

Trade Regulation Reporter - Trade Cases (1932 - 1992), U. S. v. Scophony Corporation of America, General Precision Equipment Corporation, Television Productions, Inc., and Scophony, Limited., U.S. District Court, S.D. New York, 1948-1949 Trade Cases ¶62,356, (Jan. 12, 1949)

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U. S. v. Scophony Corporation of America, General Precision Equipment Corporation, Television Productions, Inc., and Scophony, Limited.

1948-1949 Trade Cases ¶62,356. U.S. District Court, S.D. New York. Civil Action No. 34-184. January 12, 1949.

Sherman Antitrust Act

Consent Judgment—Television Industry—Divesting of Ownership Ordered.—A consent judgment entered in an action charging television equipment manufacturers with violating the Sherman Act requires two of the companies to divest themselves of ownership interests in a holding and licensing defendant company.

Consent Judgment—Television Industry—Price Fixing and Related Practices.—By a consent judgment, manufacturers of television equipment are enjoined from allocating markets excluding any person from the manufacture of television equipment, limiting the importation or exportation of installations, refraining from competition, or exchanging technical information exclusively.

Consent Judgment—Television Industry—Patent Monopolies—Action for Patent Infringement Abrogated.—A television company is enjoined from instituting action for patent infringement and required to license its patents on a reasonable royalty basis.

For the plaintiff: Sigmund Timberg, Mervin C. Pollak, Special Assistants to the Attorney General; Herbert A. Bergson, Assistant Attorney General; John F. X. McGohey, United States Attorney; Manuel M. Gorman, Special Assistant to the Attorney General; J. Francis Hayden, Special Assistant to the Attorney General.

For the defendants: Joseph O. Oilier, Attorney for Scophony Corporation of America; Mudge, Stern, Williams & Tucker, Attorneys for General Precision Equipment Corporation; Simpson, Thacker & Bartlett, Attorneys for Paramount Television, Inc., formerly Television Productions, Inc.

Final Judgment

CONGER, E. A., District Judge: Plaintiff, United States of America, having filed its complaint herein on December 18, 1945; all defendants except defendant Scophony, Limited having severally filed answers to the complaint denying the substantive allegations thereof; defendant Scophony, Limited having unsuccessfully moved to dismiss this action and to quash service of process as to it for lack of jurisdiction over said defendant, and defendant Scophony, Limited being now in all respects in default herein, and defendants, Scophony Corporation of America, General Precision Equipment Corporation and Television Productions, Inc, by their respective attorneys, having severally consented to the entry of this final judgment without admission by said defendants with respect to any issue of fact or law,

Now, therefore, no testimony or evidence having been taken herein except the deposition of W. G. Elcock by plaintiff used on the motion of defendant Scophony, Limited, hereinabove mentioned, and without any trial or finding or adjudication of any issue of law or fact herein, and upon consent of plaintiff United States of America and defendants Scophony Corporation of America, General Precision Equipment Corporation and Television Productions, Inc.;

It is hereby ordered, adjudged and decreed:

[*Jurisdiction*]

That this Court has jurisdiction of the subject matter of this action and of the parties thereto; and that the complaint states a cause of action under Sections 1 and 2 of the Act of Congress of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and sets amendatory thereof and supplemental thereto.

[*Applicability of Provisions*]

II

That the provisions of this judgment applicable to any defendant shall apply with equal force to its successors and assigns, its directors, officers, agents, representatives or employees, and any person or corporation acting or with authority to act under, through, or for such defendant.

[*Agreements Terminated*]

III

That the following licenses and agreements and all amendments, modifications, or supplements of the same, are hereby terminated and cancelled as to defendants Scophony Corporation of America, General Precision Equipment Corporation and Television Productions, Inc. as of December 18, 1945, and said defendants are hereby enjoined and restrained from the performance, observance or enforcement of any of the terms or provisions thereof, and from directly or indirectly adopting, adhering to or furthering any course of conduct for the purpose or with the effect of maintaining, reviving, or reinstating the terms and provisions of said licenses and agreements:

A. Agreement dated July 31, 1942, between Scophony, Limited, William George Elcock, General Precision Equipment Corporation, and Television Productions, Inc., a copy of which is annexed to the complaint herein as Exhibit 1;

B. Agreement dated August 11, 1942, between Scophony, Limited, William George Elcock and Scophony Corporation of America, a copy of which is annexed to the complaint herein as Exhibit 2;

C. Agreement dated August 11, 1942, between Scophony Corporation of America, General Precision Equipment Corporation and Television Productions, Inc., a copy of which is annexed to the complaint herein as Exhibit 3.

[*Acts Enjoined*]

IV

That each of the defendants Scophony Corporation of America, General Precision Equipment Corporation and Television Productions, Inc., is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any agreement, combination, plan or program with each other or with defendant Scophony, Limited:

(a) To allocate, divide or restrict territories, customers, or markets for the manufacture, use or distribution of processes, inventions, products, apparatus or installations for, or relating to television;

(b) To exclude any person from or to restrict or limit any person in the manufacture, use or distribution of any process, invention, product, apparatus or installation for, or relating to television;

(c) To limit, restrict or prevent the importation into, or exportation from the United States, its territories or possessions, of any process, invention, product, apparatus or installation for, or relating to television.

(d) To refrain from competition or to leave any person free from competition in any territory or market in the manufacture, use or distribution of processes, products, inventions, apparatus or installations for, or relating to television;

(e) To exchange exclusively among said defendant, or any of them, patent licenses or technical information with respect to the manufacture, use or distribution of any process, product, invention, apparatus or installation for, or relating to television.

[*Dispossession of Ownership*]

V

That each of the defendants, General Precision Equipment Corporation and Television Productions, Inc., divest themselves forthwith of any and all stock or ownership interests in defendant Scophony Corporation of America; and are hereby further severally enjoined and restrained from directly or indirectly:

- (a) Acquiring any stock or ownership interest in defendant Scophony Corporation of America;
- (b) Having any officer, director, representative, agent or employee who is at the same time an officer, director, representative, agent or employee of defendant Scophony Corporation of America;
- (c) Dominating, controlling or interfering with, or attempting to dominate, control, or interfere with, the business, financial or promotional policies, practices, operation, management, expansion or other activities of defendant Scophony Corporation of America.

[*Patent Licensing Ordered*]

VI

A. That defendant Scophony Corporation of America is hereby ordered and directed to grant to each applicant making written request therefor a nonexclusive and non-assignable license, or sublicense, to make or have made for them, use and vend under any or all United States patents.

- (1) Issued on or before the date of the entry of this judgment which are owned or controlled by defendant Scophony Corporation of America; or
- (2) Issued or to be issued under any or all applications for United States patents filed by or on behalf of Scophony Corporation of America pending on the date of the entry of this judgment; or
- (3) Issued or to be issued under any or all applications for United States patents filed after the date of entry of this judgment by or on behalf of Scophony Corporation of America covering inventions or discoveries, the rights in and to which were owned or controlled by Scophony Corporation of America or to which it was entitled on or before December 18, 1945; or
- (4) Issued or to be issued under any or all applications for United States patents filed or to be filed after the date of entry of this judgment by or on behalf of Scophony Corporation of America on the basis of patents owned or controlled by defendant, Scophony, Limited, in the United Kingdom on or before December 18, 1945, or on the basis of patent applications of defendant Scophony, Limited, pending on December 18, 1945, in the United Kingdom; including, without limitation, all patents, reissue and patent applications listed in Appendix A annexed hereto, and any and all divisions, continuations, reissues or extensions thereof, all of such patents whether or not listed in Appendix A, and whether issued or to be issued, being hereinafter referred to as the Licensed Patents; and defendant Scophony Corporation of America is hereby enjoined and restrained from making any disposition of any said Licensed 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 thereof shall observe the requirements of this Section of this judgment and the purchaser, transferee or assignee shall file in this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of this Section of this Judgment.

B. That defendant Scophony Corporation of America is hereby enjoined and restrained from including any restriction or condition whatsoever in any license or sub-license granted by it pursuant to the provisions of this Section, except that (a) a reasonable non-discriminatory royalty may be charged; (b) reasonable provision may be made for a periodic inspection of the books and records of licensee 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 its books and records as hereinabove provided.

C. Upon receipt of written request for a license under the Licensed Patents, or any of them, defendant Scophony Corporation of America shall advise the license applicant in writing of the royalty which it deems reasonable for the claim or claims of 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 defendant Scophony Corporation of America, the license applicant may forthwith apply to this Court for the determination of a reasonable royalty, and defendant Scophony Corporation of America shall, upon receipt of notice of the filing of such court application, promptly give notice thereof to the Attorney General. The reasonable royalty rates determined by the Court in any such proceeding shall apply to the license applicant and to all other licensees under this judgment under the same claim or claims of the same patent or patents. For said sixty (60) day period, and pending the completion of any such court proceeding, the license applicant shall have full rights under the said patent claim or claims to which his application pertains without payment of royalty, but subject to the final judgment and order of the Court in such proceeding, and further subject to the following provision, defendant Scophony Corporation of America may apply to the 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 Scophony Corporation of America shall then issue, and the court 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 court application by the applicant. If the court applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application and for the rescission of any and all of the applicant's rights under this subsection. Where an interim license or sublicense has been issued pursuant to this subsection, or where the applicant has exercised any right under any patent hereunder, reasonable royalty rates as finally determined by the Court shall be retroactive for the applicant and for all other licensees under this judgment under, the same claim or claims of the same patent or patents, to the date the applicant files his application with the Court.

D. Defendant Scophony Corporation of America is hereby ordered and directed, in so far as it has, power to do so, to grant upon written request to any applicant licensed under the provisions of this Section VI, with respect to any products manufactured in the United States pursuant to such license, a non-exclusive grant of immunity from suit under foreign patents or patents issued on foreign applications corresponding to any of the Licensed Patents under which the applicant is licensed.

[*Legal Action Enjoined*]

VII

A. Defendant Scophony Corporation of America is hereby enjoined and restrained from instituting or threatening to institute, or maintaining or continuing any proceeding under Sections 67 and 70 or Title 35, U. S. G. for the recovery of damages accrued prior to the date of this judgment for the infringement of any of its now issued or reissued United States patents applicable to the art of television.

B. Defendant Scophony Corporation of America, is hereby directed during the period ending five years after the date of the entry of this judgment to furnish or make available in writing, at a nominal charge, to any person licensed to use the Licensed patents, information concerning the operational techniques, processes, formulae, plans, specifications, and other know-how in its possession as of the date of this judgment relating to patents or applications for patents referred to in Section VI hereof.

[*Inspection for Compliance Purposes*]

VIII

For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendant be permitted, subject to any legally recognized privilege, (a) reasonable 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 (b) 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. For the purpose of securing compliance with this judgment, and for no other purpose, any defendant, upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as may from time to time be necessary for the purpose of enforcement of this judgment. No information obtained by the means permitted in this Section 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 of this action 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 necessary or appropriate for the construction or carrying out of this judgment, or the modification thereof, or the enforcement of compliance therewith and for punishment of violations thereof.

APPENDIX A

I

All United States patents issued on or before the date of the entry of the foregoing judgment which are owned or controlled by defendant, Scophony Corporation of America, and all patents issued or to be issued on applications for United States patents, including continuations and divisions thereof, filed by or on behalf of defendant Scophony Corporation of America pending on the date of the entry of the foregoing judgment, or on applications for United States patents filed thereafter by or on behalf of Scophony Corporation of America covering inventions or discoveries, the rights in and to which were owned or controlled by Scophony Corporation of America or to which it was entitled on or before December 18, 1945, including, without limitation, the following:

	Patents	
1,914,314	2,112,002	2,267,251
1,918,358	2,138,224	2,270,232
1,919,139	2,140,584	2,296,943
2,012,207	2,153,490	2,296,944
2,021,162	2,155,659	2,306,407
		(Reissue 22,628)
2,025,186	2,155,660	2,313,286
2,029,401	2,155,661	2,320,380
2,030,235	2,157,468	2,330,171
		(Reissue 22,734)
2,041,036	2,158,990	2,330,172
2,053,014	2,161,299	2,335,265
2,061,016	2,182,043	2,349,298
2,086,833	2,193,422	2,355,110
2,088,626	2,193,953	2,371,643
2,088,732	2,238,089	2,420,198
2,089,155	2,245,119	2,435,458
2,100,044	2,251,525	2,452,211
2,110,945	2,258,311	2,454,094
		2,553,595
	Applications for Patents	
509,144	560,776	599,574
523,716	576,819	563,864

541,155	580,908	709,735
544,036	580,325	710,345
551,274	590,823	775,175
556,881	591,498	12,036
557,066	597,755	12,256

II

All patents issued or to be issued on applications for United States patents, including continuations and divisions thereof, filed or to be filed by or on behalf of defendant, Scophony Corporation of America, after December 18, 1945, on the basis of patents issued on or before December 18, 1945 in the United Kingdom which are owned or controlled by defendant Scophony, Limited, or on the basis of patent applications by or on behalf of defendant Scophony, Limited, including continuations and divisions thereof, pending in the United Kingdom on December 18, 1945, or on the basis of patents issued on such applications.