

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Optical Company, an association, et al., U.S. District Court, S.D. New York, 1948-1949 Trade Cases ¶62,308, (Sept. 17, 1948)

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United States v. American Optical Company, an association, et al.

1948-1949 Trade Cases ¶62,308. U.S. District Court, S.D. New York. Civil Action No. 10-391. September 17, 1948.

Sherman Antitrust Act, Clayton Antitrust Act

Consent Judgment— Elimination of Restrictive Practices— Restoration of Competitive Conditions.— A consent judgment entered in an action charging 13 manufacturers of eyeglass frames and mountings, a national trade association of optical wholesalers, six optical wholesalers, two patent holding companies and 13 individuals with engaging in a conspiracy and combination to fix prices and otherwise restrain trade in ophthalmic goods enjoins price fixing, cancels certain patent licenses, requires that patents and trademarks relating to the frames and mountings involved be made available to other manufacturers on reasonable terms, and prohibits expansion by two defendants in the field of wholesale distribution by the acquisition of independent concerns, and the boycotting of wholesale firms and other unfair competitive practices.

For plaintiff: Herbert A. Bergson, Assistant Attorney General; Sigmund Timberg, J. Francis Hayden, Special Assistants to the Attorney General; Marcus B. Hollabaugh, George L. Derr, Robert L. Tollefson, Special Attorneys.

For defendants: Root, Ballantine, Harlan, Bushby&Palmer; Simpson, Thacher & Bartlett; Darby&Darby; Spence, Hotchkiss, Parker&Duryee; Sonnenschein, Berkson, Lautmann, Levinson&Morse; Blair, Curtis&Hayward; Niles&Johnson; Morris N. Bobis, Curtis&Belknap; Max Rockmore; Letts&Quinn; Pennie, Edmonds, Morton&Barrows; Goodman&Mabel; Harris, Beach, Folger, Keating&Wilcox; White, Wright, Raub&Forrey.

FINAL JUDGMENT

The complainant, United States of America, having filed its complaint herein on September 16, 1940; all of the defendants having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof and denying any violation of the law as alleged in the complaint; this action having come on for trial before the Honorable John M. Woolsey, late Judge of this Court, and the trial having been adjourned on October 21, 1942 pursuant to the request of the Secretary of War and the Secretary of the Navy; an order having been entered on September 17, 1948, upon the motion of certain of the defendants, declaring a mistrial in this case because of the death of Judge Woolsey during the period of adjournment and directing a new trial of all the issues; no testimony or evidence having been taken upon such new trial; and all parties hereto, by their respective attorneys, having severally consented to the entry of this final judgment without any adjudication of any issue of fact or law herein and without constituting evidence or admission in respect of any such issue:

NOW, THEREFORE, before any testimony or evidence has been taken upon such new trial and without any adjudication of law or fact herein, upon the consent of all parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

[*Jurisdiction*]

I

That this Court has jurisdiction of the subject matter of this action and of all parties hereto, and that the complaint states a cause of action against the defendants under Sections 1, 2 and 3 of the Act of Congress of July 2, 1890,

entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and For Other Purposes," and acts amendatory thereof and supplemental thereto.

[*Terms Defined*]

II

When used in this final judgment, the following terms shall have the following meanings:

- A. "American Optical" means, individually and collectively, the defendant American Optical Company, an association, and the defendant American Optical Company, a corporation.
- B. "Bausch&Lomb" means the defendant Bausch&Lomb Optical Company, a corporation.
- C. "Bausch&Lomb Affiliates" means, individually and collectively, the defendants Riggs Optical Company-Consolidated; Riggs Optical Company, Inc.; McIntire, Magee and Brown Company; Colonial Optical Company, Inc., and the Southeastern Optical Company, Inc., which, for the purpose of this judgment, are treated as subsidiaries of Bausch&Lomb.
- D. "O. W. N. A." means the defendant Optical Wholesalers National Association, Inc.
- E. "Ful-Vue Sales Company" means the partnership of that name composed of the defendants George P. Kimmel, Robert E. Hillier, and Julius H. Tuvin, and the individual partners thereof.
- F. "Patents" means United States Letters patent and patent applications, including all renewals, extensions, continuations, divisions, or reissues of such patents or patent applications.
- G. "Ophthalmic goods" means ophthalmic lenses, lens blanks, spectacle frames, mountings, eyeglasses, spectacles, and component parts or combinations of any of these articles, and as so defined does not include sun glasses or industrial safety equipment not containing lenses ground to prescription.
- H. "Person" means an individual, corporation, partnership, association, joint stock company, business trust, or any other business organization.
- I. "Manufacturers' prices" means the prices at which manufacturers sell ophthalmic goods to wholesalers.

III

Wherever reference is made in this judgment to any defendant, said reference shall also include each of such defendant's subsidiaries, successors, and assigns and each of its directors, trustees, nominees, partners, members, officers, agents, representatives or employees, and any person acting or with authority to act, under, through, or for them or any of them.

[*Agreements Cancelled*]

IV

That the following patent licenses or agreements and all amendments, modifications, or supplements of the same, and all schedules issued thereunder or relating thereto, are hereby cancelled and decreed to be null and void from the date of this judgment, and each defendant is hereby enjoined and restrained from the further performance, observance, or enforcement of any of the terms or provisions thereof (except with regard to royalties, if any, accrued to the date of this judgment, as to which this judgment is without prejudice to rights or defenses that may be asserted or claimed by any party to any proceeding), and from adopting, adhering to, or furthering any course of conduct for the purpose or with the effect of maintaining, reviving, or reinstating said licenses or agreements:

- A. All licenses and agreements between Ful-Vue Sales Company and American Optical under or relating to any of the patents listed in Appendix "A", which is attached hereto and made a part hereof, including but not limited to the License Agreement dated May 1, 1929, the License Agreement dated January 10, 1930, the Amendment

to License Agreement dated September 2, 1931, the Supplemental Agreement dated March 20, 1931 and the Agreement dated September 11, 1934,

B. All licenses and agreements between the Uhlemann Optical Company of Illinois and American Optical under or relating to any of the patents listed in Appendix "A", including but not limited to the License and Agreement dated June 4, 1938, the Agreement dated October 28, 1938, the Letter Agreement dated January 19, 1939, and the Agreement dated September 4, 1941.

C. All licenses or sublicenses issued by American Optical under or relating to any of the patents listed in Appendix "A", except that this provision shall not affect the paid-in license dated January 20, 1938, issued by American Optical to Bausch&Lomb in connection with the exchange of licenses in settlement of Interference Proceeding No. 73476 declared by the Commissioner of Patents on October 30, 1936.

D. All licenses issued by Bausch&Lomb under or relating to any of the patents listed in Appendix "A".

[Notice]

V

A. That defendant American Optical, as to the licenses and sublicenses referred to in Section IV C, and defendant Bausch&Lomb, as to the licenses referred to in Section IV D, are hereby ordered and directed, within fifteen days from the date of this judgment, to give notice to each of the licensees and sublicensees that said licenses and sublicenses, and all schedules issued thereunder or relating thereto, have been cancelled and are no longer in effect. Said notice shall be in a form approved by the Department of Justice and shall be accompanied by a true copy of this judgment.

B. That the respective owners of the patents listed in Appendix "A" are hereby ordered and directed within fifteen days from the date of this judgment to give notice to each person whose license under such patents of said owner has been cancelled by Section IV of this judgment, advising such persons of their rights to utilize patents and trade marks and to obtain patent licenses in accordance with the provisions of Sections VI and IX hereof. Said notice shall be in a form approved by the Department of Justice.

[Patents to Be Made Available]

VI

A. That each of the defendants American Optical, Bausch&Lomb, Ful-Vue Sales Company and Uhlemann Optical Company of Illinois, is hereby ordered and directed to grant to all applicants therefor nonexclusive, non-assignable licenses to make, use and vend under

(1) any or all of the patents listed in Appendix "A" which are owned or controlled by it(as indicated in said Appendix "A"), and

(2) any or all patents heretofore issued or applied for, or issued or applied for within ten years from the date of this judgment, claiming inventions constituting improvements to any invention which was claimed in any of the patents listed in Appendix "A" or which might have been claimed therein as a new invention on the basis of the inventor's disclosure, insofar as such patents are now or hereafter owned or controlled by such defendant directly or indirectly or under which it has or obtains a right to grant licenses or sublicenses.

Each of said defendants is hereby enjoined and restrained from making any disposition of any of the patents listed in Appendix "A" which deprives it of the power or authority to grant such licenses, and from accepting any exclusive license under any such improvement patents owned or controlled by any other person unless the license gives it the right to grant licenses or sublicenses under such patents in accordance with the requirements of this Section VI.

B. That if at any time hereafter any of the defendants, other than those named in Section VI A hereof, shall grant to any person a license to make, use or vend under any patent heretofore issued or applied for, or issued or applied for within ten years from the date of this judgment, claiming inventions constituting improvements to

any invention which was claimed in any of the patents listed in Appendix "A" or which might have been claimed therein as a new invention on the basis of the inventor's disclosure, such license shall be non-exclusive and shall conform to the requirements of Section VI C hereof, and the defendant which grants such license is hereby ordered and directed to grant to all applicants therefor, similar non-exclusive, non-assignable licenses to make, use and vend under any or all such patents so licensed.

C. That each of the defendants 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 this Section except that (a) a reasonable royalty may be charged which shall be uniform except with respect to the license excepted from the operation of Section IV C hereof; (b) reasonable provision may be made for periodic inspection of the books and records, of the licensees by an independent auditor who shall report to the licensor only the amount of the royalty due and payable; (c) 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; and (d) the license must provide that the licensee may cancel the license at any time by giving thirty days notice in writing to the licensor.

D. Upon application for a license under the provisions of this Section, the defendant to whom application is made shall state the royalty which it deems reasonable for the patents to which the application pertains. If the parties are unable to agree upon a reasonable royalty, the defendant may apply to this Court for the determination of a reasonable royalty, giving notice thereof to the applicant and the Attorney General, and he shall make such application forthwith upon request of the applicant. In any such proceeding, the burden of proof shall be upon the defendant to whom application is made to establish by a fair preponderance of evidence, a reasonable royalty, and the Attorney General shall have the right to be heard thereon. 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 his application pertains and the only obligation arising from such application shall be the obligation to pay the reasonable royalty ultimately determined by the parties or by the Court with respect to his exercise of rights under the patents during the period from the date of his application to the date of such determination of the reasonable royalty.

E. That if any person whose license or sublicense has been cancelled by Section IV of this judgment shall, within a period of sixty days from the date of this judgment, make application for a new license under the provisions of this Section, the rights and obligations of such person with respect to all patents to which the application pertains shall be determined in the same manner and with the same effect as if the application had been made on the date of this judgment.

[Acts Enjoined]

VII

That each of the defendants American Optical, Bausch&Lomb, Ful-Vue Sales Company and Uhlemann Optical Company of Illinois is hereby enjoined and restrained from instituting or threatening to institute, or maintaining any suit, counterclaim or proceeding, judicial or administrative, for infringement or to realize or collect damages or compensation for infringement under or on account of any patent listed in Appendix "A", where the cause of action arose prior to the date of this judgment.

VIII

That, as to ophthalmic frames or mountings embodying the invention of any patent listed in Appendix "A" or any improvement thereto as to which licenses are required to be issued under Section VI by the defendants American Optical, Bausch&Lomb, Ful-Vue Sales Company or Uhlemann Optical Company of Illinois, and manufactured by an American licensee under such patent, said defendants are hereby enjoined and restrained from attempting to enforce rights under any foreign patent embodying substantially the same invention with the purpose or effect of preventing or impeding the exportation from the United States to any foreign country of said frames or mountings.

IX

That each of the defendants is hereby enjoined and restrained from interfering in any manner with the use by any other person, with reference to a frame or mounting or part thereof, of any designation, whether registered as a trade mark or not, which has heretofore been generally used to designate frames or mountings or parts thereof manufactured under any of the patents listed in Appendix "A", except (1) to prevent the use of such designation with reference to an article without disclosure of the source of manufacture or (2) to prevent the use of such designation, in such a way as to cause deception, with reference to an article which is not substantially similar to articles to which the designation has been heretofore generally applied. Without limiting the generality of the foregoing, the following trade marks or designations are included among those heretofore generally used to designate certain of said patente articles: Ful-Vue, Numont, Arcway, Rimway, Toprim and Zylarc. This judgment does not in any way adjudicate, determine or affect the validity or invalidity of any such designation as a trade mark. The provisions of this section shall not apply to any trade mark or designation which has been used exclusively by any one of said defendants to designate articles manufactured or distributed by it.

X

That each defendant is hereby enjoined and restrained, for a period of five years from the date of this judgment, from granting or enforcing any license or sublicense or entering into or enforcing any agreement under any patents (other than those which are dealt with in Section VI hereof) in the field of ophthalmic goods, which are now or hereafter owned or controlled by it, directly or indirectly, or under which it has or obtains a right to grant sublicenses wherein there is contained any provision or condition fixing, designating, limiting, or restricting in any manner (a) the prices, conditions, or terms of sale under which any article may be made, used or sold, (b) the purpose or use for which any article may be made, used or sold, (c) the quantities of any article which may be made, used or sold, (d) the territories or areas in which any article may be made, used or sold or (e) the persons by whom any article may be used or to whom any article may be sold. At any time within five years after the injunctive provisions of this section have ceased to be applicable, if any defendant shall include any such provision or condition in any such license, sublicense, or agreement, the defendant shall give notice thereof to the Attorney General. Non-action by the United States after receipt of any notice shall in no event be considered as approval or acquiescence.

XI

That each defendant is hereby enjoined and restrained from granting or enforcing any license or sublicense or entering into or enforcing any agreement, under any patents in the field of ophthalmic goods which are now or hereafter owned or controlled by it, directly or indirectly, or under which it has or obtains a right to grant sublicenses, by the terms or conditions of which (a) any licensee or party is required to enter into Fair Trade resale price maintenance contracts or otherwise fix or attempt to fix or maintain resale prices, or (b) any purchaser of a patented article is restricted in the use or disposition thereof.

[*Price Contracts Declared Void*]

XII

That all Fair Trade resale price maintenance contracts or schedules now in effect between any of the defendants and customers of such defendants, which relate to the resale prices of ophthalmic frames or mountings, or parts thereof, are hereby decreed to be null and void, and each defendant shall forthwith cancel each of said contracts or schedules to which it is a party and give notice within thirty days hereof to each of its customers that said contracts or schedules have been cancelled and are no longer in effect; that each of the defendants is hereby enjoined and restrained from enforcing or attempting to enforce any of said contracts or schedules; and that each of the defendants is hereby enjoined and restrained for a period of two years from the date of this judgment from entering into any Fair Trade resale price maintenance contracts or schedules relating to ophthalmic frames

or mountings or parts thereof and from systematically suggesting to any other person wholesale or prescription prices for ophthalmic frames or mountings, or parts thereof.

[*Acts Enjoined*]

XIII

That the defendant OWNA is hereby enjoined and restrained from:

A. Collecting or soliciting information from or concerning, or investigating, any person with respect to the functions, operations or business of such person by any means other than direct inquiry to such person and voluntary submittal of information by such person, unless such person is a member of or has made a formal application for membership in the OWNA.

B. Collecting, soliciting, utilizing, distributing or disclosing any data or information concerning the businesses of wholesale or retail distribution of ophthalmic goods:

(1) For any purpose other than that of compiling and distributing general trade information or reports; or

(2) in such a manner as to disclose any data or information concerning any particular person; or

(3) where the purpose or effect of such activity is to establish any functional classification of any person or persons or to exclude any person from engaging in either of such businesses.

C. Preparing or disclosing any classification or list purporting or tending to show the classification of the functions or business of any particular person or persons.

XIV

That each of the defendants American Optical, Bausch&Lomb and Bausch&Lomb affiliates is hereby enjoined and restrained from being or becoming members of any organization or association whose activities have the purpose or effect of establishing any functional classification of any person or persons, fixing prices or otherwise restraining competition in the manufacture, sale or distribution of ophthalmic goods.

XV

That each of the defendants is hereby enjoined and restrained from refusing to sell ophthalmic goods at manufacturers' prices to any person because such person is not listed on the Ful-Vue Distributors List, or any similar list, or is not a member of the OWNA or any other association, or is not listed or classified as a wholesale distributor by the OWNA or by any other person.

XVI

That each of the defendants is hereby enjoined and restrained from:

A. For the purpose or with the effect of eliminating a competitor or destroying, restraining or preventing competition, selling or offering for sale ophthalmic goods and processing services upon such goods at unreasonably low prices.

B. Selling or offering for sale ophthalmic goods to retailers under any columnar or other quantity discount price list which permits a larger aggregate gross profit on the sale of a lesser quantity of goods than it permits on the sale of a larger quantity of goods of like grade and quality, provided, however, that notwithstanding the provisions of this paragraph, sales in quantities other than those for which specific prices are quoted may be made at the prices applicable, to the next lower listed quantity. For the purpose of this provision, the term "gross profit" shall mean the difference between the manufacturer's price and the price at which the goods are sold or offered to retailers.

C. Selling or offering for sale like quantities of ophthalmic goods of identical physical characteristics which are regularly sold by the defendant as being goods of the same grade and quality, or of ophthalmic goods of identical physical characteristics which are sold under the same brand or name, at different prices in the same trade or

competitive area; provided that differentials in price may be made between customers in different functional classifications prevailing in the industry.

Nothing contained in this section shall prevent any of the defendants from adopting a price made in good faith to meet an equally low price of a competitor.

XVII

That each of the defendants American Optical, Bausch&Lomb, and the Bausch&Lomb affiliates is hereby enjoined and re-restrained, individually or by combination or agreement among themselves or with any other person, from interfering with or attempting to influence or affect the business policies, practices or expansion of any other person who is a manufacturer or wholesaler of ophthalmic goods, through the use of any threat to injure or destroy the business of such person.

XVIII

That each defendant is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering any contract agreement, understanding, combination or conspiracy with any other person as to prices, discounts or other terms or conditions to be charged, given, or imposed in the sale or distribution of any ophthalmic goods to third persons, other than such contracts, agreements or understandings as are not then prohibited by other provision of this judgment and are then lawful under patent license agreements or fair trade resale price maintenance contracts.

XIX

That each of the defendants American Optical, Bausch&Lomb and the Bausch&Lomb affiliates is hereby enjoined and restrained for a period of ten years from the date of this judgment from acquiring, directly or indirectly, any ownership interest by purchase or acquisition of assets or of securities or otherwise, or from leasing or from acquiring control over, any establishment, business or concern engaged in whole or in part in the wholesale distribution of ophthalmic goods, except, however that nothing herein shall prevent Bausch & Lomb or the Bausch&Lomb affiliates from (1) acquiring additional stock or other ownership interest in or the assets of the Bausch&Lomb affiliates, and (2) acquiring ownership or control of outlets in the territory defined in Appendix "B", which is attached hereto and made a part hereof, for the wholesale distribution of ophthalmic goods provided that it or they have, after reasonable notice to the Attorney General and at opportunity on the part of the latter to be heard, shown to the satisfaction of the Court that any such acquisition does not substantially lessen competition in the wholesale distribution of ophthalmic goods in the area served by the outlet sought to be acquired or tend to create a monopoly in the wholesale distribution of ophthalmic goods in the above-defined territory. In no event shall acquisition be permitted under subdivision (2) of this Section in any city or locality in which Bausch&Lomb or a Bausch&Lomb affiliate owns or controls an outlet for the wholesale distribution of ophthalmic goods.

XX

That each of the defendants American Optical, Bausch&Lomb and the Bausch&Lomb affiliates is hereby enjoined and restrained from representing or holding out to the public that any concern, outlet or factory branch owned or controlled directly or indirectly by any of said defendants, which is engaged in the ophthalmic wholesale business or performs any of the functions of an ophthalmic wholesaler, is independently owned, controlled, or operated.

XXI

That each of the defendants American Optical, Bausch&Lomb and the Bausch&Lomb affiliates is hereby enjoined and restrained from making, entering into or enforcing, or attempting or threatening to enforce, any covenant in any contract for or incident to the acquisition or purchase of the ownership or control of any

establishment, business or concern engaged in the manufacture or wholesale distribution of ophthalmic goods which prohibits, limits or restricts, in any manner, the right of the vendor or any person to engage in the manufacture or wholesale distribution of ophthalmic goods or to compete with such defendants.

XXII

That as between the defendants American Optical and Bausch&Lomb, and as between the defendants American Optical and the Bausch&Lomb affiliates, said defendants are hereby enjoined and restrained from:

- A. Exchanging with each other, or disclosing one to the other, with respect to the manufacture or distribution of ophthalmic goods, any information relating to unit costs; future prices; current prices or current sales (other than such as is lawfully available on equal terms to other members of the industry); names of customers; or the opening or closing of wholesale outlets.
- B. Jointly obtaining, acquiring, owning or holding, directly or indirectly, any patent relating to ophthalmic goods, or any interest in such patent.
- C. Exchanging or granting one to another on an exclusive basis any license under any United States patent in the field of ophthalmic goods or any technical information in that field, or making or performing any agreement or understanding for a general exchange between any of said defendants of rights under such United States patents or of such technical information.

XXIII

That each of the defendants Bausch&Lomb, Bay State Optical Company, New Jersey Optical Company, American Optical and Shuron Optical Company is enjoined and restrained from:

- (1) Leasing, selling or licensing machines used to assemble ophthalmic goods, on the condition or with the agreement or understanding that the lessee, purchaser, or licensee will not use such machine to assemble ophthalmic goods made, or sold by any competitor of such defendant;
- (2) Enforcing any provision in any existing lease, contract or license relating to a machine used to assemble ophthalmic goods, which provides that the lessee, purchaser or licensee will not use such machine to assemble ophthalmic goods made or sold by any competitor of such defendant; and
- (3) Selling ophthalmic goods on the condition or with the agreement or understanding that such goods will be assembled only by use of machines leased, sold or licensed by such defendant.

[*Inspection for Compliance Purposes*]

XXIV

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 corporation, association or partnership 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; provided, however, that no information obtained by the means provided in this paragraph 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.

[*Report to be Filed*]

XXV

Within three months from the date of this judgment, the defendants shall file with the Attorney General a report of the action taken to carry out the provisions of this judgment requiring said defendants to send notices, including a copy of each type of notice so sent and a list of the persons to whom such notices were sent, and shall file with the Attorney General a copy of the form of patent license used in complying with the provisions requiring compulsory licensing of patents, including a statement of the rate of royalty being collected with respect to each patent so licensed.

For a period of ten years from the date of this judgment, each defendant shall, upon written request of the Attorney General or an Assistant Attorney General, submit reports in writing with respect to (a) the form and contents of, or parties to, any patent license agreements to which it is a party under United States patents in the field of ophthalmic goods; (b) the nature and extent of its United States patent holdings in the field of ophthalmic goods; (c) the United States trade marks or trade names being used by it in the field of ophthalmic goods, and any litigation or complaints initiated by it with respect thereto; (d) the activities of any trade association concerned with ophthalmic goods, and the participation of the defendants therein; (e) the cancellation of any patent license, issued pursuant to the compulsory licensing provisions of this judgment, and the reasons or grounds for such cancellation; and (f) the acquisition or opening of concerns, branches or outlets for the manufacture or wholesale distribution of ophthalmic goods in the United States.

No information obtained by the means provided in this paragraph 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.

[*Jurisdiction Retained*]

XXVI

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

[*Activities Not Affected*]

XXVII

Except with respect to Section VIII nothing contained in this judgment shall have any effect with respect to operations or activities of any defendant which relate exclusively to acts and operations outside the United States and its territories and are not violative of the Anti-Trust laws of the United States.

[*Issues Not Adjudicated*]

XXVIII

Nothing contained herein shall be deemed to adjudicate, determine or otherwise affect the issues involved in *United States v. Bausch&Lomb Optical Company, et al*, Civil Action No. 46C1332, *United States v. America) Optical Co., et al.*, Civil Action No. 46C1333 or *United States v. Uhlemann Optical Company of Illinois, et al*, Civil Action No. 48C608 now pending in the United States District Court for the Northern District of Illinois Eastern Division.

APPENDIX "A"

<i>United States Patent No.</i>	<i>Name of Inventor</i>	<i>Name of Owner</i>	<i>Issue Date</i>
1,685,192; Reissue 17,994	Ernest E. Emons	Ful-Vue Sales Company	Sept. 25, 1928; Reissued Mar. 10, 1931

1,739,049; Reissue 17,996	John A. Smith	Ful-Vue Sales Company	Dec. 10, 1929; Reissued Mar. 10, 1931
1,964,664	Ernest E. Emons	Ful-Vue Sales Company	June 26, 1934
1,976,661	Ernest E. Emons	Ful-Vue Sales Company	Oct. 9, 1934
2,041,638	Ernest E. Emons	Ful-Vue Sales Company	May 19, 1936
2,197,682 Reissue 21,909	William Brown	Fal-Vue Sales Company	Apr. 16, 1940; Reissued Sept. 30, 1941
DP-85,089	Ernest E. Emons	Ful-Vue Sales Company	Sept. 15, 1931
DP-91,518	Ernest E. Emons	Ful-Vue Sales Company	Feb. 20, 1934
DP-93,765	Ernest E. Emons	Ful-Vue Sales Company	Nov. 6, 1934
DP-94,541	Ernest E. Emons	Ful-Vue Sales Company	Feb. 12, 1935
1,935,433	T. E. Bosworth	American Optical	Nov. 14, 1933
1,953,922	T. E. Bosworth	American Optical	Apr. 10, 1934
DP-84,024	T. E. Bosworth	American Optical	Apr. 28, 1931
DP-84,678	T. E. Bosworth	American Optical	July 21, 1931
1,747,904	George E. Nerney	American Optical	Feb. 18, 1930
1,984,541	George E. Nerney	American Optical	Dec. 18, 1934
2,050,525 Reissue 21,255	Louis L. Gagnon	American Optical	Aug. 11, 1936; Reissued Oct. 3, 1939
2,236,304	T. J. Suavely	American Optical	Mar. 25, 1941
DP-107,697	George E. Nerney	American Optical	Dec. 28, 1937
DP-110,739	Edward M. Splaine	American Optical.	Aug. 2, 1938
DP-112,386	Edward M. Splaine	American Optical	Nov. 29, 1938
DP-115,769	Thomas J. Snavelly	American Optical	July 18, 1939
DP-115,772	Edward M. Splaine	American Optical	July 18, 1939
DP-117,769	Charles O. Cozzens	American Optical	Nov. 21, 1939
1,878,366	Carl L. Bausch	Bausch & Lomb	Sept. 20, 1932
1,878,370	Samuel E. Bouchard	Bausch & Lomb	Sept. 20, 1932
1,878,371	Samuel E. Bouchard	Bausch & Lomb	Sept. 20, 1932
1,978,890	Samuel E. Bouchard	Bausch & Lomb	Oct. 30, 1934
1,985,499	George L. Hommel	Bausch & Lomb	Dec. 25, 1934
2,033,608	Samuel E. Bouchard	Bausch & Lomb	Mar. 10, 1936
2,063,170	Cletus F. Kramer	Bausch & Lomb	Dec. 8, 1936
2,108,875	William R. Uhlemann	Uhlemann Optical Company	Feb. 22, 1938
2,164,557	William R. Uhlemann	Uhlemann Optical Company of Illinois	July 4, 1939
2,188,380	William R. Uhlemann	Uhlemann Optical Company of Illinois	Jan. 30, 1940
DP-117,766	William R. Uhlemann	Uhlemann Optical Company of Illinois	Nov. 21, 1939

All renewals, extensions, continuations, divisions or reissues of any of the above patents.

APPENDIX "B"

All of the Lower Peninsula of the State of Michigan; all of the State of Ohio; all of the State of West Virginia; all of the State of Kentucky except the Counties of Ballard, Carlisle, Hickman, Fulton, Graves, Calloway, Marshall, McCracken; all of the State of Indiana except the Counties of Lake, Porter, and Laporte; the Counties of Garrett and Alleghany in the State of Maryland; the following counties of the State of Illinois: Peoria, Woodford, Livingston, Tazewell, McLean, Ford, Mason, Logan, DeWitt, Piatt, Champaign, Vermilion, Cass, Menard, Scott, Morgan, Sangamon, Macon, Douglas, Greene, Macoupin, Montgomery, Christian, Shelby, Moultrie, Coles and Edgar; and the following counties in the Commonwealth of Pennsylvania: Erie, Crawford, Warren, McKean,

Mercer, Venango, Forest, Elk, Cameron, Lawrence, Clarion, Jefferson, Clearfield, Beaver, Butler, Armstrong, Indiana, Cambria, Allegheny, Westmoreland, Washington, Greene, Fayette, and Somerset