

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

VARIAN ASSOCIATES, INC. and
RICHARDSON ELECTRONICS, LTD.,

Defendants.

Civil Action No.: 91-C-6211

Filed: October 1, 1991

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action in two counts to obtain equitable and other relief against the defendants named herein and complains and alleges as follows:

COUNT ONE

I.

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, in order to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 2 of the Sherman Act, 15 U.S.C. § 2, as amended.

2. Varian Associates, Inc. transacts business and is found in the Northern District of Illinois within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

3. Richardson Electronics, Ltd. transacts business and is found in the Northern District of Illinois within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

DEFINITIONS

4. "Power grid tube" means a high vacuum electron tube that is capable of handling at least twenty-five (25) watts and that has as its defining elements a cathode for the emission of electrons, an anode for the collection of electrons, and one or more (interspersed) grids for controlling or regulating the number of electrons that flow between the cathode and anode.

5. "Dud tube" means a power grid tube that is broken, damaged, spent, or otherwise incapable of operating, but that can be rebuilt, and that is of a type that any rebuilder sought to purchase for the purpose of rebuilding.

6. "Tube rebuilder" means an entity that is regularly engaged in the business of rebuilding dud tubes and selling them as operational, rebuilt power grid tubes.

7. "VASCO" means Varian Supply Company, a joint venture partnership of defendants Varian Associates, Inc. and Richardson Electronics, Ltd., which is organized under the laws of the State of California and has its principal offices in LaFox, Illinois.

III.

THE DEFENDANTS

8. Varian Associates, Inc. ("Varian") is made a defendant herein. Varian is a corporation organized and existing under the laws of the State of Delaware, with its principal offices in Palo Alto, California. During the period covered by this Complaint, Varian manufactured power grid tubes and sold them throughout the United States.

9. Richardson Electronics, Ltd. ("Richardson") is made a defendant herein. Richardson is a corporation organized and existing under the laws of the State of Delaware, with its principal offices in LaFox, Illinois. During the period covered by this Complaint, Richardson manufactured power grid tubes and sold them throughout the United States.

10. Whenever this Complaint refers to any act, deed, or transaction of any corporation, it means that such corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

IV.

CO-CONSPIRATORS

11. Various persons and firms, not made defendants in this Complaint, participated as co-conspirators in the violation alleged and have performed acts and made statements in furtherance thereof.

V.

TRADE AND COMMERCE

12. Power grid tubes, which amplify and control electrical signals, are used for various applications in several industries. For example, power grid tubes are used in television and radio broadcasting and in industrial heating applications. They are also used in a variety of military applications, particularly in radar and communications devices.

13. Original equipment manufacturers ("OEMs") purchase power grid tubes for installation in new equipment. For this application, OEMs must purchase power grid tubes that are socket-interchangeable with the tubes the equipment is designed to use or redesign the equipment to use a different tube. Users of such equipment also purchase power grid tubes to replace tubes that break, fail, or wear out. Customers who purchase power grid tubes for replacement can use only tubes that are socket-interchangeable with tubes for which the original equipment was designed, unless the equipment is redesigned to use a different tube. About 85 percent of all power grid tube sales are for replacement rather than for installation in new equipment.

14. Varian is the largest manufacturer of power grid tubes in the world. Its annual sales of power grid tubes in the United States exceed \$50 million. Varian produces a broad range of power grid tubes consisting of hundreds of tube types

and sizes. Although a few other companies produce power grid tubes, they do not produce nearly as broad a range of power grid tubes as Varian. For many types and sizes of power grid tubes, Varian is either the only producer or one of only two producers.

15. Since 1981, Richardson has acquired numerous competing distributors of power grid tubes, and today, Richardson is the dominant or only distributor for virtually all manufacturers of power grid tubes that sell in the United States. In addition, Richardson has manufactured its own power grid tubes for sale in the United States. Its annual sales of power grid tubes in the United States, including those distributed for Varian, exceed \$35 million.

16. Varian and Richardson together account for about 70 percent of power grid tube sales in the United States.

17. Manufacturers and distributors of new power grid tubes compete with tube rebuilders, which purchase dud tubes for a small fraction of their original value, rebuild them, usually by replacing the cathode and repairing the grid structure, and then sell the rebuilt tubes for about one half the price of socket-interchangeable new power grid tubes.

18. On or about February 26, 1986, Varian and Richardson formed VASCO, and through VASCO, Varian made Richardson its only United States distributor for replacement power grid tube sales. Varian and Richardson also agreed that they would adopt

a program to collect particular dud tubes that are socket-interchangeable with new power grid tubes produced by Varian and sold by Richardson pursuant to their VASCO agreement. Defendants intended that this program would prevent or hinder tube rebuilders from rebuilding these particular dud tubes. The purpose and intent of the program was to raise prices of power grid tubes rebuilt from these particular dud tubes and the prices of new tubes that are socket-interchangeable with them.

19. No substitutes exist for power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect to which a significant number of customers can turn to avoid paying a small but significant increase in prices of these power grid tubes.

20. Manufacturers, distributors, and tube rebuilders sell power grid tubes throughout the United States. However, no significant imports of power grid tubes are made into the United States.

21. The manufacture and sale of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect constitutes a set of relevant product markets, and the United States as a whole constitutes a relevant geographic market in which these power grid tubes are sold. The

manufacture and sale in the United States of power grid tubes in each such product market also constitutes a significant part of interstate trade and commerce, within the meaning of Section 2 of the Sherman Act.

22. Varian and Richardson together account for over 90 percent of sales in the United States of power grid tubes rebuilt from the particular dud tubes that Varian and Richardson agreed to collect.

23. Manufacturers, distributors, and tube rebuilders ship and sell substantial quantities of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect across state lines to locations throughout the United States. They also purchase equipment and supplies used in making and selling such power grid tubes from states other than the state in which their products are manufactured and stored, and that equipment and those supplies are regularly shipped across state lines. The production, distribution, and sale of such power grid tubes are within the flow of and substantially affect interstate commerce.

VI.

VIOLATION ALLEGED

24. Beginning in or about February 1986, the defendants and co-conspirators have engaged in a combination and conspiracy to monopolize interstate trade and commerce

consisting of the manufacture and sale of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2). The combination and conspiracy is likely to continue unless the relief prayed for hereinafter is granted.

25. The aforesaid combination and conspiracy consisted of an agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are:

- (a) to obtain, maintain, and exercise power to control prices in the United States of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect;
- (b) to reduce or eliminate competition from power grid tubes rebuilt from the particular dud tubes that Varian and Richardson agreed to collect by increasing tube rebuilders' costs for the particular dud tubes or eliminating their supply of such tubes; and
- (c) to increase prices for new power grid tubes produced by Varian and sold by Richardson in the United States that are socket-interchangeable with power grid tubes rebuilt from the particular dud tubes that Varian and Richardson agreed to collect.

26. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things that, as hereinbefore alleged, they have combined and conspired to do, including agreeing, on or about February 26, 1986, to collect particular dud tubes that are socket-interchangeable with new power grid tubes produced by Varian and sold by Richardson in the United States pursuant to their VASCO agreement, for the purpose of reducing or eliminating the supply of these dud tubes to tube rebuilders in order to reduce or eliminate competition from tube rebuilders and enable defendants to increase their prices for new power grid tubes that are socket-interchangeable with tubes rebuilt from these dud tubes.

27. Defendants entered into the aforesaid combination and conspiracy with the specific intent to monopolize interstate trade and commerce consisting of the manufacture and sale of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

VII.

OVERT ACTS

28. In furtherance of the aforesaid combination and conspiracy, in or about January 1988, defendant Richardson, pursuant to its agreement with Varian, began to acquire dud

tubes of the particular types Varian and Richardson agreed to collect to prevent tube rebuilders from rebuilding the dud tubes and selling them in competition with socket-interchangeable new power grid tubes produced by Varian and sold in the United States through VASCO by Richardson.

VIII.

EFFECTS

29. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) competition in the United States for sales of power grid tubes that are socket-interchangeable with power grid tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect has been reduced or eliminated; and
- (b) prices in the United States for power grid tubes that are socket-interchangeable with power grid tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect have increased.

30. The aforesaid combination and conspiracy has affected a substantial amount of interstate commerce.

PRAYER

31. WHEREFORE, plaintiff prays:

- A. That the Court adjudge and decree that the defendants and co-conspirators are and have engaged in an unlawful combination and conspiracy

to monopolize the above-described interstate trade and commerce consisting of the manufacture and sale of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

- B. That a permanent injunction be issued preventing and restraining defendants and all persons acting on their behalf from engaging in any activity in furtherance of the aforesaid combination or conspiracy.
- C. That the defendants be required to take such further action as the Court may deem necessary and appropriate to dissipate the effects of the aforesaid combination and conspiracy and to permit and restore full and free competition in the manufacture and sale in the United States of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Varian and Richardson agreed to collect.
- D. That plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.
- E. That the plaintiff recover the costs of this action.

COUNT TWO

32. The allegations contained in paragraphs 1 through 16 and 20 above are here realleged with the same force and effect as though set forth in full detail.

IX.

TRADE AND COMMERCE

33. On or about February 26, 1986, Varian and Richardson agreed through VASCO to cooperate in acquiring competing manufacturers and distributors of power grid tubes.

34. Prior to its acquisition by Richardson in July 1988, the Amperex Electronic Corporation ("Amperex") was a significant manufacturer of power grid tubes. Amperex operated a manufacturing facility in Hicksville, New York, where it produced numerous types and sizes of power grid tubes that were socket-interchangeable with power grid tubes produced by Varian. For these tubes, Varian and Amperex were the only producers or the dominant producers.

35. No substitutes exist for power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex to which a significant number of customers can turn to avoid paying a small but significant increase in prices of these power grid tubes.

36. The manufacture and sale of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex constitutes a set of relevant product markets, and the United

States as a whole constitutes a relevant geographic market in which these power grid tubes are sold. The manufacture and sale in the United States of power grid tubes in each such product market also constitutes a significant part of trade and commerce, within the meaning of Section 2 of the Sherman Act.

37. Varian and Richardson together account for over 75 percent of sales in the United States of power grid tubes that are socket-interchangeable with power grid tubes that prior to July 1988 were produced by both Varian and Amperex.

38. Manufacturers and distributors ship and sell substantial quantities of power grid tubes that are socket-interchangeable with tubes that prior to July 1988 were produced by both Varian and Amperex across state lines to locations throughout the United States. They also purchase equipment and supplies used in making and selling such power grid tubes from states other than the state in which their products are manufactured and stored, and that equipment and those supplies are regularly shipped across state lines. The production, distribution, and sale of such power grid tubes are within the flow of and substantially affect interstate commerce.

X.

VIOLATION ALLEGED

39. Beginning in or about July 1988, and continuing up to and including the date of filing of this Complaint, the defendants and co-conspirators have engaged in a combination and conspiracy to monopolize interstate trade and commerce consisting of the manufacture and sale of power grid tubes that are socket-interchangeable with power grid tubes of the types

that prior to July 1988 were produced by both Varian and Amperex, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2). The combination and conspiracy is continuing and will continue unless the relief prayed for hereinafter is granted.

40. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are:

- (a) to obtain, maintain, and exercise power to control prices in the United States of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex and to exclude competition for sales of such power grid tubes in the United States;
- (b) to eliminate a major competing power grid tube manufacturer and seller by acquiring Amperex; and
- (c) to increase prices in the United States for power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex.

41. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things that, as hereinbefore alleged, they have combined and conspired to do, including agreeing that Richardson would acquire Amperex on their behalf

and, on or about July 1988, Richardson acquiring Amperex on their behalf, in order to eliminate competition for the manufacture and sale in the United States of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex and to enable defendants to increase their prices for such power grid tubes produced by Varian.

42. Defendants entered into the aforesaid combination and conspiracy with the specific intent to monopolize interstate trade and commerce consisting of sales of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

XI.

OVERT ACTS

43. In furtherance of the aforesaid combination and conspiracy and pursuant to its agreement with Varian, Richardson acquired Amperex in or about July 1988. Following this acquisition, Richardson discontinued the manufacture of all Amperex power grid tubes that were socket-interchangeable with Varian tubes, making Varian the only or dominant manufacturer of such tubes and seller of such tubes to OEMs in the United States and making Richardson, through VASCO, the only or dominant seller of such tubes for replacement.

XII.

EFFECTS

44. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) competition for sales in the United States of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex has been eliminated; and
- (b) prices in the United States for power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex have increased.

45. The aforesaid combination and conspiracy has affected a substantial amount of interstate commerce.

PRAYER

46. WHEREFORE, plaintiff prays:

- A. That the Court adjudge and decree that the defendants and co-conspirators are and have engaged in an unlawful combination and conspiracy to monopolize the above-described interstate trade and commerce consisting of the manufacture and sale of power grid tubes that are socket-interchangeable with power grid tubes of

the types that prior to July 1988 were produced by both Varian and Amperex, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

- B. That a permanent injunction be issued preventing and restraining defendants and all persons acting on their behalf from engaging in any activity in furtherance of the aforesaid combination or conspiracy.
- C. That the defendants be required to take such further action as the Court may deem necessary and appropriate to dissipate the effects of the aforesaid combination and conspiracy and to permit and restore full and free competition in the manufacture and sale in the United States of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex.
- D. That plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.

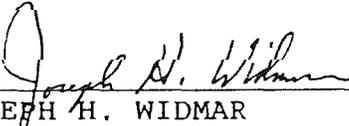
E. That the plaintiff recover the costs of this
action.

Dated:



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