

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

VARIAN ASSOCIATES, INC. and
RICHARDSON ELECTRONICS, LTD.,

Defendants.

Civil Action No.: 91-C-6211

Filed: October 1, 1991

Entered: April 1, 1992

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on October 1, 1991, alleging two conspiracies between defendants to monopolize trade and commerce in certain power grid tubes sold in the United States;

AND WHEREAS, plaintiff and defendants 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 any testimony having been taken, and without this Final Judgment constituting any evidence against or any admission by any party with respect to any issue of law or fact;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 2 of the Sherman Act (15 U.S.C. §2).

II.

As used in this Final Judgment:

A. "Varian" means defendant Varian Associates, Inc., each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

B. "Richardson" means defendant Richardson Electronics, Ltd., each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

C. "VASCO" means Varian Supply Company, a joint venture partnership between Varian and Richardson organized under the laws of the State of California and having its principal place of business in LaFox, Illinois.

D. "Power grid tube" means a high vacuum electron tube that is capable of handling at least twenty-five (25) watts and that has as its defining elements a cathode for the emission of electrons, an anode for the collection of electrons, and one or more (interspersed) grids for controlling or regulating the number of electrons that flow between the cathode and anode.

E. "Dud tube" means a power grid tube that is of a type that can be rebuilt and that is broken, damaged, spent, or otherwise incapable of performing its intended function, whether or not the specific tube can be rebuilt.

F. "Tube rebuilder" means an entity that is regularly engaged in the business of rebuilding dud tubes and selling them as operational, rebuilt power grid tubes.

G. "Market value of a dud tube" means the value of the dud tube to tube rebuilders.

III.

A. The provisions of this Final Judgment shall apply to defendants, to their successors or assigns, to their subsidiaries or affiliates, and to their directors, officers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

B. Prior to the expiration of this Final Judgment, each defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

A. Neither defendant shall purchase or otherwise acquire, either directly or indirectly, any power grid tube that the acquiring defendant knows or reasonably expects to be a dud tube for the purpose of increasing the cost of, or decreasing competition from, any tube rebuilders. A dud tube shall be deemed to have been acquired for at least one of the foregoing prohibited purposes, unless:

1. the dud tube is acquired with the written consent of the Antitrust Division of the Department of Justice,

2. the dud tube is acquired pursuant to a contract between the acquiring defendant and a bona fide user of the tube requiring the tube to be rebuilt and returned to the user, or

3. within one year of acquiring the dud tube, the acquiring defendant either,

(a) rebuilds the dud tube,

(b) transfers the dud tube to an independent tube rebuilder,

(c) makes the dud tube not rebuildable as a result of engineering bench tests and measurements that are part of a bona fide research program intended to improve the performance or characteristics of tubes of that general type, provided that the costs to the acquiring defendant of the bench tests and measurements on the tube are always at least three (3) times greater than the then current market value of the tube, except that the acquiring defendant can make up to five (5) tubes of each tube type not rebuildable in any twelve (12) month period as a result of such tests and measurements where such costs are less than three (3) times greater than the then current market value of the tube, provided that such costs are at least equal to such market value,

(d) makes the dud tube not rebuildable as a result of engineering bench tests and measurements that are part of a bona fide research program intended to enable the acquiring defendant to build a power grid tube of that particular tube type, provided that

the acquiring defendant did not manufacture the tube, and provided further that the acquiring defendant does not make more than ten (10) tubes not rebuildable under this Paragraph IV.A.3.(d) in any twelve (12) month period,

(e) makes the dud tube not rebuildable as a result of a bona fide program to salvage and recycle parts and materials from dud tubes, provided that the value to the acquiring defendant of the salvaged and recycled parts and materials (either as receipts from sale or as avoided costs from reuse) is greater than the then current market value of the tube (net of transaction costs), and provided further that the acquiring defendant does not make more than forty (40) tubes not rebuildable under this Paragraph IV.A.3.(e) in any twelve (12) month period,

(f) returns the dud tube to its manufacturer, provided the tube was acquired from a customer under a warranty claim, or

(g) publishes an announcement in an electronics industry publication that for sixty (60) days from the publication date, the dud tube is available at no cost (except shipping costs and specified reasonable handling fees) to the first tube rebuilder or bona fide user of that particular type of power grid tube

to respond to the announcement and either the acquiring defendant receives no such response within the sixty (60) day period or, if such a response is received, that defendant ships the dud tube to the first such respondent within ten (10) days after expiration of the sixty (60) day period.

B. Each defendant shall for each dud tube it acquires after entry of this Final Judgment, except pursuant to Paragraph IV.A.1., above, prepare and maintain contemporaneous, accurate, and detailed records of its acquisition, handling, and disposition of that dud tube, and in the case of Paragraph IV.A.3.(c), above, of the then current market value of the dud tube and the costs of the bench tests and measurements on the tube, and in the case of Paragraph IV.A.3.(e), above, of the then current market value of the dud tube and the value of the salvaged and recycled parts and materials therefrom; provided, however, that the acquiring defendant must keep such records for a particular tube that it acquires only from the date that it knows or reasonably expects the particular tube to be a dud tube. If either defendant's records for any dud tube do not clearly demonstrate that the tube was acquired, handled, and disposed of pursuant to Paragraph IV.A., above, then such dud tube will be rebuttably presumed to have been acquired by that defendant in violation of Paragraph IV.A.

C. For the purpose of Paragraphs IV.A. and IV.B., an acquiring defendant does not "reasonably expect" a power grid tube to be a dud tube if it is acquired as part of a collection of power grid tubes, the majority of which the acquiring defendant reasonably expects to be operational; provided, however, that if the acquiring defendant knows or reasonably expects that any specific tubes in such collection are dud tubes, then that defendant knows or reasonably expects each such tube to be a dud tube.

V.

Neither Varian nor Richardson shall, directly or indirectly, merge or consolidate with, or acquire securities or a significant amount of the power grid tube assets of, any other company that manufactures, rebuilds, or distributes power grid tubes, without first obtaining the written consent of the Antitrust Division of the Department of Justice. For purposes of the immediately preceding sentence, a "significant amount of the power grid tube assets" of a company shall mean twenty-five (25) percent or more of that company's power grid tube assets, provided that the power grid tube assets being acquired have an aggregate value greater than two hundred and fifty thousand dollars (\$250,000). Notwithstanding the foregoing, in the case of any such acquisition of power grid tube assets having an

aggregate value of less than one and one-half million dollars (\$1,500,000), the requirements of this Section V. shall be deemed to be satisfied upon sixty (60) days prior written notice to the Antitrust Division of such acquisition. A purchase of power grid tubes in the usual and ordinary course of business for both the seller and purchaser shall not be deemed to be an acquisition of power grid tube assets under this Paragraph V., and an acquisition of securities of such a company by an individual or a corporate pension fund shall not be deemed to be an acquisition of securities under this Section V., provided that, after the particular transaction, the individual or fund does not own, on a fully converted basis, more than one (1) percent of the outstanding voting shares, or any other class of securities, of the company.

VI.

A. Immediately upon the entry of this Final Judgment, defendants shall dissolve VASCO and shall terminate all sales to, through, or by VASCO. Defendants shall take no action thereafter, either directly or indirectly, to reconstitute VASCO without first obtaining the written consent of the Antitrust Division of the Department of Justice. Defendants shall wind up VASCO within thirty (30) days after the entry of this Final Judgment.

B. Varian shall not grant to Richardson, either directly or indirectly, any exclusive distribution rights in the United States for any Varian power grid tubes.

C. Varian and Richardson shall not share, either directly or indirectly, any profits (i.e., any amount in excess of the cost of acquiring any tubes) from the sale in the United States of any power grid tubes, without first obtaining the written consent of the Antitrust Division of the Department of Justice.

D. Varian and Richardson shall not, either directly or indirectly, discuss or agree upon any price at which either Varian or Richardson sells or will sell to any third party any power grid tubes not manufactured by Varian.

E. Varian and Richardson shall not, either directly or indirectly, discuss or agree upon any price at which either Varian or Richardson purchases or will purchase any dud tubes from any third party.

F. Varian and Richardson shall not agree on any price or price level at which Richardson, as principal, will sell to any third party any power grid tubes manufactured by Varian.

G. Except where Richardson is acting as Varian's agent in connection with any sales in the United States to any federal, state, or local governments, any original equipment manufacturers, or any academic or other research facilities, Varian and Richardson shall not agree on any prices or price

levels at which Varian sells or will sell to any third party any power grid tubes manufactured by Varian.

H. Varian shall not grant to Richardson, either directly or indirectly, distribution rights in the United States for any Varian power grid tubes that are more favorable than Varian grants to any other person.

VII.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives 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 made to any defendant at its principal offices, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or other

persons acting for or on behalf of the defendant, all of whom may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

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

D. If, at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of privilege under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given

by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than grand jury proceedings) to which the defendant is not a party.

VIII.

Defendants shall:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment.

IX.

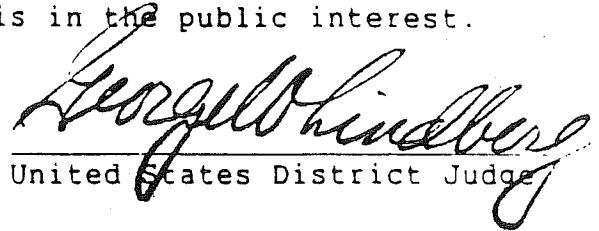
Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of the Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

X.

This Final Judgment will expire on the tenth anniversary of its entry.

XI.

Entry of this Final Judgment is in the public interest.


United States District Judge

Dated:

APR 1 1992