The Myth of the Early Aviation Patent Hold-Up
– How a U.S. Government Monopsony Commandeered Pioneer Airplane Patents

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ABSTRACT

The prevailing historical accounts of the formation of the U.S. aircraft “patent pool” in 1917 assume the U.S. Government necessarily intervened to alleviate a patent hold-up among private aircraft manufacturers. We show these accounts to be inconsistent with the historical facts. We show that despite the existence of basic aircraft patents, aircraft manufacturers faced no patent barriers in the market dominated by Government demand. We show that the notion of the aircraft patent hold-up is a myth created by Government officials and used to persuade Congress to authorize eminent domain condemnation of basic aircraft patents. Government officials used the threat of condemnation to impose a depressed royalty structure on aircraft patents and induce key patent owners to enter a cross-licensing patent pool. We show that this cross-licensing agreement was not an archetypical private patent pool, but had been structured to suit the preferences of the Government as monopsonist; it imposed on private suppliers to the Government a nearly costless technology transfer.

Keywords: History of technology, Patent Pools, Patent Hold-up, Anti-trust, Monopsony, Manufacturers Aircraft Association, National Advisory Committee for Aeronautics, eminent domain, Wright Brothers, Navy Aviation, War Department.


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