



economic injuries sustained by plaintiff and to prevent such injuries from occurring in the future by reason of defendant's tortious interference with prospective business advantage of plaintiff and for violations of Section 1 and Section 2 of the Sherman Act (15 U.S.C. §1, 15 U.S.C. §2 ). Further, jurisdiction is also based in 28 U.S.C. §2201, providing for the grant of Declaratory Judgment.

### **VENUE**

3. Venue is proper in the U.S. District Court for the Western District of Missouri pursuant to 28 U.S.C. 1391 for the reason that: Rolls-Royce is a corporation authorized to manufacture, repair and sell aircraft engines and parts, can be found in and does business within the district.

### **PARTIES**

4. AvidAir is a Missouri corporation that was formed September 30, 1991 for the purpose of engaging in the repair and overhaul of Allison turbine engine compressor cases. AvidAir holds Federal Department of Transportation, Federal Aviation Administration (FAA) Air Agency Certificate No. XV7R835J issued November 29, 1994. The certificate permits AvidAir to overhaul and repair compressor cases for Series II Rolls-Royce Model 250 engines. AvidAir has also been certified by the European Aviation Safety Agency (Approval Certificate Ref. EASA.145.5677, issued April 26, 2005) as an approved repair station. Its customers are engine owners, FAA Repair Stations, military installations, foreign maintenance facilities and parts manufacturers (PMA) located in the United States and throughout the world.

5. Rolls-Royce is a Delaware corporation with its principal offices in Indianapolis, Indiana. It is engaged in the manufacture of Model 250 Series engines, replacement parts and the repair thereof for aircraft throughout the United States, including the State of Missouri.

Rolls-Royce is the successor to the rights to the Allison Model 250 Series engines by reason of a merger with the Allison Engine Company in April 1995.

6. By succession, Rolls-Royce is now the original equipment manufacturer (OEM) and holder of FAA Production Certificate 310 initially issued on May 20, 1955 for the first of many Allison gas turbine engines which were originally developed for the U.S. Military with federal funds.

7. Rolls-Royce is engaged in the business of manufacturing and selling in interstate commerce several series of turbine engines, including the Model 250/T-63, and manufacturing and selling aftermarket engines and replacement parts. The Model 250/T-63 engine and component parts are Type Certified by the FAA under FAA Production Certificate No. 310 and sold throughout the world for application in helicopters and turboprop aircraft. Rolls-Royce sells parts and engines directly to governmental agencies, including the United States military, original equipment manufacturers, Rolls-Royce authorized maintenance centers (AMCs) and the general public.

8. Rolls-Royce is the manufacturer, directly or through licensees, of original Rolls-Royce replacement parts that are used in the overhaul of Model 250/T-63 engines. For many years Rolls-Royce held unique market power as the sole source of substantially all of the new critical replacement parts that are necessary to perform repairs and overhauls of Model 250/T-63 series engines.

### **GENERAL ALLEGATIONS**

9. The Rolls-Royce (formerly Allison) Model 250/T-63 series engine's genesis lies in a U.S. Army sponsored engine competition for a new generation of light observation aircraft launched in 1957. In 1958 Allison was selected to begin designing a 250 shp engine in both turboshaft and

turboprop variants. The first prototype Model 250 (military designation T-63) engines were test run in April 1959 and were first flown in a Bell helicopter in February 1961. Production deliveries began in December 1965 for installation in the Hughes OH-6A “Cayuse” Light Observation Helicopter that entered U.S. Army service in 1966. Originally developed for the United States military with military funds, Allison sold the C-18 Model 250/T-63 engine exclusively to the United States military from 1961-1965.

10. In 1966, the Allison Engine Company received approval from the Federal Aviation Administration to manufacture and sell the Allison Model 250/T-63 engine for installation in civilian type certified aircraft. Hughes Aircraft began development of a commercial version of the OH-6A and by November 1968 the civil Hughes Model 500 had entered production powered by the Model 250-C18 engine.

11. The Rolls-Royce Model 250/T-63 consists of four (4) basic series of turboprop aircraft engines and four (4) basic series of turboshaft helicopter engines. Each engine is manufactured pursuant to FAA Production Certificate 310 and is Type Certified by the FAA pursuant to Federal Aviation Regulations.

12. As a Type Certificate holder, Rolls-Royce has the obligation pursuant to Federal Aviation Regulation (FAR) 21.50(b) and FAR Part 33, Appendix A, to provide Instructions for Continued Airworthiness (ICAs) for each of its engines and component parts to engine owners, FAA Certified Repair stations certified to overhaul Model 250 Series engines, engine overhaulers, owners of parts eligible for installation in Model 250 Series Engines and persons authorized by the FAA to repair component parts.

13. During the operational life of a Rolls-Royce Model 250/T-63 engine, repairs and

maintenance are frequently necessary. In addition, Rolls-Royce has established recommended “time between hot section Inspection” (“hot section”) or Heavy Maintenance Inspection (HMI), and a recommended “time between overhauls” (TBO).

14. Rolls-Royce controls the manner in which aftermarket parts and repaired parts are installed through overhaul manuals and various technical publications that detail recommended procedures for overhauling engines, performing hot sections, and repairs. Such manuals provide “limits” and “inspection” procedures for the internal component parts so that aircraft mechanics can determine whether or not parts can be reused at overhaul.

15. The Model 250 Series II engines incorporate a compressor case that must be overhauled, repaired or replaced if it fails to meet airworthiness standards each time the engine is inspected in accordance with the Federal Aviation Regulations.

16. AvidAir is engaged in the business of overhauling and repairing Model 250 Series II compressor cases.

17. On or about March 17, 1993 AvidAir purchased some of the equipment necessary to commence the Series II compressor case repair business from Mountain Air Helicopters, Albany, Oregon. Included with the equipment was a manual containing Allison DOIL 24 and certain revisions that, on information and belief, had been obtained originally from the U.S. military.

18. The DOIL 24 and revisions obtained by AvidAir contained no proprietary restrictions by Allison or its predecessors.

19. The content of DOIL 24 is substantially similar to the publicly available military publication, DMWR 55-2840-242 (U.S. Army Aviation and Troop Command, 15 September, 1980) which combines overhaul manual and DOIL information into a single unrestricted government

manual.

20. Utilizing DOIL 24 and other technical information, AvidAir applied for and received certification from the FAA as FAA Certified Repair Station # XV7R835J in November 1994.

21. Since 1994, AvidAir has overhauled and/or repaired thousands of Series II compressor cases in accordance with its FAA approved repair station manual that requires repair in accordance with FAR Part 43 and DOIL 24.

22. During the mid 1990s Rolls-Royce began changing DOILs to AMC-OILs each time a revision was added. Each newly released AMC-OIL contained a Rolls Royce Proprietary designation. Upon information and belief, the text of DOILs and AMC-OILs remain substantially the same.

23. With each overhauled compressor case, AvidAir included the following certification on FAA form 8130-3: "Overhauled in Accordance with Allison Manual and OIL-24."

24. On October 31, 1997, Rolls Royce issued Revision 13 to DOIL 24 that contained a slight change to the length of the number 5 and 6 compressor case vanes in order to prevent potential internal contact that had been experienced by some Rolls-Royce facilities.

25. When AvidAir learned of the Revision 13 change, AvidAir incorporated Revision 13 into its FAA Approved Repair Station manual because it was considered to be a safety of flight "form fit and function" required by Federal Aviation Regulation §21.50 to be provided by Rolls Royce as an "instruction for continued airworthiness" (ICA) when aircraft engines enter service.

26. As of January 31, 2003, DOIL 24 contained the most current Rolls-Royce repair information for Series II compressor repairs.

27. In approximately 2004, Rolls-Royce cancelled AMC-OIL 24 and reissued the service information as a Part Repair Process Letter (PRPL). Rolls Royce makes the PRPL available only to Rolls Royce Authorized Maintenance Centers (AMCs) and other Rolls Royce authorized facilities. Upon information and belief, the PRPL equivalent to OIL-24 is substantially similar to OIL-24.

28. AvidAir's current FAA approved language for FAA Form 8130-3 that is provided with each overhauled/repared compressor case is "Overhauled in accordance with the FAA Approved Rolls-Royce Overhaul Manual 10W3, Fourth Edition, dated 15 April 2002, Revision 2 Dated August 2006 and OIL-24, Revision 13."

29. At overhaul or repair of Series II compressor case, the owner has the following options:

- a. Replace the compressor case with a Rolls Royce new or overhauled compressor case;
- b. Have the compressor case overhauled or repaired by a Rolls-Royce owned or "authorized" facility;
- c. Have the compressor case overhauled or repaired by an FAA or foreign Certified Repair Station that is not a Rolls-Royce owned or "authorized" facility.

30. Rolls-Royce provides an overhaul manual and maintenance manual for each of the Model 250/T-63 engines that includes the technical criteria necessary to perform hot sections, module overhauls, major overhauls, and repairs.

31. Historically, in addition to overhaul manuals and maintenance manuals, Rolls-Royce creates and provides technical information concerning each of its engines in the form of documents

variously denominated as Commercial Service Letters (CSLs), Commercial Engine Bulletins (CEBs), Distributor Information Letters (DILs), Distributor Overhaul Information Letters (DOILs), Authorized Maintenance Center Information Letters (AMC-ILs), Authorized Maintenance Center Overhaul Information Letters (AMC-OILs), Spare Parts Application Digest Lists (SPADLs), and PRPLs, etc.

32. During the 1970s, 1980s and 1990s through early 1994, drawings of Model 250 series components, parts, part repair procedures, part maintenance information and other service/technical information relating to the Model 250 series engines were readily available and freely distributed to aircraft owners, mechanics and others throughout the world without restriction.

33. During the 1980s and early 1990s, Rolls-Royce distributors, AMCs and ARFs, etc., with the knowledge of Rolls-Royce regularly kept Model 250 series part drawings and collections of technical information on their shop floors to be used by mechanics and others without restriction. Rolls-Royce regularly audited distributor and AMC facilities to assure that such drawings and technical information were readily available for use by or sale to customers.

34. Upon information and belief, during the 1980s and early 90s copies of overhaul manuals, DILs, DOILs, parts lists, parts maintenance/modification information and related Model 250 service information were regularly delivered to the Indianapolis Public Library and were considered by Allison to be in the public domain.

35. Upon information and belief, comprehensive Rolls-Royce technical documents, including parts drawings, operation, maintenance and overhaul manuals and the successive families of bulletins, instructions and service letters, DILs and DOILs etc., pertaining to the Model 250/T-63 have been and remain in the possession of U.S. and foreign military users. Upon information and

belief, such documents in foreign government possession do not contain proprietary rights legends or other indices of limitations on use and have been generally available to mechanics, contractors and others without restriction.

36. Upon information and belief, prior to 1994 Rolls-Royce made no serious or effective effort to protect or preserve whatever proprietary rights that might have existed in the Model 250/T-63 engine. In fact, (during its' existence as Allison) Rolls-Royce parts drawings and documents were knowingly and intentionally widely disseminated and made available throughout the aviation industry for the use and convenience of both military and civil owners, users and service providers.

## COUNT I

### **Tortious Interference With Business Relations, Contracts and Prospective Economic Advantage**

37. Paragraphs 1 through 36 are hereby incorporated by reference.

38. AvidAir has contracts, prospective contracts and established supplier, customer, distributor and other business relationships with numerous entities throughout the world relating to military and commercial Model 250 series II engine compressor repairs, aircraft engines and parts (herein "AvidAir Business Relationships").

39. Rolls-Royce had, has and continues to seek further knowledge of AvidAir Business Relationships.

40. Rolls-Royce knowingly and/or intentionally, and by using unlawful means, interfered with AvidAir Business Relationships by refusing to permit AvidAir overhauled/repaired Series II compressor cases to be embodied or purchased by Rolls-Royce AMCs and other Rolls-Royce authorized facilities.

41. Rolls-Royce lacks any legal justification for interfering in AvidAir Business Relationships.

42. AvidAir has suffered irreparable harm from Rolls-Royce's wrongful interference with AvidAir Business Relationships resulting in damages in an amount of at least \$75,000.

43. AvidAir is entitled to actual damages as determined from the evidence, costs and punitive damages and such other relief as the court deems just and proper from Rolls-Royce.

**COUNT II**  
**Sherman Act (15 U.S.C. §1,2)**  
**(Abuse of Monopoly Power)**

44. Paragraphs 1 through 43 are hereby incorporated by reference.

45. Beginning at a time unknown to plaintiff, but at least by the Winter of 1993, upon information and belief, Rolls-Royce with the assistance, or acquiescence, of some of its' AMCs, developed and implemented an aftermarket strategy to reduce or eliminate competition in the market for Rolls-Royce Model 250/T-63 aftermarket parts and overhauled part modules and engine modules.

46. Rolls-Royce's aftermarket plan to reduce or to eliminate AvidAir and others as competitors included at least the following:

- a. Reference to PMA parts as "bogus" and "unauthorized", "unsafe" or "obsolete";
- b. Wrongful use of "FAA Approved";
- c. Claiming non-existent proprietary rights;
- d. Controlling overhaul publications and refusing to provide overhaul manuals and service information in a timely manner and at a reasonable price;

- e. Attempting to eliminate FAA certified repair stations' ability to perform hot sections, engine overhauls, and module overhauls by restricting or eliminating access to overhaul manuals and other technical data required to perform such work.

47. In the context of Rolls-Royce's aftermarket business plan, "distributor agreements" refer to the Rolls-Royce Authorized Maintenance Center Agreement and AMC Policy Manual.

48. In the context of Rolls-Royce's aftermarket business plan, "overhaul publications" refers to overhaul manuals and other technical data required by the FAA and needed by FAA certified repair stations to perform hot sections repairs and/or overhauls of Rolls-Royce Model 250/T-63 engines and modules.

49. Beginning at a time unknown to plaintiff, upon information and belief Rolls-Royce systematically began and is continuing to abuse its monopoly power over replacement parts for which there is no competition by increasing parts prices often more than double; by effectively requiring many of AvidAir's customers to use only Rolls-Royce authorized or supplied parts; by issuing false or misleading service information; by refusing to allow and interfering with AvidAir's sale of overhauled/repaired Series II compressor cases; and by denying or restricting the supply of Rolls-Royce manufactured or approved compressor vanes.

50. Rolls-Royce's abuse of monopoly power concerning certain aftermarket replacement parts is in direct violation of Sections 1 and 2 of the Sherman Act. (15 U.S.C. §1,2.)

51. The relevant geographic market within which the abuse of monopoly is to be evaluated is the entire world.

52. The relevant product markets within which the abuse of monopoly is to be evaluated

is the market for the sale of aftermarket overhauled/repaired compressor cases for Rolls-Royce Model 250/T-63 Series II engines that have reached overhaul and/or require repair.

53. Within the relevant geographic and product markets for aftermarket overhauled or repaired Series II compressor cases, Rolls-Royce is attempting to maintain and extend monopoly power.

54. Rolls-Royce's attempt to have and to maintain monopoly power in the defined relevant geographic and product markets has been deliberately formed and implemented with the specific intent to eliminate AvidAir and others as competitors, all with the resulting dangerous probability that absolute monopolization will be achieved.

55. Rolls-Royce, in furtherance of its attempt to extend its monopoly, has abused its existing monopoly power by, upon information and belief, using unlawful tying arrangements; entering into secret agreements with AMCs and vendors; granting preferential prices, and adopting predatory price practices for replacement parts which acts are all designed to discourage competitors and destroy competition; also conducting misleading publicity campaigns; distributing unfounded and misleading service information, falsely claiming that DOIL 24 has never been in the public domain, restricting sources of needed parts and providing false information to the Federal Aviation Administration and customers of AvidAir concerning the quality, airworthiness and suitability of its overhauled compressor cases for embodiment in Model 250 Series II engines.

56. The effects of the abuse of monopoly power has been, but is not limited to, the following:

- a. The United States government and other Model 250 Series engine owners have been deprived of the opportunity to purchase AvidAir overhauled/

repaired Model 250 Series II compressor cases, and replacement parts in a free and competitive market and have been compelled to pay non-competitive prices for such compressor cases.

- b. AvidAir and others have been effectively deprived of the opportunity to compete on a fair and even basis with Rolls-Royce in the sale of aftermarket overhauled/repaired compressor cases to the commercial and military market.
- c. The business of AvidAir has been injured and is threatened with destruction unless Rolls-Royce's abuse of monopoly alleged herein is halted.

### **COUNT III**

#### **28 U.S.C. § 2201 (Declaratory Judgment)**

57. Paragraphs 1 through 56 are hereby incorporated by reference.

58. Rolls-Royce claims that it has protected proprietary rights to DILs, DOILs, PMIs and other technical information relating to the Allison Model 250/T-63 series engine.

59. On September 16, 2006, Rolls Royce counsel, Alastair Warr, represented that Rolls Royce data had never been released to the public and demanded that AvidAir cease and desist from using Rolls-Royce data contained in the DILs, DOILs (including DOIL 24) and demanded that all such data be returned to Rolls-Royce. (Attached as Exhibit A)

60. Upon information and belief, AvidAir claims that the drawings and technical information for which Rolls-Royce claims proprietary protection has been released to the public domain or are otherwise not protected; and that Rolls-Royce has no protected proprietary interest in the DILs, DOILs (including DOIL 24). In particular, AvidAir claims:

- a. Series II documents and information that Rolls-Royce claims are its “Intellectual Property” were developed, in whole or in part, for the U.S. Army at the Army’s expense and were submitted to the Army pursuant to written contract without proprietary protection.
- b. Rolls-Royce and its predecessors have lost any proprietary protection that they might have had by knowingly and intentionally marking documents with confidential proprietary designation many years after they had been released into the public domain.
- c. Rolls-Royce and its predecessors have falsely claimed proprietary protection for entire technical documents (i.e. AMC-ILs, AMC-OILs, parts drawings and PMIs) when in fact only a small portion of the document arguably contained protected proprietary information.
- d. Rolls-Royce and its predecessors failed to designate the specific protected proprietary information in a drawing or technical bulletin that has been released into the public domain thereby effectively waiving all proprietary protection.
- e. Rolls-Royce has misused such proprietary data as it may possess by making false claims about its breadth in order to unfairly compete with AvidAir and others in the aftermarket for Model 250 Series II overhauled/repaired compressor cases.
- f. Parts drawings and other technical information material that Rolls-Royce collectively denominates as proprietary is either wholly in the public domain

or that such a minuscule percentage thereof that may be entitled to protection is, nevertheless, subject to the well established doctrine of “Fair Use.”

61. Rolls-Royce was fully cognizant of AvidAir’s business endeavors and use of the technical information at least as early as 2002 and is therefore barred by the doctrine of Laches from claiming proprietary rights to technical data relied upon by AvidAir in overhauling/repairing Model 250 Series II compressor cases.

62. An actual controversy exists within the Court’s jurisdiction over the rights Rolls-Royce and/or AvidAir have, if any, to the drawings and technical information relating to the Allison Model 250 engine component parts eligible for installation in the Allison Model 250 engine.

63. AvidAir is an interested person and has standing to seek a declaration from the court determining whether Rolls-Royce has any protected proprietary interest in the drawings and technical information for the Model 250 Series II compressor cases.

### **INJURY TO AVIDAIR**

64. As a result of the violations of both Sections 1 and 2 of the Sherman Act, Section 3 of the Clayton Act and the tortious interference with contract and business relationships that are alleged, competition has been injured or destroyed and AvidAir has been unable to compete on a fair and even basis with Rolls-Royce in the sale of overhauled/repared Rolls-Royce Model 250/T-63 Series II engine compressor cases; has sustained serious injury to business and property; and is in imminent danger of having its business completely destroyed.

### **ATTORNEY FEES**

65. AvidAir has been compelled to employ attorneys to represent them in this action and have done so. AvidAir has necessarily incurred and will incur liability for attorney’s fees and other

necessary costs and expenses for the continued prosecution of this action.

**PRAYER FOR RELIEF**

WHEREFORE, AvidAir prays:

A. That Rolls-Royce be required to answer the Complaint within the time permitted by the Federal Rules of Civil Procedure;

B. That Rolls-Royce be temporarily and permanently enjoined from engaging in any further violations of Sections 1 and 2 of the Sherman Act, Section 3 of the Clayton Act, and further tortious interference with AvidAir's Business Relationships.

C. That this Court enter a Declaratory Judgment pursuant to 28 U.S.C. 2201 determining that Rolls-Royce has no protected proprietary interest in public domain DOIL 24, AMC-OIL 24 and any revisions thereto, and the equivalent PRPL; or to drawings and technical information relating to parts eligible for installation in the Allison Model 250 Series II engines; and that Rolls-Royce is barred from any future claims to proprietary rights to technical data relied on by AvidAir in overhaul and repair of Model 250 Series II compressor cases.

D. That Rolls-Royce be required to pay actual damages in an amount of at least as much as the profits from its' illegal activity as is determined from the evidence and increased by statutory damages, and punitive damages.

E. That AvidAir recover from Rolls-Royce threefold the damages determined to have been sustained by AvidAir.

F. That AvidAir be granted costs, including reasonable attorneys fees, prejudgment interest and all other expenses incurred in maintaining this action; and

G. Such other relief as the Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b), of the Federal Rules of Civil Procedure, plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

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