

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Westinghouse Electric & Manufacturing Company and Westinghouse Electric International Company., U.S. District Court, D. New Jersey, 1952-1953 Trade Cases ¶67,501, (Jun. 1, 1953)

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United States v. Westinghouse Electric & Manufacturing Company and Westinghouse Electric International Company.

1952-1953 Trade Cases ¶67,501. U.S. District Court, D. New Jersey. Civil Action No. 5152. Filed June 1, 1953. Case No. 818 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act and Wilson Tariff Act

Consent Decrees—Specific Relief—Termination of Agreements—Dedication of Patents —Technical Information Available—Electrical Equipment.—A consent decree entered against a manufacturer of electrical equipment and its subsidiary terminates specified agreements with foreign companies, orders the manufacturer and the subsidiary to dedicate to the public specified patents, and orders the manufacturer to make available for examination on reasonable terms certain technical information.

Consent Decrees—Practices Enjoined—Allocation of Markets—Limitations on Exports and Imports.—

A manufacturer of electrical equipment and its subsidiary are enjoined by a consent decree from entering into any plan with specified foreign companies to (1) allocate markets for the production or sale of electrical equipment, (2) exclude any person from the manufacture, use, distribution, or sale of electrical equipment, (3) limit the importation into, or the exportation from, the United States of electrical equipment, and (4) refrain from competition or to leave any person free from competition in any territory or market in the manufacture, Use, distribution, Or sale of electrical equipment.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, and Edwin H. Pewett, W. D. Kilgore, Jr., Donald E. Van Koughnet, and Grover C. Richman, Jr., Attorneys for the United States.

For the defendants: Cravath, Swaine and Moore by Donald C. Swatland, and Stryker, Tarns and Horner by Josiah Stryker.

Final judgment

[*Consent to Entry of Decree*]

FORMAN, District Judge [*In full text*] : Plaintiff, United States of America, having filed its Complaint herein on April 12, 1945, and the defendants herein having appeared and filed their answers to the Complaint denying the substantive allegations thereof; and the plaintiff and said defendants by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issues;

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

It is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act and Wilson Tariff Act*]

The Court has jurisdiction of the subject matter herein and of all the parties hereto. The Complaint of April 12, 1945, states a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known

as the Sherman Act, as amended, and under Section 73 of the Act of Congress of August 27, 1894, entitled "An Act to Reduce Taxation, to Provide Revenue for the Government, and for Other Purposes," commonly known as the Wilson Tariff Act, as amended.

II

[*Definitions*]

For the purposes of this Judgment:

- (a) "Westinghouse" shall mean the defendant Westinghouse Electric & Manufacturing Company, which by change of name effective May 10, 1945, is now the Westinghouse Electric Corporation.
- (b) "International" shall mean the defendant Westinghouse Electric International Company.
- (c) "Electrical equipment" shall mean machines, apparatus, devices, circuits, material and processes relating to the generation, transmission, distribution or utilization of electric energy except electric lamps, radio and communications apparatus, cable, X-ray apparatus, elevators and certain other, specialized apparatus. Electrical equipment includes generators, transformers and switchgear, 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 fans and cooling or heating devices for domestic use.
- (d) "Patents acquired from Siemens" shall mean any patents, patent applications, or rights to grant licenses under patents or patent applications, directed to electrical equipment and heretofore acquired by defendants from Siemens-Schuckertwerke A. G. or from Siemens & Halske A. G., named as co-conspirators in the Complaint, and shall include all re-issues, divisions, continuations or extensions of said patents, and any patents which may issue upon said applications. A list of the patents acquired from Siemens and which defendants now own or control is attached hereto and marked Exhibit "A" [not reproduced].

III

[*Applicability of Provisions*]

The provisions of this Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, successors, assigns, subsidiaries, and all other persons acting under, through, or for such defendant.

IV

[*Agreements Terminated*]

The agreement dated November 10, 1934, between Siemens-Schuckertwerke A. G., Siemens & Halske A. G. and the defendants, Westinghouse and International, and any agreements amendatory thereof or supplemental thereto, to the extent not heretofore terminated, are hereby terminated, and the defendants are hereby enjoined and restrained from the further performance of any of the provisions of said agreement. This Article shall not be deemed to terminate any patent rights held by defendants upon the termination of said agreement.

V

[*Dedication of Patents Ordered*]

Each defendant is ordered and directed, within ninety (90) days after the date of the entry of this Judgment, to dedicate to the public any and all right, title and interest which it may have on the date of the entry of this Judgment in and to each of the patents listed in Exhibit "A" [not reproduced] to this Judgment, such dedication to be effective as of the date of entry of this Judgment; and in order to enable any one who desires to do so, to practice the inventions of such dedicated patents, defendants shall, to the extent necessary, continue to license

upon reasonable terms any patents which they now own or control pursuant to the policy set forth in the letter attached hereto as Exhibit "B."

Each defendant is hereby enjoined and restrained from instituting or threatening to institute, or maintaining any suit, counterclaim or proceeding, judicial or administrative, for infringement, or to realize or collect damages or other compensation for infringement under or on account of any patent listed in Exhibit "A" [not reproduced].

VI

[*Technical Information To Be Available*]

Defendant Westinghouse is hereby ordered and directed to make available for examination on reasonable terms at its plant at East Pittsburgh, Pennsylvania, to any applicant, such technical information received from Siemens-Schuckertwerke A. G. and Siemens & Halske A. G. under the agreement dated November 10, 1934, as defendant Westinghouse now has in its possession in its Foreign Engineering Department at East Pittsburgh, Pennsylvania, or may hereafter discover elsewhere in its organization. Such information shall be made available by defendant Westinghouse in the form in which it is presently maintained. Any such applicant shall be permitted by defendant Westinghouse to reproduce copies of any such information, at applicant's expense and as applicant may desire, provided that the applicant shall agree to return or replace all copies of such information taken for purposes of reproduction from the files of defendant Westinghouse.

VII

[*Practices Enjoined*]

Each defendant is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with Siemens-Schuckertwerke A. G. or Siemens & Halske A. G. or any of their subsidiaries, successors, assigns, officers, agents or employees, to:

- (a) allocate or divide territories or markets for the production, sale or other distribution of electrical equipment;
- (b) exclude any person from or to restrain or limit any such person in the manufacture, use, distribution or sale of electrical equipment;
- (c) limit, restrain or prevent the importation into or exportation from the United States, its territories, or possessions, of electrical equipment;
- (d) refrain from competition or to leave any person free from competition in any territory, field or market in the manufacture, use, distribution or sale of electrical equipment.

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

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 the principal office of either defendant, be permitted (1) reasonable 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 such matters, and upon request said defendants 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 Article VIII 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 in 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 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 for the construction or carrying out of this Judgment, or the modification or termination of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof, without costs.

Exhibit "A"

[Not reproduced.]

Exhibit "B"

20 May

1953

Attorney General
Department of Justice
Washington, D. C.

Attention: Mr. Stanley N. Barnes
Assistant Attorney General

Dear Sir: Subject: United States of America v. Westinghouse Electric & Manufacturing Company, et al. Civil Action 5152

In connection with the consent decree which has been negotiated with the Antitrust Division in the settlement of the above case, we wish to confirm our conversations with you relative to the "patents acquired from Siemens" as defined in the decree and the Westinghouse patent licensing policy.

A list of "patents acquired from Siemens" has been compiled and is attached to the decree as Exhibit "A." This is based upon an examination of its records by Westinghouse and to the best of our knowledge comprises all of such patents. Should any other patents falling within the definition be subsequently discovered; we shall so advise you and dedicate them to the public as contemplated by the decree.

We have not included any patents other than United States patents because neither Westinghouse nor Westinghouse Electric International Company owns or has the right to grant licenses under any such patents outside the United States.

It is the general policy of Westinghouse to grant licenses under its United States patents at reasonable royalty rates or for other reasonable consideration to any applicant. Such licenses are generally granted on the basis of individual negotiations, with the royalty rate or other consideration being determined by the individual factors involved in each case.

Exceptions to this general policy are made (a) with respect to basic or controlling patents and (b) grants covering inventions upon which large expenditures of time, effort or money have been made. Very frequently, categories (a) and (b) are one and the same. Even in these cases, Westinghouse usually grants licenses to qualified applicants.

In our judgment, none of the patents acquired from Siemens is basic or controlling. All have been the subject of licensing under the general policy outlined above since prior to World War II. They have been licensed with such other Westinghouse patents as may have been necessary to enable the licensee to practice the inventions covered thereby. Reasonable royalty rates have been charged.

Very truly yours,

[Signed] E. V. Huggins
E. V. Huggins
Vice President