

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Radio Corporation of America et al., U.S. District Court, D. Delaware, 1932-1939 Trade Cases ¶55,015, (Nov. 21, 1932)

Federal Antitrust Cases

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United States v. Radio Corporation of America et al.

1932-1939 Trade Cases ¶55,015. U.S. District Court, D. Delaware. Filed November 21, 1932.

Headnote

Consent decree ordering divestiture of stock of the Radio Corporation of America by other defendants, enjoining defendants from enforcing the exclusive provisions of their radio patent cross licensing agreements and forbidding agreements for the division of territory.

Consent Decree

This cause coming on to be heard this 21st day of November, 1932, and the several defendants having accepted service of process and having appeared and filed their answers to the Petition and to the Amended and Supplemental Petition herein, which latter has superseded the original Petition and is hereinafter referred to as the Petition, and the cause having heretofore this day been dismissed as to the General Motors Corporation, General Motors Radio Corporation, American Telephone and Telegraph Company and Western Electric Company, Inc.;

And the petitioner and the remaining defendants (hereinafter in this decree referred to as the defendants) having filed a stipulation with the Clerk of the Court wherein and whereby the defendants consent to the making and entering of this decree;

And the petitioner by its counsel having represented to the Court that this decree will provide suitable relief concerning the matters which the petitioner charges in said Petition, and having requested that this decree be made and entered;

And it appearing that by reason of the consents of the defendants to this decree and the acceptance of the same by the petitioner it is unnecessary to proceed with the trial of the cause or to take testimony therein or that any adjudication be made by the Court of the issues presented by the pleadings herein, other than those hereinafter specially reserved in Section VI hereof;

Now, therefore, without taking any testimony on evidence and without making any adjudication, it is, upon and in accordance with such stipulation and consent, hereby ordered and decreed as follows:

I.

The Court has jurisdiction of the subject matter hereof and of all the parties hereto and has full power and authority to enter this decree and the allegations of the Petition state a cause of action against the defendants under the provisions of 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 or additional thereto, known as the Federal Anti-Trust Laws.

II.

General Electric Company and Westinghouse Electric & Manufacturing Company, respectively, shall divest themselves of the holdings of themselves and their respective subsidiaries of shares of stock of the Radio Corporation of America. This shall be done as follows:

General Electric Company shall within three months from the date hereof divest itself of substantially one-half of all of the holdings of itself and its subsidiaries of the shares of common stock of Radio Corporation of America by distributing such shares ratably to its own common stockholders, or causing them to be so distributed.

The balance of such common stock and the shares of preferred stock of Radio Corporation of America held by General Electric Company and its subsidiaries shall be disposed of within three years from the date hereof, by distributing such shares ratably to its own common stockholders, or causing them to be so distributed, or otherwise disposed of.

Westinghouse Electric & Manufacturing Company shall within three months from the date hereof divest itself of substantially one-half of all of the holdings of itself and its subsidiaries of the shares of common stock of Radio Corporation of America, by distributing such shares ratably to its own stockholders, or causing them to be so distributed.

The balance of such common stock and the shares of preferred stock of Radio Corporation of America held by Westinghouse Electric & Manufacturing Company and its subsidiaries shall be disposed of within three years from the date hereof by distributing such shares ratably to the shareholders of Westinghouse Electric & Manufacturing Company, or causing them to be so distributed, or otherwise disposed of.

The distribution of shares of Radio Corporation of America to shareholders of General Electric Company and of Westinghouse Electric & Manufacturing Company, herein provided for, shall be without any restriction on the full rights of ownership of the several distributees, including the right to dispose of the same as they see fit.

In any disposition of shares of common stock hereby required to be made by General Electric Company and Westinghouse Electric & Manufacturing Company, or its or their subsidiaries (other than for the purpose of distribution to stockholders), they shall not knowingly sell or transfer to any one interest shares of such common stock to an aggregate in excess of 150,000 shares of the present common stock, or stock which at the time may be equivalent to 150,000 shares of the present common stock in respect to the then existing voting rights.

Pending the disposition of such stock, General Electric Company and Westinghouse Electric & Manufacturing Company and their respective subsidiaries (other than G. E. Employees Securities Corporation) shall be enjoined from exercising any voting rights with respect to such stock, except that they shall from time to time, as requested by the executive committee of the board of directors of Radio Corporation of America, as such executive committee may then be constituted, give to it or to such person or persons as such executive committee may designate, proxies with power of substitution, to vote such stock for the election of directors of Radio Corporation of America or for the transaction of ordinary business at any annual or special meeting of stockholders; and as to all other matters as to which the stockholders' action is required, such holders may, at their election, give proxies to such executive committee or, in case any of them fails to do so within ten days before the date set for any such meeting, it shall give such proxies as may be directed by an order of this Court on the application of the defendant, Radio Corporation of America, or the holder of such stock.

General Electric Company and Westinghouse Electric & Manufacturing Company shall report to the Court at the ends of the aforesaid periods of three months and three years, respectively, with regard to their compliance with the foregoing provisions of this Section II.

Except as aforesaid, General Electric Company and Westinghouse Electric & Manufacturing Company, and each of them, are enjoined after the expiration of such period of three months from acquiring or holding, directly or indirectly, any shares of stock of Radio Corporation of America or any of its subsidiaries, present or future; provided, however, that nothing herein contained shall be construed to prevent G. E. Employees Securities Corporation from continuing to hold, and from exercising all rights with respect to, not more than 50,000 shares of A Preferred and 10,000 shares of B Preferred stock of Radio Corporation of America now held by it.

III.

General Electric Company and Westinghouse Electric & Manufacturing Company, respectively, shall cause all of their officers, directors, employees or agents, who are now members of the board of directors, or other boards or committees of Radio Corporation of America, or of any of its subsidiaries, to resign, within ten days from the date hereof, from such boards and committees, and are hereby enjoined and restrained from thereafter permitting any such officer, director, employee or agent to act as a member of any such board or committee; and Radio Corporation of America and its subsidiaries are likewise enjoined and restrained from thereafter permitting any officer, director, employee or agent of General Electric Company or Westinghouse Electric & Manufacturing Company to become or to act as a member of any such board or committee; provided, however, that for a period of not longer than five months from the date hereof, Owen D. Young and Andrew W. Robertson may continue to serve, at the pleasure of the Radio Corporation of America, as members of the boards and committees of Radio Corporation of America and its subsidiaries, and provided, further, that the Advisory Council of National Broadcasting Company, Inc., so long as its functions shall continue to be merely advisory, shall not be deemed to be a board or committee within the meaning of the foregoing provision.

IV.

The defendants are hereby enjoined and restrained from recognizing as exclusive or asserting to be exclusive any license for the enjoyment of patents or patent rights in the following agreements, referred to in the Petition:

1. The Agreement between the Radio Corporation of America and the General Electric Company, dated November 20, 1919, and referred to as Agreement A;
2. The Agreement between General Electric Company and American Telephone and Telegraph Company, dated July 1, 1920, and referred to as Agreement B;
3. The Agreement between the Radio Corporation of America and United Fruit Company, dated March 7, 1921;
4. The Agreement between the Westinghouse Electric & Manufacturing Company and The International Radio Telegraph Company, dated June 29, 1921, and referred to as Agreement D;
5. The Agreement between the General Electric Company, Radio Corporation of America and Westinghouse Electric & Manufacturing Company, dated June 30, 1921, and referred to as Agreement E;
6. The Agreement between General Electric Company and American Telephone and Telegraph Company, dated July 1, 1926, and referred to as Modified Agreement B;
7. The Agreement between General Electric Company, Radio Corporation of America and Westinghouse Electric & Manufacturing Company, dated June 11, 1929, and referred to as Agreement L;
8. The Agreement between General Electric Company, Radio Corporation of America and Westinghouse Electric & Manufacturing Company, dated January 1, 1930, and referred to as Agreement M;

and are likewise enjoined and restrained from recognizing or asserting the continued existence or the continued obligation of any provision of any of said agreements restricting or limiting the right of a party thereto freely to engage in such business or activities as it may desire or to make such use of its patents or patent rights as it may desire.

V.

The defendants are and each of them is further enjoined and restrained from making or entering into any combination, agreement, understanding or joint endeavor between them or any two or more of them (except between any one defendant and its subsidiaries, or between subsidiaries of any one defendant) or between them or any one of them and third persons, in restraint of interstate or foreign commerce of the United States in violation of the Anti-Trust Laws of the United States by:

(a) limiting or restricting the freedom of any defendant to grant licenses under its own patents or patent rights in the fields of radio purposes as defined in the Agreement A-1 attached to the stipulation consenting to this decree, or in the application in fields other than of radio purposes, of radio tubes or tubes having the functional characteristics of radio tubes or of other radio devices or circuits;

(b) limiting or restricting the freedom of any defendant or any party to such combination, agreement, understanding or joint endeavor to engage in trade and commerce in said fields of radio purposes and in said applications either by exchange of exclusive licenses under patents, by agreements restricting or burdening the right of an owner of a patent or patent right to enjoy the same or to grant licenses thereunder, by agreements for division of fields or territory, or by other similar means or devices;

provided, however, that nothing herein contained shall be deemed or construed to prevent any defendant from acquiring or assigning or agreeing to acquire or assign patents or other property or granting or agreeing to grant, or continuing to act under, exclusive rights thereunder or in connection therewith, or taking any other action, if not done to restrict liberty of action as part of a plan or purpose to restrain interstate or foreign commerce of the United States as prohibited by the Anti-Trust Laws of the United States, it being recognized that patents and patent rights may be bought, sold and transferred as may other kinds of property and subject only to like limitations.

VI.

The issues presented by the Petition and the amendment thereto this day filed, with reference to contracts and arrangements and understandings between the defendants or any of them and foreign companies and governments, are specially reserved for trial and determination if that becomes necessary, for a period of two and one-half years from the date hereof, such period being allowed for the reason stated in the stipulation consenting to this decree. Said contracts, arrangements and understandings now existing are not affected by and do not come within the provisions of the previous Sections of this decree. The defendants affected hereby shall at the end of one year from the date hereof render to the Attorney General a written report as to what has been and what is being done with reference to the matters covered by the foregoing portion of this Section VI, and on the request of the Attorney General shall at any time irrespective of the rendering of said report give to him full information respecting such matters. If prior to the expiration of said period of two and one-half years the defendants have succeeded in securing modifications or changes of said contracts, arrangements and understandings, to meet the objections of the petitioner, the cause shall be dismissed as to the issues so reserved, but otherwise upon the expiration of said period (unless it be shown to the Court at that time that defendants have used due diligence to secure the modification or change of said contracts, arrangements or understandings and that no reason of public interest exists why such trial should not be further continued, in which case the trial may be postponed to such time as the Court deems advisable) the cause shall forthwith be placed upon the trial calendar next following and shall be set for trial on the reserved issues at the earliest convenience of the Court. If said issues are to be tried the defendants may file their answers to the amendment to the Petition on or before the expiration of said period, but a failure to do so shall not prevent the cause from being placed on the calendar and set for trial as hereinbefore provided. At any time after the said one year from the date hereof the petitioner may, on notice to the defendants affected thereby, apply to the Court to have said

period of two and one-half years shortened upon showing to the satisfaction of the Court that the defendants have not been diligent in dealing with said foreign contracts, arrangements and understandings by negotiation or otherwise, or that there appears no likelihood of their being satisfactorily adjusted.

VII.

The term subsidiary as used in this decree means a corporation the majority of the voting stock of which is owned by any of the named defendants.

VIII.

Jurisdiction is hereby expressly reserved for the purpose of enforcing or modifying this decree on application of any of the parties hereto. Jurisdiction is further reserved to permit any of the defendants, after the expiration of three years from the date hereof, to apply to the Court for permission to acquire stock in any other of the defendant corporations, or their subsidiaries, which permission may be granted upon proof to the satisfaction of the Court that such acquisition of stock will not tend to defeat the purpose of this decree or violate the anti-trust laws or operate in any manner otherwise inimical to the public interest.

(Sgd.) John P. Nields, Judge