

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. General Electric Company and International General Electric Company Incorporated., U.S. District Court, D. New Jersey, 1952-1953 Trade Cases ¶67,585, (Oct. 6, 1953)**

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United States v. General Electric Company and International General Electric Company Incorporated.  
1952-1953 Trade Cases ¶67,585. U.S. District Court, D. New Jersey. Civil Action No. 4575. Dated October 6, 1953. Case No. 814 in the Antitrust Division of the Department of Justice.

### **Sherman Antitrust Act and Wilson Tariff Act**

#### **Consent Decree—Practices Enjoined—Agreements with Foreign ManufacturersElectrical Equipment.—**

A manufacturer of electrical equipment was enjoined by a consent decree from entering into any understanding with any foreign manufacturer to (1) allocate or divide territories or markets, (2) limit any person in the manufacture, use, distribution, or sale of electrical equipment, (3) limit the importation into or exportation from the United States, (4) leave any person free from competition, (5) refrain from competition in obtaining rights to patents, and (6) determine or prescribe the terms or conditions upon which licenses are granted to others. The use of stock or other financial interest in any foreign manufacturer to enter into understandings described above also was prohibited.

**Consent Decree—Specific Relief—Patent Licensing—Electrical Equipment.—**An electrical equipment manufacturer was ordered by a consent decree to grant to any applicant a non-exclusive license to make, use and vend electrical equipment under any patents acquired by the manufacturer from the foreign manufacturers named as co-conspirators. The granting of licenses under necessary patents (owned or controlled by the manufacturer which are needed to enable a licensee to practice the invention under the acquired patents) also was ordered. Provisions pertaining to reasonable royalties, inspection of a licensee's books and records, cancellation of the license upon failure to pay the royalties or permit inspection, and transferability of the license could be included in the license.

For the plaintiff: Stanley N. Barnes, Marcus A. Hollabaugh, Donald E. Van Koughnet, W. D. Kilgore, Jr., and William F. Tompkins, Attorneys.

For the defendant: James R. E. Ozias and Cahill, Gordon, Zachry and Reindel.

### **Final Judgment**

[ *Consent to Entry of Decree*]

FORMAN, District Judge [ *In full text except for Exhibits B and C*]: The plaintiff, United States of America, having filed its complaint herein on January 18, 1945; the defendants General Electric Company and International General Electric Company, Incorporated, having appeared and filed their answers to the complaint denying the substantive allegations thereof; the defendant International General Electric Company, Incorporated, having thereafter been merged on July 31, 1952 with the defendant General Electric Company; and the plaintiff and the defendant General Electric Company by their attorneys having severally consented to the entry of this Judgment without trial or adjudication of any issues of fact or law herein and without this Judgment constituting evidence or an admission by either of them in respect to any such issue;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, adjudged and decreed as follows:

I.

[ *Sherman Act and Wilson Tariff Act*]

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the complaint states a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act, as amended, and under Section 73 of the Act of Congress of August 27, 1894, commonly known as the Wilson Tariff Act, as amended.

II.

[ *Definitions*]

As used in this Judgment:

(A) "Electrical equipment" means all equipment, devices, and systems (except electric lamp and radio equipment, devices, and systems) which concern the generation, transmission, and utilization of electric energy including: generators, transformers, and switch-gear essential for the generation and distribution of electric energy; motors of various types which serve as the sources of power for other industries; motors, magnets, switches, and heating elements for incorporation in other manufactured products; and electrical appliances such as refrigerators and heating devices for household use.

(B) "Person" means an individual, partnership, firm, association or corporation. For the purpose of this Judgment a defendant and its subsidiaries shall be considered to be one person.

(C) "Subsidiary" of a corporation means a corporation more than 50% of whose stock entitled to vote upon the election of directors (other than preferred stock so entitled to vote upon the failure of the corporation to pay certain dividends) is owned or, directly or indirectly, controlled by such other corporation.

(D) "Foreign manufacturers" means Allgemeine Elektrizitäts Gesellschaft, Compagnie Française Pour l'Exploitation des Procédés Thomson-Houston, Associated Electrical Industries Limited, Tokyo Shibaura Denki Kabushiki Kaisha, Société d'Électricité et de Mécanique (Procédés Thomson-Houston & Carels Société Anonyme) and Compagnia Generale di Elettricità.

(E) "Acquired patents" means any United States patents, patent applications, or rights to grant licenses under patents or patent applications, directed to electrical equipment and heretofore acquired by defendant General Electric Company from the foreign manufacturers named as co-conspirators in the complaint and listed in subparagraph (D) of this Section, and shall include all reissues, divisions, continuations or extensions of said patents, and any patents which may issue upon said applications. A list of the patents so acquired and which defendant General Electric Company now owns or controls is attached hereto and marked Exhibit "A" [not reproduced].

(F) "Necessary patents" means any United States patents, patent applications, or rights to grant licenses under patents or patent applications, directed to electrical equipment and owned or controlled by defendant General Electric Company, which must be licensed to enable a licensee to practice the inventions of the acquired patents defined in subparagraph (E) of this Section, and shall include all reissues, divisions, continuations or extensions of said patents, and any patents which may issue upon said applications.

III.

[ *Foreign Activities*]

The provisions of this Judgment applicable to defendant General Electric Company shall apply to such defendant, its officers, directors, agents, employees, representatives, subsidiaries, successors, assigns, and all other persons acting under, through or for such defendant, and to operations and activities outside the United States insofar as affecting the foreign or domestic commerce of the United States.

IV.

[ *Termination and Modification of Agreements*]

(A) Defendant General Electric Company is hereby ordered and directed to terminate and cancel each of the agreements listed in Exhibit "B" [not reproduced] attached to this Judgment which has not heretofore expired or terminated or been cancelled.

(B) Defendant General Electric Company is hereby ordered and directed prior to December 31, 1953, to terminate and cancel each of the agreements listed in Exhibit "C" [not reproduced] attached to this Judgment which shall not theretofore have terminated or been cancelled, or to cause the name to be modified and amended insofar as necessary so that it shall not be in conflict with any provision of this Judgment.

(C) Defendant General Electric Company is hereby enjoined and restrained from entering into, maintaining or furthering, any contract, agreement or understanding to continue or renew any provision of any of the agreements listed in (A) and (B) of this Section IV which is in conflict with any provision of this Judgment.

(D) Nothing contained in this Section shall be deemed to terminate any right of defendant General Electric Company to use on a non-exclusive and unrestrictive basis any patent under which such defendant has heretofore been licensed or to terminate any power of such defendant to issue sub-licenses or immunities under any such patent.

## V.

### [ *Agreements with Foreign Manufacturers* ]

(A) Defendant General Electric Company is hereby enjoined and restrained from entering into, maintaining or furthering any contract, agreement or understanding with any foreign manufacturer as defined in this Judgment, or any of its subsidiaries, successors, assigns, officers, agents or employees, to:

- (1) allocate or divide territories or markets for the production, sale or other distribution of electrical equipment;
- (2) exclude any person from or restrain or limit any such person in the manufacture, use, distribution or sale of electrical equipment;
- (3) limit, restrain or prevent the importation into or exportation from the United States, its territories, or possessions, of electrical equipment;
- (4) refrain from competition or leave any person free from competition in any territory, field or market in the manufacture, use, distribution or sale of electrical equipment;
- (5) refrain from competition in the manufacture, use, sale or distribution of, or in obtaining rights to, patents and technological information relating to electrical equipment;
- (6) determine or prescribe the terms or conditions upon which licenses or immunities under any patent, invention, or technological information relating to electrical equipment shall be made available by the grantor to others.

Nothing in the foregoing provisions of this Section V shall be construed to prohibit, without more, licenses or conveyances of patent rights or technical information, whether on an exclusive basis or otherwise.

(B) Defendant General Electric Company is further enjoined and restrained from using its stock or other financial interest in any foreign manufacturer, as defined in this Judgment, to directly or indirectly influence or to attempt to influence such manufacturer to enter into any contract, agreement or understanding in conflict with any provision of (A) of this Section.

## VI.

### [ *Non-Exclusive Licenses Under Acquired Patents* ]

(A) Defendant General Electric Company is hereby ordered and directed to grant, to the extent that it has the power to do so, to any applicant making written request therefor a non-exclusive license under any, some or all

of the acquired patents, as defined herein and listed in Exhibit "A" [not reproduced] attached to this Judgment, and for their full unexpired terms, to make, use and vend electrical equipment.

(B) (1) Defendant General Electric Company is enjoined and restrained from including any restriction or condition whatsoever in any license or sub-license granted by it pursuant to this Section, except that each such license or sub-license may contain any, some or all of the following provisions: (a) a provision for the payment to the licensor of a reasonable, non-discriminatory compensation in the nature of a royalty or other monetary consideration (herein referred to as a "royalty"); (b) reasonable provisions for periodic inspection of the books and records of the licenses by an independent auditor, or by any other person acceptable to the licensee and licensor, who shall report to the licensor only the amount of royalty due and payable; (c) reasonable provisions for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books or records as hereinabove provided; (d) that the license shall not be transferable; and (e) such other terms and provisions as this Court shall approve if application for such approval is made after reasonable notice to the Attorney General.

(2) Each license issued pursuant to this Section shall provide that: (a) the licensee may cancel the license at any time after one year from the initial date thereof by giving thirty (30) days' notice in writing to the licensor; and (b) the licensor shall notify each licensee of the issuance of each license granted pursuant to this Section involving the same patent or patents; and each licensee shall have the right, upon written request, to exchange its license for any other such license granted by the licensor and involving the same patent or patents, in the event such other license be upon more favorable terms.

(3) Upon receipt by the defendant of a written request for a license under the provisions of this Section, the defendant shall advise the applicant, in writing, of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date such request for a license was received by the defendant, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and the defendant shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the Attorney General or the Assistant Attorney General in charge of the Antitrust Division. The reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to all other subsequent licensees under the same patent or patents. Pending the completion of negotiations or any such proceedings, the applicant shall have the rights requested under this Section to make, have made, use or vend the patent or patents to which its application pertains without payment of royalty or other compensation as above provided, except as provided in Paragraph B (4) hereof.

(4) Where the applicant has the right to make, have made, use or vend as provided in Paragraph B (3) hereof, said applicant or the defendant may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the Court fixes such interim royalty rate, the defendant shall then issue, and the applicant shall accept, a license or, as the case may be, a sub-license, providing for the periodic payment of royalties at such interim rate from the date of the filing of the application for a license. If the applicant fails to accept such license, or sublicense, or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application, and his rights under this Section shall terminate. The interim royalty rate determined by this Court shall apply to the license granted to such applicant from the date of his application for a license, and may be charged to each subsequent licensee under the same patent or patents, unless this Court shall fix a different rate of interim royalty upon application of any such subsequent licensee pursuant to this Section.

(5) Upon the written request of any licensee licensed pursuant to the provisions of this Section, the defendant shall grant such licensee, to the extent it has the power to do so, an unrestricted, unconditional and non-exclusive grant of immunity from suit by such defendant, with respect to any products made or sold under a license granted pursuant to the terms of this Judgment, under any foreign patents corresponding to the patent or patents under which such licensee is licensed.

## VII.

[ *Non-Exclusive Licenses Under Necessary Patents*]

(A) Defendant General Electric Company is hereby further ordered and directed to grant to any applicant licensed under the provisions of Section VI of this Judgment, but only to the extent necessary to enable said applicant to practice the inventions of the acquired patents licensed under such Section, a non-exclusive license under any, some or all of the necessary patents as defined herein and for their full unexpired terms, to make, use and vend electrical equipment.

(B) Licenses granted under this Section VII shall be subject to and in conformity with the provisions of Section VI (B) of this Judgment.

**VIII.**

[ *Inspection and Compliance*]

For the purpose of securing compliance with this Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant General Electric Company, to its principal office, be permitted, subject to any legally recognized privilege, (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and upon request said defendant shall submit such written reports as might from time to time be reasonably necessary to the enforcement of this Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

**IX.**

[ *Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.