

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Industrial Electronic Engineers, Inc., U.S. District Court, C.D. California, 1977-2 Trade Cases ¶61,734, (Oct. 3, 1977)

[Click to open document in a browser](#)

United States v. Industrial Electronic Engineers, Inc.

1977-2 Trade Cases ¶61,734. U.S. District Court, C.D. California, Civil No. 73-1472-WPG, Entered October 3, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 35721).

Case No. 2329, Antitrust Division, Department of Justice.

Sherman Act

Monopolization: Rear Projection Readout Devices for Electronic Equipment: Below-Expense Sales: Acquisitions: Patents and Trademarks: Consent Decree.— The assertedly largest manufacturer of rear projection readouts used in electronic equipment was enjoined by a consent decree from monopolizing the market in the United States. Under the terms of the decree, the manufacturer was specifically barred from below-expense sales, as defined; from acquiring an interest in any competitor, except in connection with sales made in the ordinary course of business; and from acquiring any patents, trademarks, designs, inventions, improvements or know-how connected with rear projection read-out manufacture, except from a person acting as its employee or agent.

Sales Below Cost: Monopoly Effect: Rear Projection Readout Devices for Electronic Equipment: Consent Decree.— The manufacturer of rear projection readouts used in electronic equipment that was enjoined by a consent decree from monopolizing the market, was specifically restrained from selling or offering to sell rear projection readouts at below cost prices except when the sales or offers (1) were incidental to a legitimate close-out or discontinuance by the manufacturer, and the rear projection readouts were previously offered in a standardized form to two or more customers, or (2) were made to meet a competitor's equally low price. The manufacturer was not precluded from giving, without charge, as many as five models of rear projection readouts, as advertising or promotional samples.

Department of Justice Enforcement: Royalty-Free Patent License: Rear Projection Readouts: Patent Infringement Suits: Know-How: Consent Decree.— The manufacturer of rear projection readouts that was enjoined by a consent decree from monopolizing the market was ordered to grant to each person making a request, an irrevocable, royalty-free, non-exclusive, and unrestricted license to make, use, sell or lease the product in question under certain United States patents listed in the decree and under other United States patents issued to the manufacturer or under which it had the right to grant licenses or sublicenses. The manufacturer was not required to grant a right to sublicense to any person obtaining a license pursuant to the decree provisions. It was enjoined from bringing patent infringement suits and was ordered--for a period of five years--to furnish its know-how connected with patents licensed under the decree, with certain limitations and requirements to be met by the transferee or assignee.

For plaintiff: John H. Shenefield, Actg. Asst. Atty. Gen., William E. Swope, Dwight B. Moore, Charles F. B. McAleer, Robert J. Ludwig, and Raymond P. Hernacki. **For defendant:** Robert G. Lane.

Final Judgment

Gray, D. J.: Plaintiff, United States of America, having filed its Complaint herein on June 27, 1973 and plaintiff and the defendant, by their respective attorneys, having 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 with respect to any such issue, and without this Final Judgment constituting evidence or admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony and without adjudication of any issue of fact or law herein and upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction over the subject matter herein and of the parties hereto. The Complaint states a claim against the defendant upon which relief may be granted under Section 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §2), commonly known as the Sherman Act.

II

[Applicability]

The provisions of this Final Judgment applicable to Industrial Electronic Engineers, Inc. (referred to hereinafter as "IEE") shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

[Definitions]

As used in this Final Judgment:

(A) "Rear projection readout" means any display device capable of selectively projecting from a film or other image-forming element a wide variety of numbers, letters, symbols or pictures in one or more colors from the rear of the device onto a miniature front viewing screen.

(B) "IEE cost" means all expenses incurred by IEE, under generally accepted accounting principles, consistently applied, as determined by a generally recognized national certified public accounting firm, in the production and sale of any rear projection readout, but shall not include any research and development expense or any initial tooling and other start up expenses incurred by IEE in connection with such rear projection readouts.

(C) "IEE know-how" means (1) a list disclosing the name and last known address of each person in the United States to whom rear projection readouts were sold by IEE between January 1, 1973 and the date of entry of this Final Judgment, and (2) written or microfilmed information, owned or controlled by IEE on the date of entry of this Final Judgment, disclosing designs for, or methods or techniques of, manufacturing and/or assembling rear projection readouts, including, but not limited to, all: drawings, blueprints, specifications, information on microfilm quality, workmanship standards, quality assurance standards, production process control travelers, quality control inspection instructions, general inspection instructions, and copies thereof.

(D) "Person" means any individual, corporation, association, partnership or other legal entity.

IV

[Prohibited Conduct]

IEE is hereby enjoined and restrained from:

(A) Selling or offering to sell rear projection readouts at prices below IEE cost except where such sales or offers (1) are incidental to a legitimate close-out or discontinuance by IEE of such rear projection readouts, and such rear projection readouts were previously offered for sale by IEE in a standardized form to two or more customers, or (2) are made to meet the equally low price offered by a competitor. This Section IV(A) shall not preclude IEE from giving, without charge, a small quantity of any model of rear projection readouts, not to exceed five (5) in number for each such model, as advertising or promotional samples.

(B) Acquiring or receiving, for a period of five (5) years immediately following the date of entry of this Final Judgment, any stocks, bonds, notes, capital assets, or other interest in any person engaged in the manufacture or assembly of rear projection readouts, except IEE may acquire notes or security interests in connection with sales of IEE products or services made in the ordinary course of business.

(C) Acquiring or receiving, for a period of ten (10) years immediately following the date of entry of this Final Judgment, exclusive control of any patents, trademarks, designs, inventions, improvements, or know-how covering the manufacture, production, or assembly of rear projection readouts, except from a person that conceived or developed said patents, trademarks, designs, inventions, improvements, or know-how in the course of such person's services for IEE as an employee or agent.

(D) Monopolizing (as used in [Section 2 of the Sherman Act](#)) the rear projection readout market in the United States.

V

[Notice]

(A) Within ninety (90) days following the date of entry of this Final Judgment, IEE is ordered and directed to establish and to distribute to all IEE personnel a written policy, approved by the plaintiff, prohibiting any officer, director, employee or agent of IEE from authorizing, making, publishing or acquiescing in any statement, known to be false or believed to be false by such officer, director, employee or agent of IEE, to discredit or disparage any person engaged in the manufacture or sale of rear projection readouts. Such policy shall provide that violation thereof by any IEE personnel will be cause for immediate dismissal.

(B) For a period of five (5) years immediately following the date of entry of this Final Judgment, IEE (1) shall annually distribute, within the thirty (30) days immediately preceding the anniversary of the date of entry of this Final Judgment, a copy of such policy to all IEE sales personnel and (2) shall distribute a copy of said policy to each new officer, director, employee or agent at the time of his employment.

VI

[Royalty-Free Patent License]

(A) IEE is ordered and directed to grant to each person in the United States making written request therefor, an irrevocable, royalty-free, non-exclusive, and unrestricted license to make, have made, use, sell or lease the subject matter claimed therein under any or all of the following United States patents, and any reissues thereof, and on any patents issued from any division or continuation thereof, and all other United States patents issued to IEE or under which IEE has the right to grant licenses or sublicenses, on or before the date of entry of this Final Judgment, and disclosing and claiming rear projection readouts or disclosing and claiming components or subassemblies for such rear projection readouts or disclosing and claiming methods of, or equipment for, making such rear projection readouts or such components or subassemblies.

<i>Number</i>	<i>Date Issued</i>	<i>Inventor(s)</i>
3,041,600	June 26, 1962	Donald G. Gumpertz & John E. Hendricks
3,201,784	August 17, 1965	John E. Hendricks & David M. Piatt
3,244,071	April 5, 1966	Donald G. Gumpertz
3,332,318	July 25, 1967	Guy O. Gessel
3,761,169	September 25, 1973	Robert W. Farnden, Roger Silverstone, & John E. Hendricks

(B) Except as otherwise provided in this Final Judgment or as implied by law, nothing herein shall require IEE to grant the right to sublicense to any person obtaining a license pursuant to the provisions of this Section VI.

(C) IEE is enjoined and restrained from bringing or prosecuting any action against any person licensed under this Section VI on the ground that any rear projection readouts made, made for, used, sold or leased by such person infringed on any patents listed in Section VI(A) of this Final Judgment.

(D) IEE is ordered and directed for a period of five (5) years from the entry of this Final Judgment, upon written request, to furnish IEE know-how used or useful to practice the subject matter claimed under all patents licensed pursuant to this Section VI (except that IEE shall not be required to furnish any know-how specifically directed to and developed in connection with any invention or improvement covered by any rear projection readout patent issued to IEE after the date of entry of this Final Judgment), at a price not to exceed the actual cost to IEE of assembling and reproducing such know-how. Such know-how shall be provided pursuant to this subsection VI(D) for each rear projection readout as a unit and for the separate components of (1) the casing for the rear projection readout and all parts within the casing; (2) each bezel of standardized form; and (3) the lamp terminal assembly and each terminal assembly forming a part thereof. Know-how shall also be provided by IEE for all switches and connector assemblies for IEE's model designated "Series 405." IEE shall not be obligated to provide know-how for (1) decoders for converting information in one code into information in another code; (2) drivers for electrically energizing the light sources; (3) power supplies for supplying electrical energy to the various electrical components including the light sources and the decoders and drivers; (4) parts, subassemblies, assemblies and accessories which are not supplied by IEE; and (5) parts, sub-assemblies, assemblies and accessories which are not listed above.

(E) IEE shall not sell, transfer, assign or otherwise dispose of any of the patents or know-how referred to in this Section VI unless the purchaser, transferee or assignee agrees in writing, prior to the consummation of such sale, transferral, assignment or other disposition, to be bound by the provisions of this Section VI.

(F) The provisions of this Section VI shall not be construed as requiring IEE to provide any IEE know-how hereunder to any person owned or controlled, directly or indirectly, by any person whose principal place of business or permanent residence is not within the United States, and shall not be construed to prohibit IEE from requiring any person receiving IEE know-how hereunder to agree in writing not to disclose any IEE know-how to any person owned or controlled, directly or indirectly, by any person whose principal place of business or permanent residence is not within the United States.

VII

[Trademarks]

Nothing in this Final Judgment shall be construed to grant to any person any right in IEE trademarks, trade names, copyrights, or model designations, or to confer any rights to any person that unlawfully passes off any product as a product of IEE.

VIII

[Reports]

For a period of five (5) years from the date of entry of this Final Judgment, IEE is ordered to annually provide the plaintiff, within thirty (30) days prior to each anniversary date of the entry of this Final Judgment, a report setting forth the steps IEE has taken to comply with Sections V and VI of this Final Judgment.

IX

[Inspections]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative 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 IEE made to its principal office, be permitted subject to any legally recognized privilege:

(1) Access during the office hours of IEE to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of IEE relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of IEE and without restraint or interference from it, to interview officers, directors, agents or employees of IEE who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, IEE shall submit such reports in writing to the plaintiff with respect to matters contained in this Final Judgment as may from time to time be requested.

(C) No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

[Retention of Jurisdiction]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final 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 Final Judgment, for the modification of any of the provisions hereof, and for the violation of any of the provisions contained herein.

XI

[Public Interest]

Entry of this Final Judgment is in the public interest.