipment falling within the above categories which contains any of the patented devices. There is a guaranteed annual minimum royalty, payable except in case of *force majeure* (Clause 4).

The licensee may grant sub-licences, subject to the prior approval of the licensor, which may not be withheld if half of the royalty or the share offered to him is at least as great as the rate of royalty agreed upon in Clause 4 (Clause 4*bis*) added by the supplementary agreement of 31 December 1953).

The licensor guarantees the existence and validity of the patents. The licensee undertakes to refrain from challenging, directly or indirectly, the validity of the patents (Clause 5).

Should one or more of the patents be revoked by court decision upon application by a third party, the licensee may ask for the agreed royalty and the guaranteed minimum to be reduced.

Should such a decision affect all the patents, the licensee is released from all obligations *vis-à-vis* the licensor but has no right to compensation or to reimbursement or retention of any royalties paid or falling due at the time when the court decision becomes final (Clause 6 (2), (4) and (5)).

The agreement is concluded for the duration of the most recent original or improvement patent, whether or not already held (Clause 7, as read with Clause 6 of the supplementary agreement of 31 December 1953).

The benefit of any modifications or improvements made by either of the parties to the patented goods accrues automatically to the other party (Clause 8).

Throughout the duration of the agreement the parties undertake to refrain from all forms of competition with each other in the fields covered by the agreement. Should the licensor or a firm in which he has an interest invent processes or devices, even if based on different principles, which are capable of being used for the purposes covered by the agreement, such processes or devices would automatically fall within the scope of all the provisions of the agreement, and the royalties payable by the licensee would not be increased. The same applies to any devices manufactured by the licensee by processes other than those of the licensor, in which case the latter is entitled to royalties on the sale of such devices (Clause 9 (1) and (3)).

Clause 10 provides that any dispute relating to the performance of the agreement shall be submitted to arbitration, and lays down the procedure for such submission.

(b) *Joint venture agreement*

On the date of the licensing agreement (15 and 17 September 1951), the parties thereto also concluded a joint venture agreement, whose main provisions are set out below.

The object of the venture is to obtain patents in other countries on the basis of the French patents held by Mr Beyrard, and to exploit, administer and turn to profitable account these patents together with any improvement patents or patents of addition (Clause 1).

The venture is stated to be for a period of 20 years which may be extended by a period equal to that by which the life of any original or improvement patent extends beyond the initial 20-year period (Clause 2).

The licensor assigns to the venture the benefit outside France of all rights attaching to the French patents listed in the agreement. Any new application for an improvement patent and any new patent of addition is covered by this, as is any process or device, even if based on different principles, which can be used for the same purposes and which is invented by the licensor or by a firm in which he has a direct or indirect interest.

Each of the parties undertakes to defray the costs incurred in attaining these objects, the licensor paying two-thirds and the licensee one-third (Clause 3).

The venture is managed jointly by the two parties (Clause 4).

Clause 8 provides that any dispute as to the performance of the agreement shall be submitted to arbitration.

(c) *Agreement for assignment and co-ownership of industrial property rights*

The joint venture agreement was accompanied by an agreement concluded by exchange of letters, also dated 15 and 17 September 1951, under which for five years from the date of the agreement the licensee was given the right to acquire a one-third share in the ownership of the rights under the original patents, improvement patents and patents of addition, for the whole world except France and the French Union.

In pursuance of this agreement, which in 1955 replaced the joint venture agreement, the licensee has carried out the necessary formalities for the registration in its name of a one-third share in the ownership of the rights under the licensor's patents in respect of non-French patents as follows:

1. the patent dated 7 August 1951, entitled 'Liquid resistor electrical device', in Italy, the United Kingdom, the Federal Republic of Germany and Belgium;
2. the patent dated 14 December 1965, entitled 'Variable-level liquid resistor device', in Belgium, the Netherlands, the Federal Republic of Germany, Italy and the United Kingdom (obtained in December 1966);
3. the patent dated 27 March 1968, entitled 'Liquid resistor electric current reducer', in Belgium, the Netherlands, the Federal Republic of Germany, Italy and the United Kingdom (obtained in March 1969);
4. the patent dated 27 August 1969, entitled 'Variable-value liquid resistor reducer', in Belgium, the Netherlands, Luxembourg, Italy, the Federal Republic of Germany and the United Kingdom (obtained in July and August 1970).

Acting either alone or jointly with the licensor, the licensee has granted sub-licences for the exploitation of the Beyrard patents in a large number of countries including, as regards the common market, Italy, Luxembourg, the Federal Republic of Germany and the United Kingdom. Several of these sub-licenses have now expired; however, equipment manufactured by AOIP is still being distributed in those countries by local firms which import it either for simple resale or for the purpose of incorporating it in their own products, as is the case in Germany. In the United Kingdom, an AOIP agency looks after distribution.

Finally, within the framework of the technical cooperation established between the parties, studies have been carried out jointly by the licensor and the licensee to perfect the equipment manufactured on the basis of certain patents held by the licensor with a view, particularly, to meeting the technical requirements of customer firms.

(d) *The litigation between the parties*

By letter dated 27 May 1971 the licensee notified the licensor of its decision to cease paying all royalties from 7 August 1971, which was the date of expiration of French Patent No 1.088.565 dated 7 August 1951 concerning a liquid resistor electrical device. As the licensor disputed the licensee's unilateral decision, the latter brought the dispute before the Tribunal de Grande Instance, Paris, and in interlocutory proceedings applied for an order empowering it to pay to a depositary all royalties in respect of the exploitation of the patent of 7 August 1951, on the grounds that certain clauses of the licensing agreement dated 15 and 17 September 1951 and of the supplementary agreement dated 31 December 1953 were anti-competitive and caught by the prohibition in Article 85(1) of the Treaty establishing the EEC.

By interlocutory order of 19 October 1971, the President of that Court dismissed AOIP's application on the ground that AOIP had requested and obtained Beyrard's agreement to the assignment of half of the rights attaching to patents obtained in other countries on the basis of the French patent of 27 August 1969. Further, the licensing agreements and some of the patents were still in force, even if the latter were not being exploited by the plaintiff, so that there appeared to be no valid reason for making the order requested. The Paris Court of Appeal upheld the order by judgment given on 11 July 1972.

(e) *The main arguments adduced by the parties*

In support of its view that Article 85 (1) of the EEC Treaty is applicable to these agreements, the licensee has adduced the following arguments :

— Of all the patents under which the licensor granted AOIP an exclusive manufacturing and sales licence, only Patent No 1.088.565 dated 7 August 1951, entitled 'Liquid resistor electrical device', has actually been exploited by AOIP. Since the term of the patent expired on 7 August 1971, it may now be exploited by any person as of right and royalties are no longer payable.

— Preservation of the obligation to pay royalties on devices no longer covered by a current patent or on devices which have never been patented keeps the cost of such devices higher than they should be, thus jeopardizing the competitiveness of the licensee.

— The effect of the provisions of Clauses 2, 7 and 9 of the patent licensing agreement of 15 and 17 September 1951 is to restrict production, outlets, technical development and investment to the extent that the licensee has to bear the cost of royalties on devices which are no longer covered by a current patent or have never been so covered.

— Clauses of this kind are not to be found in the list of those which the Commission considers are not prohibited under Article 85 (1) of the EEC Treaty according to its Notice of 24 December 1962 concerning patent licensing agreements.

— Since the licensee exports a major proportion of its production to other common market countries, the agreements may affect trade between Member States of the EEC, for the price of the exported device is unjustifiably increased by the amount of the royalty, so that trade between Member States develops otherwise than it would in the absence of the royalty.

The licensor, who contends that neither the provisions of the agreements nor the way they are applied infringe the Community rules on competition, and that royalties on devices manufactured by the licensee in accordance with the patented processes are still payable to him, adduced in particular the following arguments :

— Clause 7 of the patent licensing agreement, read with Clause 6 of the supplementary agreement of 31 December 1953, provides that the agreements are to remain in force throughout the life of the most recent original or improvement patent, whether or not already held. The most recent improvement patent obtained in France is dated 27 August 1969 and its term will therefore expire in France in 1989 ; accordingly, the agreement should remain in force until 1989.

— As the agreements were concluded between two parties in a single Member State — France — and contain no provisions restraining imports or exports, they do not fall within the field of application of the Community rules on competition.

— The principles stated by the Commission in its Notice of 24 December 1962 concerning patent licensing agreements, especially those at I D, are applicable to this case.

— The agreements fall within category (2) (b) in Article 4 (2) of Council Regulation No 17, for which notification is not obligatory.

(f) *The economic significance of the case*

The patent licensing agreement dated 15 and 17 September 1951 mainly concerned the manufacture and sale of automatic starter rheostats for electric motors of various power ranges. Such devices are used in all those industries which utilize medium and high-powered motors, such as textiles, cement, sugar, brickworks, quarries, the food industry, the iron and steel industries and chemicals.

On the basis of the Beyrard patents, the licensee manufactures two ranges of devices : liquid vapour rheostats and stator rheostats. In France there is a patent which competes with Mr Beyrard's patent of 7 August 1951, but only the electrolytic rheostats which AOIP manufactures under the Beyrard patents have been commercially successful. These devices face competition from a number of other types, both in France and in the other common market countries.

AOIP employs some 3 500 staff ; it manufactures and markets devices for telecommunications and navigation, electrical and electronic measuring devices, and low-tension equipment and automatic starters for electric motors in various power ranges. Its main competitors as regards electrial starters are the major firms

manufacturing traditional metal resistor systems. In 1972 AOIP's sales totalled FF 188 572 420, of which FF 8 160 000 were accounted for by automatic starters. It holds an estimated 6·98 % share of the French market, and accounts for some 17·63 % of French exports to other EEC countries.

II. Applicability of Article 85 (1) of the EEC Treaty

1. Article 85 (1) of the Treaty establishing the EEC prohibits as incompatible with the common market all agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

2. AOIP is an undertaking within the meaning of Article 85, as is also Mr Beyrard, since by licensing his patents he has commercially exploited his invention.

3. The patent licensing agreement dated 15 and 17 September 1951, together with the supplementary agreement of 31 December 1953, is an agreement within the meaning of Article 85. The same is true of the joint venture agreement and of the agreement on assignment and co-ownership of industrial property rights in countries other than France. However, the two latter agreements, which relate to territorial markets other than those to which the patent licensing agreement relates, will be examined in a separate proceeding.

4. The patent licensing agreement contains the following clauses whose object or effect is to restrict competition within the common market.

(a) By clause 1 (1) the licensor grants to the licensee the exclusive right to manufacture and sell the patented devices in France and in the countries of the former French Union. This clause has, as its object and effect, a restriction of competition in that, by granting to a single firm the right to exploit his monopoly in a given territory, the licensor gives up for the duration of the agreement the power to grant in respect of the same territory licences to other firms, thus preventing competition from arising in the present case between several licensees. Contractual obligations upon the licensor such as that which results from the granting of an exclusive licence are not matters relating to the existence of the patent, for a contractual obligation which restricts the holder of a right in his exercice thereof cannot call into question the very existence of that right.

This is an appreciable restriction of competition in view of the size of the licensee's turnover in respect of the patented devices, and of its market share in France and in certain other Member States of the EEC.

(b) Clause 1 (2) of the licensing agreement authorizes the licensee to export the devices which it manufactures under the licence to any country in which the licensor has neither licensed nor assigned his rights to third parties. This clause amounts, in effect, to a conditional prohibition on exports. Its object is to prohibit the licensee from exporting to a country in which a licence has been granted or the patent has been assigned. The existence of the patent-right is not at issue when the licensor prohibits the licensee from exporting to countries in which the licensor has granted a licence or assigned his patent. The protection of one licensee or assignee against the competition of another licensee or assignee constitutes a restriction of competition within the meaning of Article 85 (1), when such protection results from a contractual prohibition on exports or imports.

The fact that the licensor has not made use of the clause in question, in that he has not granted other licences or assigned his patents, does not diminish in any way the restrictive object of the clause.

(c) Clause 5 (2) of the licensing agreement prohibits the licensee from challenging the validity of the patents directly or indirectly. Such a no-challenge clause is not a matter pertaining to the existence of the patent. Rather, it constitutes a contractual restriction of competition in that it deprives the licensee of the possibility, which is available to everyone else, of removing an obstacle to his freedom of action in the commercial field by means of an action for revocation of the patents. This is no less the case where the relevant authority examines an application for novelty and degree of inventiveness before granting a patent, since such an examination does not affect the right of firms who might profit from the non-existence of the patent to oppose it or to bring actions for its revocation. Even if it is the licensee who is best placed to attack the patent on the basis of the information given to him by the licensor, the public interest in the revocation of patents which ought not to have been granted requires that the licensee should not be deprived of this possibility.

(d) Clause 7 of the licensing agreement, read with the supplementary agreement of 31 December 1953, provides that the agreement is to remain in force for the life of the most recent original or improvement patent, whether or not already held. Such a clause enables the licensor to extend unilaterally and indefinitely the duration of the licensing agreement; it has restrictive effects at least when, as in the present case, it is combined with other restrictions on competition (exclusivity, export prohibition no-challenge clause, non-competition clause, payment of royalties even where a patent is not exploited), that is to say, when it is provided against a licensee, along with other restrictive provisions, that a licensing agreement shall have a duration which is longer than the life of the last patent to have been granted at the date when the agreement was made. The parties are free to agree later, whether in a new contract or by means of a supplementary or modifying agreement, to extend the term of the original agreement, as was done in this case by the supplementary agreement of 31 December 1953. But such an extension may not be effected by the unilateral act of one of the parties.

In addition, clause 7 of the licensing agreement obliges the licensee to pay the full royalty, even if all the patents in force when the agreement was made have expired and the licensee is not making use of the patents obtained after that date.

The obligation to pay royalties after the expiration of the most recent patent in force when the agreement was made constitutes, in this case, an infringment of Article 85 because the licensee does not have the right to terminate the agreement. Maintenance of such an obligation for products or processes which have been manufactured or used under an expired patent, or for which a patent has been obtained, but not used, after the date when the licensing agreement was made, has the effect of burdening manufacturing costs without any economic justification and thereby weakening the competitive position of the licensee.

The question whether the patents granted later and so still in force after 7 August 1971 are being exploited by the licensee is being litigated before the French courts; it is not necessary for the Commission to reach any conclusion on this question of fact.

If the French courts decide that the licensee has exploited these patents after 7 August 1971, the licensee is obliged to pay the agreed royalty until the date of expiration (29 January 1973) of the most recent patent in force at the date of the supplementary agreement. If those courts decide that the licensee has exploited these patents after 29 January 1973, this Decision of the Commission does not prevent those courts from admitting, under national law, the right of the licensor to a royalty which corresponds to the economic value of the patents by comparison with that of the patents in force when the licensing agreement was made.

(e) Clause 9 (1) of the licensing agreement obliges the contracting parties to refrain from competing with each other in any way. Such a provision does not relate to the existence of the patent, but constitutes a restriction of competition within the meaning of Article 85 (1).

(f) Clause 9 (3) requires the licensee to pay royalties when it manufactures the products which are the subject matter of the agreement without making use of the licensor's patents, whether such manufacture is on the basis of its own development work or of a licence granted to it by a third party.

This clause in effect restricts competition, first because it strengthens the non-competition clause (Clause 9 (1)); the obligation to pay royalties to the licensor in respect of the licensee's own development work or in respect of the exploitation of licences granted by third parties discourages the licensee from carrying out its own research or from making use of the discoveries of other licensors, even though these may be technically superior.

Secondly, the clause restricts competition because it provides for the payment of royalties to the licensor whether or not the licensor's patents are exploited. This is also incompatible with Article 85 (1), in the same way as the obligation to pay royalties after the expiration of a patent.

5. The licensor cannot invoke the Commission's Notice of 24 December 1962 [1] concerning patent licensing agreements to defend the validity of the licensing agreement because the agreement contains restrictions which are not regarded by the Notice as compatible with Article 85 (1), particularly the no-challenge clause, the non-competition clause, the indefinite duration of the agreement, and the obligation to pay royalties in respect of devices which are not manufactured under the licensor's patents.

6. The clauses of the licensing agreement referrred to above may also affect trade between Member States.

[1] OJ No 139, 24. 12. 1962, p. 2922/62.

A substantial part of the licensee's sales derives from exports to other common market countries of the devices which are the subject matter of the agreement. The licensee has a relatively large market share in Belgium, the Netherlands and Luxembourg and this market share could increase if the licensee were not obliged to carry the burden of unjustifiable royalties.

The licensee's exclusive rights in France prevent not only French firms, but those of all the other Member States from being able to obtain from the licensor a licence in respect of the French patents. The conditional export prohibition could isolate the French market from that of the other Member States. The no-challenge clause strengthens the licensor's patent rights, not merely as against the licensee but also in relation to his competitors throughout the Community. The obligation to pay royalties for an indefinite period and for products which are not manufactured in accordance with the licensor's patents, as well as the non-competition clause, alter the competitive standing of the licensee not only in France, but also in relation to its exports to other Member States. These clauses are consequently liable, directly or indirectly, to affect the free movement of trade between Member States in a way which would hinder the realization of the objectives of a common market.

7. It is accordingly clear that the following clauses of the licensing agreement are caught by the prohibition in Article 85 (1) of the EEC Treaty :

(a) clause 1 (1) : exclusivity ;

(b) clause 1 (2) : conditional export prohibition ;

(c) clause 5 (2) : no-challenge clause ;

(d) clause 7 to the extent that it enables the duration of the agreement to be extended beyond the date of expiration of the most recent of the patents in force when the agreement or a supplementary agreement was made, and obliges the licensee to pay royalties in respect of an expired or unused patent ;

(e) clause 9 (1) : non-competition clause ;

(f) clause 9 (3) : the obligation to pay royalties to the licensor even if the licensee makes use only of his own development work or of that of third parties.

III. Inapplicability of Article 85 (3) of the EEC Treaty

1. Under Article 85 (3), the prohibition in Article 85 (1) may be declared inapplicable in the case of a clause in a patent licensing agreement whereby the licensor grants the licensee the exclusive right to manufacture certain products within a specified part of the territory of the common market [1]. This is particularly the case when the exclusivity provides a stimulus for the licensee to penetrate a territorial, or product, market which has not yet been exploited by the licensor [2]. An exemption can also be granted in an appropriate case for a prohibition on exports applicable to the first sale only and of limited duration, the object of which is the mutual protection of the parties or of other licensees.

2. The question whether in this case the exclusivity and the export prohibition satisfy all the tests for exemption need not be answered, since there are other parts of the licensing agreement which do not satisfy the conditions prescribed by Article 85 (3), with the result that an exemption could not be granted for the restrictive clauses as a whole.

3. The no-challenge and non-competition clauses, the indeterminate duration of the agreement, the obligation for the licensee to pay royalties after the expiration of the most recent patent in force when the agreement was made, as well as in the case where it makes use only of its own development work or that of third parties — all these are matters which do not contribute to improving the production or distribution of goods, nor to promoting technical or economic progress. The no-challenge and non-competition clauses constitute, on the contrary, hindrances to technical and economic progress. The non-challenge of a patent possibly granted in error prevents the licensee and any third party who might be interested in exploiting the invention from acting freely within the area of the claims made by the patent. The non-competition clause removes the commercial incentive for the two parties to conduct research in fields parallel to those of the licensed patents and thus excludes any contribution to technical progress. In the same way, the obligation for the licensee to pay royalties, whether the invention is used or not, reduces the incentive to find better technical solutions which are not covered by the licensor's patents.

4. For the reasons set out above, the licensing agreement does not qualify for exemption under Article 85 (3).

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(1) Commission Decision of 9 June 1972 — Davidson Rubber Company : OJ No L 143, 23. 6. 1972, p. 31 *et seq.*
Commission Decision of 18 July 1975 — Kabelmetal-Luchaire : OJ No L 222, 22. 8. 1975, p. 34.

(2) Commission Decision of 25 July 1975 — Bronbemaling/Heidemaatschappij : OJ No L 249, 25. 9. 1975, p. 27.

5. It is unnecessary to decide whether the agreement falls within Article 5 (2) and categories (1) or (2) (b) of Article 4 (2) of Regulation No 17, since it does not qualify for exemption under Article 85 (3),

HAS ADOPTED THIS DECISION :

Article 1

The following clauses of the patent licensing agreement concluded between the parties whose names are set out in Article 4 on 15 and 17 September 1951, as read with the supplementary agreement of 31 December 1953, constitute infringements of Article 85 (1) of the EEC Treaty :

1. clause 1 (1) (exclusivity) ;
2. clause 1 (2) (export prohibition) ;
3. clause 5 (2) (no-challenge clause) ;
4. clause 7 to the extent that
   (a) it extends the duration of the restrictive clauses of the agreement beyond the life of the most recent patent in force when the agreement or a supplementary agreement was made ;
   (b) it requires the licensee to pay royalties in respect of an expired patent or in respect of a patent which was granted after the date when the licensing agreement was made, but which is not being exploited ;
5. clause 9 (1) (non-competition clause) ;
6. clause 9 (3) to the extent that it requires the licensee to pay royalties even if the licensee manufactures the products which are the subject matter of the agreement without making use of the licensor's patents.

Article 2

The application of Article 85 (3) is refused.

Article 3

The undertakings set out in Article 4 shall forthwith bring to an end the infringements referred to in Article 1.

Article 4

This Decision is addressed to :

1. Mr Norbert Beyrard,
   Avenue Raphaël, 24
   75016 Paris.

2. L'Association des Ouvriers en Instruments de Précision, S.A.,
   Rue Charles Fourier, 8
   75013 Paris.

Done at Brussels, 2 December 1975.

For the Commission

A. BORSCHETTE

Member of the Commission