

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. General Electric Co., Westinghouse Electric Corp., Delta-Star Electric Co., A. B. Chance Co., Cole Electric Co., Hi-Voltage Equipment Co., Pacific Electric Mfg. Corp., Railway and Industrial Engineering Co., Southern States Equipment Corp., Electrical Engineers Equipment Co., U.S. District Court, S.D. California, 1948-1949 Trade Cases ¶62,518, (Nov. 4, 1949)

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United States v. General Electric Co., Westinghouse Electric Corp., Delta-Star Electric Co., A. B. Chance Co., Cole Electric Co., Hi-Voltage Equipment Co., Pacific Electric Mfg. Corp., Railway and Industrial Engineering Co., Southern States Equipment Corp., Electrical Engineers Equipment Co.

1948-1949 Trade Cases ¶62,518. U.S. District Court, S.D. California. Civil Action No. 7899-M. November 4, 1949.

Sherman Antitrust Act

Consent Judgment—Electrical Equipment Patents—Non-Exclusive Licensing.—Manufacturers of electrical equipment and holders of patents relating thereto consent to a judgment terminating certain inter-company agreements, prohibiting contracts and combinations for price fixing and refusal to compete, prohibiting the interchange of certain kinds of business information, requiring certain reports to be made to the government, requiring a system of reasonable royalty, non-exclusive licensing of rights under patents, and permitting government inspection of records upon notice. Jurisdiction is retained for enforcement purposes, and to permit application by parties for amendment of the judgment

For the plaintiff: William C. Dixon, Special Assistant, Attorney General, Los Angeles.

For the defendants: O'Melveny & Myers, Los Angeles, for General Electric Co.; Gibson, Dunn & Crutcher, Los Angeles, for Westinghouse Electric Corp.; Wright & Garrett, Los Angeles, for Delta-Star Electric Co. and Electric Engineers Equipment Co.; Orville A. Rohlf, San Francisco, for A. B. Chance Co.; Earl S. Patterson, Los Angeles, for Cole Electric Co.; Loeb and Loeb, Los Angeles, for Hi-Voltage Equipment Co.; Freston & Files, Los Angeles, for Pacific Electric Mfg. Corp.; Newlin, Holley, Sand-meyer & Tackabury, Los Angeles, for Railway and Industrial Engineering Co.; Charles E. Hobart, Los Angeles, for Southern States Equipment Corp.

Final Judgment

PAUL J. MCCORMICK, District Judge: Plaintiff, UNITED STATES OF AMERICA, having filed its Second Amended Complaint herein on November 4, 1949, and the defendants herein having appeared and filed their answers to the Second Amended 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 of any party defendant in respect of any such issue;

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.

The Court has jurisdiction of the subject matter herein and of all the parties hereto. The Second Amended Complaint of November 4, 1949 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, and acts amendatory thereof and supplemental thereto.

[*Terms Defined*]

II.

As used in this Final Judgment:

(a) "Disconnecting switches" shall mean switches, including the mechanism and linkage for manual or mechanical methods of operation, used for changing connections in electrical circuits, which do not have an interrupting rating and are intended to be operated only after the circuit has been opened by some other means.

(b) "Grounding switches" shall mean switches, including the mechanism and linkage for manual or mechanical methods of operation, which do not have an interrupting rating and by means of which an electrical circuit or a piece of apparatus may be connected to ground.

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

[*Application of Judgment*]

III.

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

[*Termination of Agreements*]

IV.

(A) The following agreements are hereby terminated and the defendants Railway and Industrial Engineering Company, Westinghouse Electric Corporation, General Electric Company, Delta-Star Electric Company and Electrical Engineers Equipment Company are hereby enjoined and restrained from the further performance of said agreements, and of any agreements or arrangements amendatory thereof or supplemental thereto:

(1) Agreement between Railway and Industrial Engineering Company and Westinghouse Electric Corporation, dated December 3, 1942;

(2) Agreement between Railway and Industrial Engineering Company and General Electric Company, dated November 20, 1939;

(3) Agreement between Railway and Industrial Engineering Company and Delta-Star Electric Company, dated April 4, 1938;

(4) Agreement between Delta-Star Electric Company and Railway and Industrial Engineering Company, dated April 4, 1938; and

(5) Agreement between Westinghouse Electric Corporation and Electrical Engineers Equipment Company, dated January 3, 1940.

(B) The above named defendants are hereby enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program which has as its purpose or effect the continuing or renewing of any of the agreements listed in paragraph (A) of this Section IV.

[*Conspiracies Enjoined*]

V.

(A) Defendants are severally and jointly enjoined and restrained from combining or conspiring with, or from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with any manufacturer of disconnecting or grounding switches to:

- (1) Determine, fix, maintain or adhere to prices, differentials, discounts or other terms or conditions of sale for disconnecting or grounding switches to third persons;
- (2) Refuse to submit a bid for the sale of disconnecting or grounding switches or to make a bid therefor higher than, or identical with, the bid of any one else, or to submit collusively a bid therefor.

(B) Defendants are jointly and severally enjoined and restrained from:

(1) Circulating, exchanging, disclosing or communicating among or to other manufacturers of disconnecting or grounding switches:

- (a) Quotations or bids for the sale of such switches to third persons;
- (b) Information concerning the sale of such switches which is made generally available to the trade, in advance of its being made so available to the trade;
- (c) Information as to prices, terms or conditions of sale of such switches not generally available to the trade, except exclusively in connection with a bona fide purchase or sale, or proposed purchase or sale of such switches by or to a defendant.

(2) Submitting bids for the sale of disconnecting or grounding switches for the purpose or with the intent of discouraging or precluding any person from becoming or continuing as a customer of such defendant. A course of action involving the submission of bids which provide higher prices or more unfavorable terms or conditions of sale than such defendant is then regularly offering to others similarly situated shall place upon such defendant the burden of disproving such purpose or intent.

[*Reports to Government*]

VI.

(A) Each defendant, its successors and assigns, are hereby ordered and directed, within thirteen (13) months from the effective date of this Judgment, to serve plaintiff with a statement, under oath, of:

- (1) Its prices, terms, and conditions of sale that were in effect March 1, 1949, and that were applicable to disconnecting and grounding switches;
- (2) Each change made by it during the period between March 1, 1949 and one year after the effective date of this Judgment with respect to any of said prices, terms, and conditions of sale;
- (3) The effective date of each such change, the date it was announced to the trade, and the manner in which the announcement was made.

(B) Within six (6) months after service of the last of said statements upon plaintiff, plaintiff may move to amend this Judgment, with respect to the subject matter in Section V, after giving notice to each defendant adversely affected. Upon such motion any such defendant not consenting thereto, shall have a reasonable opportunity to be heard in opposition to the proposed amendment or any part thereof and, in connection with such opposition, may elect to have said Section V of this Judgment vacated in its entirety as to it. Neither the Judgment nor the consents hereto shall operate as a bar or estoppel against the rights of plaintiff and of such defendant, respectively (1) to offer evidence in support of and in opposition to such proposed amendment; and, (2) to have all the issues this Court deems relevant and material to the disposition of such motion litigated in such hearing.

[*Non-Exclusive Licensing*]

VII.

(A) The defendants General Electric Company, Westinghouse Electric Corporation, Delta-Star Electric Company, Electrical Engineers Equipment Company, Railway and Industrial Engineering Company, and each of them, are hereby ordered and directed to grant to each applicant therefor, including any defendant named in this Judgment, a non-exclusive license to make, use and vend any disconnecting or grounding switches, or any parts of such switches, under any, some or all patents relating to disconnecting and grounding switches now owned or controlled by such defendant, or which are issued or applied for within five (5) years from the date of this Judgment, and are 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 this Section VII and of Section VIII of this Judgment and the purchaser, transferee or assignee shall file with this Court prior to consummation of said transaction, an undertaking to be bound by said provisions of this Final Judgment.

(B) In the event that any one of the defendants, A. B. Chance Company, Cole Electric Company, Hi-Voltage Equipment Company, Pacific Electric Manufacturing Corporation, or Southern States Equipment Company, hereafter grants a license under any patents relating to disconnecting or grounding switches now owned or controlled by such defendant, or which are issued or applied for within five (5) years from the date of this Judgment, then and in such event all of the provisions of this Section VII shall become applicable to such defendant.

(C) Each defendant is hereby enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense granted by it pursuant to the provisions of subsections (A) or (B) of this Section VII except that (1) the license may be non-transferable; (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 royalties or to permit the inspection of his books and records as hereinabove provided; (5) the license may provide that 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; (6) the license must refer to and identify this Judgment.

(D) Upon receipt of a written request for a license under the provisions of subsections (A) or (B) of this Section VII, 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 the 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. In any such proceeding, the burden of proof shall be on the defendant owning or controlling said patents 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 any disconnecting or grounding switches 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 (E) of this Section.

(E) Where the applicant has the right to make, use and vend any disconnecting or grounding switches under subsection (D) of this Section VII, said applicant or the defendant owning or controlling said patents 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, 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 section shall be ground for the dismissal of his application, and his rights under sub-section (D) shall terminate as to such patents applied for. Where an interim license or sublicense has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined

by the Court shall be retroactive for the applicant and all other licensees under the same patents to the date the applicant files his application with the Court.

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

(G) Each defendant is hereby enjoined and restrained from instituting or threatening to institute, or maintaining or continuing any action, suit or proceeding for acts of infringement of any disconnecting or grounding switch patent, required to be licensed by this Section VII, which acts of infringement have occurred prior to the date of this Judgment.

[*Access to Records*]

VIII.

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 an Assistant Attorney General, and on reasonable notice to any defendant, be permitted (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 such matters. For the purpose of securing compliance with this Judgment, any defendant, upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such written reports with respect to any of the matters contained in this Judgment as from time to time may be necessary for the purpose of enforcement of this Judgment. No information obtained by the means provided in this Section 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.

[*Jurisdiction Retained*]

IX.

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.