

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	NO. 8586
GENERAL INSTRUMENT CORPORATION;)	
RADIO CONDENSER COMPANY;)	
CONDENSER DEVELOPMENT CORPORATION;)	
VARIABLE CONDENSER CORPORATION;)	
STANLEY S. CRAMER; RUSSELL E.)	
CRAMER; ABRAHAM BLUMENKRANTZ;)	
SAMUEL COHEN; CHARLES H. HYMAN;)	
NATHAN HYMAN and EDWARD HYMAN,)	
Defendants.)	

FINAL JUDGMENT

This cause came on for hearing before the Court upon motions by the plaintiff and the defendants, counsel for the parties having been heard and the Court having determined, upon consideration of the pleadings, the admissions, stipulations and exhibits on file, that there is no genuine issue between the parties as to any material fact required for this Final Judgment, and the Court having filed its opinion herein on October 28, 1949, granting the motion by plaintiff for summary judgment against all the defendants except Nathan Hyman and Edward Hyman, and denying the motion for summary judgment on the part of the other named defendants,

NOW, THEREFORE, after hearing plaintiff and defendants by their attorneys, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

As used in this Final Judgment:

- (A) "Development" shall mean the defendant Condenser Development Corporation;
- (B) "Radio" shall mean the defendant Radio Condenser Company;

(C) "General" shall mean the defendant General Instrument Corporation;

(D) "Variable" shall mean the defendant Variable Condenser Corporation;

(E) "De Jur Amsco" shall mean De Jur Amsco Corporation;

(F) "Defendants" shall mean all the corporate parties as named in the complaint in this cause, their directors, officers and agents;

(G) "Variable condensers" shall mean a tuning device in which the capacitance is variable, and shall include the mechanical tuning devices used in conjunction therewith but shall not include inductive tuners;

(H) "Person" shall mean an individual, partnership, firm, association, corporation or other business or legal entity;

(I) "Patents" shall mean United States Letters Patent and applications therefor, including all reissues, divisions, continuations or extensions thereof and patents issued upon said applications.

II

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, agents, servants, employees, and attorneys, and all other persons when acting or claiming to act on behalf of such defendant.

III

The complaint is hereby dismissed as to the individual defendants Nathan Hyman and Edward Hyman.

IV

Defendants have violated Sections 1 and 2 of the Act of Congress of July 2, 1890, 15 U.S.C. §§ 1 and 2, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act. Said violations have consisted of defendants engaging in an unlawful combination and conspiracy in restraint of trade and commerce in variable condensers, entering into unlawful contracts, agreements

and mutual understandings in restraint of said trade and commerce and unlawfully attempting to monopolize and combining and conspiring to monopolize said trade and commerce in variable condensers.

V

(A) Each of the following agreements is hereby adjudged and decreed to be unlawful under Sections 1 and 2 of the Sherman Act and is hereby terminated; and defendants are jointly and severally enjoined and restrained from the further performance or enforcement of any of the provisions of said agreements and of any agreements amendatory thereof or supplemental thereto:

- (1) Agreement of July 30, 1934 between Radio, General and De Jur Amsco;
- (2) Agreement of August 7, 1934 between Radio, General and De Jur Amsco and Development;
- (3) Agreement dated May 19, 1937 between Radio, General and De Jur Amsco and Development;
- (4) Two agreements dated June 9, 1939 between Radio and General and Development;
- (5) Agreement of March 1, 1946 between Radio and General and Development;
- (6) All contracts, agreements or understandings to which any two or more of the defendants Development, Radio and General are jointly or severally parties covering the licensing of patents relating to variable condensers.

(B) Defendants are hereby jointly and severally enjoined and restrained from entering into, performing, enforcing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, arrangement, understanding, plan or program for the purpose or with the effect of continuing, reviving or renewing any of the agreements, contracts or understandings referred to in Subsection (A) of this Section V.

VI

(A) Each defendant is hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any combination, conspiracy, contract, agreement, arrangement, understanding, or plan or program with any person engaged in the manufacture or distribution of variable condensers which has as its purpose or effect:

- (1) Limiting, restraining or preventing the sale of tools, dies, fixtures or jigs, used in the manufacture of variable condensers, to any person or for use in any specified territory;
- (2) Limiting, reducing or restricting the types, models, qualities or quantities of variable condensers which are or may be developed or manufactured;
- (3) Fixing, maintaining or adhering to prices or price ranges or other terms and conditions of sale or distribution of variable condensers; except that this provision shall not apply to valid restrictions contained in patent licenses between a defendant and a person not a party to this case;

(B) The defendants as between themselves are hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any combination, conspiracy, contract, agreement, arrangement, understanding or plan or program which has as its purpose or effect:

- (1) Excluding each other from any territory or market, or interfering with or restricting each other in competing in any territory or market;
- (2) Limiting or restricting, in any manner, the exercise of independent decision in the acquisition of patents or patent rights.

(C) Each defendant is hereby enjoined and restrained from entering into any contract, agreement or understanding with the purpose or effect of admitting the validity of any patent not issued at the time of such admission.

VII

(A) Defendants General, Radio and Development are jointly and severally ordered and directed to cause the dissolution of defendant Development within 60 days following entry of this Judgment;

(B) Defendant Development is hereby ordered and directed within 30 days following entry of this Judgment to transfer or assign all patents or patent rights owned or controlled by it to the person (including other defendants) from whom such patents or patent rights were acquired; except that Patent No. 2,064,620 of December 15, 1936 shall be assigned by Development to Radio;

(C) Other than the patents and patent rights required to be transferred or assigned under Subsection (B) above, all remaining assets of Development, both real and personal, shall be distributed among those defendants contributing to the administration of Development and in ratio to the amount contributed or obligated to contribute.

VIII

(A) Following the distribution of the assets of the defendant, Development, and its dissolution pursuant to Section VII of this Judgment:

1. Each remaining defendant is hereby enjoined and restrained from holding, acquiring or claiming, directly or indirectly, jointly with any other defendant, any rights under any patents relating to the manufacture of variable condensers, except that this provision shall not prohibit the grant of a license in accordance with Paragraph X of this Judgment by any of the defendants to any other defendant or the taking of a non-exclusive license by any defendant relating to patents to manufacture variable condensers.

2. Each remaining defendant is hereby enjoined and restrained for a period of seven (7) years from the date of the entry of this Judgment from holding, acquiring or claiming, directly or indirectly, jointly with any other person engaged in the manufacture of variable condensers, patent and patent rights relating to the manufacture of variable condensers, except that this provision shall not prohibit the grant of a license in accordance with Paragraph X of this Judgment by any of the defendants to a non-defendant or the taking of a license by any defendant from a non-defendant relating to patents to manufacture variable condensers.

3. Each remaining defendant is hereby enjoined and restrained from holding, acquiring or claiming, directly or indirectly, any rights under any manufacturing or sale facilities, plants or other assets relating to the manufacture of variable condensers, jointly with any other defendant engaged in the manufacture of variable condensers and for a period of seven (7) years from the date of entry of this Judgment, jointly with any other person engaged in the manufacture of variable condensers.

(B) Defendants, General and Radio, are hereby enjoined and restrained from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, the ownership or control of the business of the other in the manufacture of variable condensers and, whether jointly or severally, for a period of seven (7) years after the date of entry of this Judgment of any other person engaged in the manufacture of variable condensers.

IX

(A) Defendants are hereby jointly and severally enjoined and restrained from:

1. Instituting or threatening to institute, or maintaining or continuing any action or proceeding for acts of infringement, or to collect damages, compensation or royalties alleged to have occurred or accrued, prior to the date of this Judgment, under any patent relating to the manufacture or use of variable condensers;

2. Instituting or threatening to institute, or maintaining or continuing any action or proceeding against any person for acts of infringement of any patent relating to the manufacture or use of variable condensers owned or controlled by any defendant and issued prior to December 31, 1956, unless such person has refused to enter into a license agreement as provided for in Section X of this Judgment after being requested so to do by such defendant.

X

(A) With the exception of defendant Development, each defendant is hereby ordered and directed, insofar as it has the power to do so, to grant to any applicant therefor a non-exclusive license under any, some or all of the patents or patent licenses relating to the manufacture or use of variable condensers owned or acquired by such defendant prior to December 31, 1956, and is hereby enjoined and restrained from making any sale or other disposition of any of said patents which deprives it of the power or authority to grant such licenses, unless it sells, transfers or assigns such patents and requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of Section X and XII of this Judgment with respect to the patents so acquired and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Sections with respect to the patents so acquired;

(B) Each defendant is hereby enjoined and restrained from including any restriction or condition whatsoever in any license or sub-license, as the case may be, granted by it pursuant to the provisions of this Section except that (1) the license may be made nontransferable; (2) a reasonable

non-discriminatory royalty may be charged; (3) reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable; (4) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalty or to permit the inspection of its books and records as hereinabove provided; (5) the license shall provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving 30 days notice in writing to the licensor;

(C) Upon receipt of a written request for a license or sublicense, as the case may be, under the provisions of this Section X, such 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 60 days from the date such request for the license was received by such 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. In any such proceeding the burden of proof shall be on the defendant to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall apply to the applicant and all other licensees under the same patent or patents. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use and vend under the patents to which its application pertains without payment of royalty or other compensation as above provided, but subject to the provisions of Subsection (D) of this Section X;

(D) Where the applicant has the right to make, use and vend under any patents pursuant to Subsection (C) of this Section X, 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 this 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 sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such license 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 Subsection (C) shall terminate. Where an interim license or sublicense has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the applicant and all other licensees under the same patents to the date the applicant files his application with this Court;

(E) Nothing herein shall prevent any applicant from attacking in the aforesaid proceedings the validity or scope of any of the patents nor shall this Judgment be construed as importing any validity or value to any of said patents.

XI

Immediately following the entry of this Judgment, each of the defendants Development, Radio, and General shall mail a copy of this Judgment to each person with whom any of them has a license agreement under patents relating to the manufacture or use of variable condensers, to each person who has applied to such defendant for such a license since August 7, 1934. Within 30 days following the entry of this Judgment, the said defendants shall file with this Court a statement setting forth the steps taken to comply with the above requirements of this Section XI.

XII

For the purpose of securing compliance with this Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice to any defendant, made 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 such request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Judgment as may from time to time be 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.

XIII

Judgment is entered against the defendants Development, Radio, General, Variable, Stanley S. Cramer, Russell E. Cramer, Abraham Blumentkrantz, Samuel Cohen and Charles H. Hyman, jointly and severally, for all costs to be taxed in this proceeding.

XIV

The affirmative separate defenses interposed by General, Radio and Variable together with the individual defendants are hereby denied.

XV

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 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.

XVI

Except as otherwise specifically provided in this Judgment, this Judgment shall not be construed to forbid normal business transactions of any of the corporate defendants with its selling agents or consignees, persons or corporations rendering services to it, or customers; or to prohibit transactions with citizens or corporations of foreign nations; or to prevent any defendants from availing of the benefits of the Acts of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, the Act of July 14, 1952 commonly called the McGuire Act, or of the benefits of the Patent Laws.

Dated: September 30, 1953

/s/ Forman
United States District Judge