

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SERVEL, INC.

Defendant

Civil Action
No. 11036

Filed: Dec. 17, 1957

ORDER

The defendant, Servel, Inc., having filed its Application herein on December 17, 1957 for an order expunging paragraph (C) of Section IV from the Final Judgment which was entered herein on or about January 18, 1954 and granting the defendant other specified relief, and it appearing that the defendant has discontinued the manufacture of absorption refrigerators and absorption refrigerating units and seeks to dispose of the manufacturing facilities therefor and of the patents relating thereto pursuant to a negotiated sale, and the plaintiff having indicated its lack of objection to said Application of the defendant,

NOW, THEREFORE, it is hereby ordered, adjudged and decreed (a) that paragraph (C) of Section IV of the Final Judgment be and it hereby is expunged therefrom, (b) that the defendant is granted the right to dispose of the patents subject to the licensing provisions of the Final Judgment free from the provisions thereof, and (c) that the purchaser of said patents from the defendant shall not thereby become subject to any of the provisions of the Final Judgment.

Dated: December 17, 1957

/s/ Francis L. Van Dusen
United States District Judge

The plaintiff, the United States of America,
has no objection to the entry of the foregoing order.

/s/ W. D. Kilgore, Jr.

/s/ William L. Maher

Attorneys for the Plaintiff

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APPLICATION

The defendant, Servel, Inc., respectfully applies to this Court for the relief requested below, and in support of its application shows:

FIRST: On or about January 18, 1954, this Court entered its Final Judgment herein, which among other things provided that jurisdiction hereof be retained by this Court for the purpose of enabling either party to apply at any time for the modification of any of the provisions thereof.

SECOND: Paragraph (C) of Section IV of the Final Judgment enjoins and restrains the defendant from selling any patents subject to its licensing or provisions unless the defendant requires as a condition of the sale that the purchaser shall observe the requirements of said Section IV, and the said paragraph also requires that the purchaser shall file an undertaking so to be bound with this Court prior to consummation of the transaction.

THIRD: At the time of the entry of the Final Judgment, the defendant was engaged in the manufacture

and sale of various articles of merchandise, including absorption refrigerators and absorption refrigerating units. After the entry of the Final Judgment, but not because of its entry there was a steady decline in the sale by the defendant of absorption refrigerators and absorption refrigerating units, until the volume reached a point where it became obvious to the Company's management that this phase of its business could not be operated by the Company on a basis which would yield an adequate return on the stockholders' investment. Accordingly, the defendant discontinued the manufacture of these products in 1957. The reasons for such discontinuance are more fully set out in a Proxy Statement dated August 8, 1957 for the September 11, 1957 special meeting of stockholders of Servel, Inc., a copy of which is annexed hereto as Exhibit A and made a part hereof. At their September 11, 1957 special meeting, the stockholders of the defendant authorized its management to sell the manufacturing facilities and patents used in this manufacturing operation, including patents within the licensing provision of Section IV of the Final Judgment.

FOURTH: Early in August, 1957, at about the time of the mailing to stockholders of the defendant of the notice of the September 11, 1957 special meeting of stockholders, the defendant notified representatives of the principal companies in the Gas Industry of its decision to discontinue its absorption refrigerator business, and of its desire to sell the manufacturing facilities and the patents pertaining to the said business. Since that time, the defendant has endeavored

to find a purchaser for such facilities and patents at their net book value, which is the purchase price the defendant's stockholders authorized its management to accept in a negotiated sale.

FIFTH: The defendant believes that, if it is not successful in negotiating a sale but has to dispose of the properties at public auction (which is the alternative authorization given by its stockholders), the defendant will obtain an over-all purchase price substantially below the net book value of such properties. Furthermore, there is no assurance that, if the properties are sold at auction, they would not be bought piecemeal or that a purchaser would continue to manufacture and sell absorption refrigerators or absorption refrigerating units, whereas the prospective purchaser now in the offing has indicated clearly that it intends to continue such manufacture and sale. It would seem to be of importance that absorption refrigerators, which alone are fueled by gas and kerosene, should not disappear from our economic picture.

SIXTH: Only one concern has shown any serious interest in acquiring the absorption refrigerators and absorption refrigerating unit facilities and patents from the defendant at their net book value. The defendant believes that there is danger that the negotiations with this prospective purchaser will fail if the purchaser is required to comply with the provisions of the Final Judgment and that it will be impossible for the defendant to dispose of the patents subject to the licensing provisions of the Final Judgment to anyone on a negotiated sale basis unless the defendant is able

to sell such patents free from the provisions of the
Final Judgment,

SEVENTH; No other application has been made by the
defendant for the relief sought herein,

WHEREFORE, the defendant respectfully requests
this Court (a) to expunge paragraph (C) of Section IV
from the Final Judgment, (b) to grant the defendant
the right to dispose of the patents subject to the
licensing provisions of the Final Judgment free from
the provisions thereof, (c) to provide in its order
that the purchaser of said patents from the defendant
shall not thereby become subject to any of the provisions
of the Final Judgment and (d) to grant the defendant
such other and further relief as to this Court may seem
proper.

Respectfully submitted.

December 17, 19

/s/ Alfred H. Phillips
of the firm of
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& Ivey,
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