

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Rail Joint Company et al., U.S. District Court, N.D. Illinois, 1944-1945 Trade Cases ¶57,287, (Sept. 20, 1944)

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United States v. The Rail Joint Company et al.

1944-1945 Trade Cases ¶57,287. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 43-C-1295. September 20, 1944.

In an anti-trust suit, defendants, engaged in the rail joint bar reforming industry, consent to a decree directing defendants to dedicate certain patents to the public; enjoining defendants from threatening to institute or instituting any proceeding for the enforcement of certain patents; enjoining defendants from entering into any agreement to fix prices, to agree upon the terms or conditions for the issuance or acceptance of patent rights, to fix price differentials between new rail joint bars and reformed rail joint bars, to limit the location or scope of operations of any plant, to allocate territories, customers or markets, or to refrain from competing in any territory or for any particular customers or markets; and declaring certain licenses and agreements illegal and enjoining defendants from reinstating them.

For the United States: Wendell Berge, Assistant Attorney General; George B. Haddock, Special Assistant to the Attorney General; and W. L. Hotchkiss, Special Assistant to the Attorney General.

For defendants: Mayer, Meyer, Austrian & Platt by Leo F. Tierney.

Decree entered by United States District Judge Barnes.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on the 21st day of December 1943; the defendants, The Rail Joint Company, Poor & Company, Woodings-Verona Tool Works, Fred Poor, Victor C. Armstrong and Emanuel Wood-ings, having severally appeared and filed their Answers to such Complaint, denying the substantive allegations thereof: and each of the aforesaid parties, by their respective attorneys herein, having consented to the entry of this final judgment herein;

NOW, THEREFORE, without taking any testimony or evidence or making any Findings of Fact, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

[*Jurisdiction and Cause of Action*]

The Court has jurisdiction of the subject matter hereof and of all of the said parties hereto, and the Complaint states a cause of action against the said parties hereto under the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental thereto.

II

[*Definition of "Reforming" or "Reformed"*]

As used in this Judgment the term "reforming" or "reformed" when applied to rail joint bars mean the reconditioning or the reworking of used or worn rail joint bars to original or new shapes, or to new or original fits with the rails on which they are to be used.

III

[*Patents to be Dedicated to Public*]

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Each of the defendants, the Rail Joint Company, Poor & Company, Woodings-Verona Tool Works, and each of their subsidiaries, successors, assigns, officers, directors, agents, and employees, and all persons acting or claiming to act under, through or for them, or any of them, is hereby ordered and directed to forthwith take such steps as may be necessary to dedicate to the public the following patents owned by such defendants:

Patents owned by The Rail Joint Company:

Patentee	Patent No.	Date
Armstrong	1,833,550	November 24, 1931
Disbrow	1,641,416	September 6, 1927
Thomson	1,829,247	October 27, 1931

Patents owned by Woodings-Verona Tool Works:

Patentee	Patent No.	Date
Woodings	1,728,225	January 6, 1931

Such dedication shall be without any restriction or condition and shall extend to all rights under such patents and under any reissue of any such patent.

IV

[Activities Enjoined]

Each of the defendants, the Rail Joint Company, Poor & Company, and Woodings-Verona Tool Works, Fred Poor, Victor C. Armstrong, and Emanuel Woodings, and each of their subsidiaries, successors, assigns, officers, directors, employees, and agents, and all persons acting or claiming to act under, through or for them, or any of them, is hereby enjoined and restrained from doing, attempting to do, or inducing others to do, the following:

- (a) Threatening, to institute, instituting or maintaining any proceeding in any court for the enforcement of any right claimed under any of the patents listed in the Exhibits attached here to and marked "A", "B", and "C" or under any reissue of any such patent;
- (b) Threatening to institute, instituting or maintaining any suit or proceeding under any United States Letters Patent applied for or issued on or prior to the date of the entry of this judgment, in any court on account of the reforming by any person of rail joint bars into an unpatented form or design or into the original form or design or into substantially the original form or design of such bars or on account of the use or sale by any person of any bar so reformed into an unpatented form or design or into its original form or design or into substantially its original form or design;
- (c) Threatening to institute, instituting or maintaining any suit or proceeding in any court under any United States Letters Patent applied for after the date of the entry of this judgment under an assertion that the reforming of any rail joint bar into its original form or design or into substantially its original form or design or the use or sale of any rail joint bar so reformed, infringes a patent claiming such form or design as an invention.

V

[Agreements Enjoined]

Each of the defendants, the Rail Joint Company, Poor & Company, and Woodings-Verona Tool Works, Fred Poor, Victor C. Armstrong, and Emanuel Woodings, and each of their subsidiaries, successors, officers, directors, employees, and agents, and all persons acting or claiming to act under, through or for them, or any of them, is hereby enjoined and restrained from entering into, adhering to, or furthering any contract, agreement, license, cross-license, understanding, plan or program . among themselves or with any other person to:

- (a) Determine, fix, maintain or adhere to prices, terms or conditions to be quoted, submitted to or required of any other person for the reforming of rail joint bars or for the purchase or sale of reformed rail joint bars;

- (b) Agree upon the terms or conditions for the issuance to or acceptance from any other person of any right under or interest in any patent right or license or sub-license under any patent right, relating to the reforming of rail joint bars;
- (c) Determine, fix, maintain or adhere to price differentials or any other differential. between new rail joint bars and the reforming of rail joint bars or reformed rail joint bars, in deal ing with any other person;
- (d) Limit, restrict, or determine the location of any rail joint bar reforming plant, or the scope of operations of any such plant, whether as. to territory, service or otherwise:
- (e) Allocate territories, customers or markets for the reforming of rail joint bars;
- (f) Refrain from competing in any territory, or for any particular customers or markets in relation to the reforming of rail joint bars.

VI

[Licenses and Agreements Declared Illegal]

The licenses and agreements listed in Exhibit "D" attached hereto and all licenses and agreements supplementary or amendatory to such listed licenses and agreements are hereby declared to be illegal, and each of the defendants, the Rail Joint Company, Poor & Company, and Woodings-Verona Tool Works, Fred Poor, Victor C. Armstrong, and Emanuel Woodings, and each of their successors, officers, directors, employees, and agents, and all persons acting or claiming to act under, through or for them, or any of them is hereby enjoined and restrained from reinstating any of such licenses or agreements and from, by any arrangement, plan or program, reviving the operation or effects of such licenses and agreements.

VII

Access of Department of Justice to Records; Right to Interview]

For the purpose of securing compliance with, this judgment, duly authorized representatives of the Department of Justice on written request of the Attorney General of the United States or an Assistant Attorney General, and on reasonable notice to a corporate defendant, shall be permitted (1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda or other records and documents in the possession or under the control of such defendant relating to any matter contained in this judgment; (2) without restraint or interference from any corporate defendant, to interview officers or employees of such defendant, who may have counsel present regarding any such matter. Each of the defendants, on such written request, shall submit copies of any agreements or statements of any understandings, relating to patent rights for the reforming of rail Joint bars to which such defendant or its successors may be a party or a participant; *provided, however,* that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings for the purpose of securing compliance with this judgment in which the United States is a party or as is otherwise required by law.

VIII

[Report of Compliance]

Each of the corporate signatory defendants and each of their successors shall file with this court and with the Attorney General of the United States or with the Assistant Attorney General in charge of the Antitrust Division, a report, within ninety days after the date of the entry of this judgment, of all action taken by them to comply with or conform to the terms of Section III of this judgment.

IX

[Jurisdiction Retained]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the court at any time for such further orders and directions as may be appropriate for the construction or carrying out of this judgment, for the enforcement of compliance therewith, and for the punishment of violations thereof.

X

[*Activities for War Purposes*]

Nothing in this judgment shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers, or employees in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as "Exhibit E") [reported at ¶ 1151 and omitted here], or with any amendment or amplifications thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National War Agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto.

Exhibit A

Patentee	Patent No.	Date
Thomson	1,208,698	December 12, 1916
"	1,374,782	April 12, 1921
"	Reissue	February 19, 1924
"	15,773	.....
Woodings.....	1,547,853	July 28, 1925
"	Reissue	April 11, 1933
"	18,794	.....
Langford	1,562,423	November 17, 1925
"	Reissue	January 14, 1930
"	17,561	.....
Langford	Reissue	February 18, 1930
"	17,596	.....
Langford	Reissue	September 29, 1931
"	18,213	.....
Langford	Reissue	July 9, 1935
"	19,638	.....
Langford	1,659,776	February 21, 1928
Langford	1,712,506	May 14, 1929
Langford	1,724,031	August 13, 1929
Langford	1,732,650	October 22, 1929
Langford	Reissue	March 24, 1931
"	18,011	.....
Langford	1,757,774	May 6, 1930
Langford	Reissue	February 10, 1931
"	17,963	.....
Woodings.....	1,788,225	January 6, 1931
Langford	1,799,382	April 7, 1931
Langford	1,804,792	May 12, 1931
Langford	1,808,466	June 2, 1931
Langford	Reissue,	August 25, 1931
"	18,165	.....
Langford	1,808,467	June 2, 1931
Langford	1,808,468	June 2, 1931
Langford	Reissue	October 4, 1938
"	20,874	.....
Thomson	1,829,247	October 27, 1931
Langford	1,836,032	December 15, 1931
Langford	1,858,401	May 17, 1932

Langford	2,134,449	.....	October 25, 1938
Langford	2,134,450 ²	.....	October 25, 1938

Exhibit B

Patentee	Patent No.	Date
Langford	1,759,458	..... May 20, 1930
Langford	1,799,380	..... April 7, 1931
Langford	Reissue	..... August 16, 1932
	18,568	.....
Langford	1,799,381	..... April 7, 1931
Langford	1,814,835	..... July 14, 1931
Langford	1,833,026	..... November 24, 1931
Langford	1,836,033	..... December 15, 1931
Langford	1,842,412	..... January 26, 1932
Langford	1,865,194	..... June 28, 1932
Langford	1,883,982	..... October 25, 1932
Langford	1,890,687	..... December 13, 1932
Langford	2,034,043	..... March 17, 1936
Langford	2,034,044	..... March 17, 1936
Langford	2,034,045	..... March 17, 1936
Langford	2,034,046	..... March 17, 1936
Langford	2,060,996	..... November 17, 1936

Exhibit C

Patentee	Patent No.	Date
Armstrong.....	1,833,550	..... November 24, 1931
Disbrow	1,641,416	..... September 6, 1927
Faries	1,948,102	..... February 20, 1934

Exhibit D

Date License Executed	Parties to the Agreement
September 12, 1931	McKenna Process Company (Licensor) The Rail Joint Company (Licensee) (Designated as License Agreement "A")
September 12, 1931	The Rail Joint Company (Licensor) McKenna Process Company (Licensee) (Designated as License Agreement "B")
September 12, 1931	The Rail Joint Company (Licensor) McKenna Process Company (Licensee) (Designated as License Agreement "C")
October 19, 1931	Woodings-Verona Tool Works (Licensor) The Rail Joint Company (Licensee)
October 19, 1931	The Rail Joint Company (Licensor) Woodings-Verona Tool Works (Licensee)
October 5, 1931	The Rail Joint Company (Licensor) Tredegar Company (Licensee)
October 7, 1931	The Rail Joint Company (Licensor) Rail Joint Reforming Company (Licensee)
October 15, 1931	The Rail Joint Company (Licensor) Mississippi Valley Structural Steel Company (Licensee)
September 28, 1931	Agreement between The Rail Joint Company and Woodings - Verona Tool works supplementing the license of October 19, 1931, entered into between Rail Joint as Licensor and Woodings as Licensee,

October 26, 1931	The Rail Joint Company (Licensor) Mohawk Equipment Co. (Licensee)
November 3, 1931	The Rail Joint Company (Licensor) Ray O. Shaffer (Licensee)
November 18, 1931	The Rail Joint Company (Licensor) Texas Rail Joint Company (Licensee)
October 31, 1932	Supplement to License Agreements "B" and "C" entered into between The Rail Joint Company and McKenna Process Company
March 8, 1935	The Rail Joint Company (Licensor) Poole & McGonigle, Inc., (Licensee) (License under Disbrow Patent No. 1,641,416)
October 11, 1935	McKenna Process Company (Licensor) The Rail Joint Company (Licensee)
December 15, 1935	Agreement between The Rail Joint Company and Woodings - Verona Tool Works supplementing and amending their agreement of October 19, 1931.
February 1, 1936	The Rail Joint Company (Licensor) Youngstown Steel Car Company (Licensee)
April, 1936	Agreement between The Rail Joint Company and McKenna Process Company cancelling License Agreement "B" and amending Agreement "A"
June 27, 1936	The Rail Joint Company (Licensor) Mohawk Equipment Co. (Licensee) (License under Disbrow Patent No. 1,641,416 and Farles No. 1,948,102)
May 24, 1939	George Langford (Licensor) The Rail Joint Company (Licensee)