

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Driver-Harris Co., Alloy Metal Wire Co., Inc., and its Successor, H. K. Porter Co. (Delaware), Wilbur B. Driver Co., Hoskins Manufacturing Co., C. O. Jelliff Manufacturing Corp., U.S. District Court, D. New Jersey, 1961 Trade Cases ¶70,031, (May 25, 1961)

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United States v. Driver-Harris Co., Alloy Metal Wire Co., Inc., and its Successor, H. K. Porter Co. (Delaware), Wilbur B. Driver Co., Hoskins Manufacturing Co., C. O. Jelliff Manufacturing Corp.

1961 Trade Cases ¶70,031. U.S. District Court, D. New Jersey. Civil Action No. 942-56. Filed May 25, 1961. Case No. 1312 in the Antitrust Division of the Department of Justice.

Sherman Act

Consent Decree—Relief—Patent Licensing—Technical Information and Assistance—Identical Bids—Pricing.—Two electrical alloy resistance product manufacturers entered into a consent decree in which it was provided that (1) the companies would withdraw present price lists and issue new ones, and sell on non-discriminatory terms to all persons on the same functional industry level as other customers, with exceptions for items no longer offered; (2) make a public dedication or grant royalty-free licenses under specified patents which the government charged had been misused, and make licenses available on all other patents, including those obtained within 5 years following the effective date of the judgment; and (3) give technical information and assistance, at specified maximum charges, to actual or potential manufacturers requesting such help during the five years after the judgment becomes effective, or during the life of patents as to licensees. Practices involving price fixing, territory allocation, and avoidance of competition were prohibited, as were the exchange of information, holding stock or other interests in other manufacturers, or having common “policy” personnel with such manufacturers. The decree also provided that, in any enforcement action by the government, a showing by the plaintiff of an “appreciable number” (not otherwise defined) of identical bids in excess of \$50 by a consenting defendant with any other defendant for the sale of electrical resistance materials or products would be *prima facie* evidence of price fixing.

For the plaintiff: George Reycraft and Jay Flocken, Department of Justice.

For the defendants: Pitney, Hardin & Ward, Newark, N. J., for Driver-Harris Co.; Shanley & Fisher, Newark, N. J., for Jelliff Mfg. Co.; Stickel & Stickel, Newark, N. J., for Wilbur B. Driver Co.; Milton, McNulty & Augelli, Jersey City, N. J., for Hoskins Mfg. Co.; McCarter, English & Studer, Newark, N. J., for Alloy Metal “Wire Co.

Final Judgment

SMITH, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 5, 1956; the defendants consenting hereto having appeared and filed their answers to such complaint, denying the substantive allegations thereof; and the plaintiff and the defendants consenting hereto, by their respective attorneys, having consented to the entry of this Final Judgment herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties signatory hereto, and the Court being advised and having considered the matter, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendants consenting hereto, under Sections 1 and 2 of

the Act of Congress of July, 1890, entitled “An act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) “Person” shall mean any individual, partnership, firm, association, corporation, or any other business or legal entity;
- (B) “Resistance materials” shall mean (1) electrical resistance materials, and (2) materials sold by a defendant (a) having a composition substantially similar to electrical resistance materials, or (b) for thermocouple or sparkplug purposes, and (3) tubing, wire, ribbon, strip or rod sold by a defendant for heat resistant purposes in connection with the flow of electricity;
- (C) “Resistance products” shall mean wire, ribbon, strip, rod or tubing made from resistance materials;
- (D) “Electrical resistance materials” shall mean any alloy or any metallic or other element, or any combination of elements now or which may be
- (1) produced, processed, sold or received by a defendant, which is recognized or represented by such defendant as having electrical resistance properties (including controllable and reproducible electrical resistivity or temperature coefficients of resistance) suitable for electrical resistance uses; or
- (2) manufactured, sold, distributed or received by a defendant for electrical resistance purposes; or
- (3) known or recognized generally in the trade as an electrical resistance material;
- (E) “Electrical resistance products” shall mean tubing, wire, ribbon, strip or rod made from electrical resistance materials;
- (F) “Manufacturer” shall mean any person engaged in the manufacture or drawing or processing (such as enameling, insulating, oxidizing or coiling) of electrical resistance materials or electrical resistance products;
- (G) “Patents” shall mean any, some or all claims of patents relating to the manufacture, use or sale of electrical resistance materials or electrical resistance products, including any divisions, reissues or extensions of such patents, or applications there for;
- (H) “Subsidiary” shall mean any corporation controlled by, or more than 50% of whose outstanding stock entitled to vote is held by one person;
- (I) “Bid” shall mean a bid for furnishing electrical resistance materials or electrical resistance products pursuant to a formal written invitation for a bid made by a prospective customer who, the defendant knows or has reason to know, has also submitted the same request for a bid to another person. It shall not include the ordinary solicitation of orders by a defendant from a customer or prospective customer nor the ordinary quotation to a customer or prospective customer;
- (J) “Consenting defendant” or “consenting defendants” shall mean only a defendant or defendants which shall have consented to the terms of this Final Judgment;
- (K) “Effective date of this Final Judgment” shall mean the date on which a Final Judgment not subject to further appeal is entered against the remaining defendants.

III

[*Scope of Judgment— Notice*]

(A) The provisions of this Final Judgment shall apply solely to any consenting defendant, to each of its subsidiaries, successors and assigns, and to each of its officers, directors, agents and employees, and to all other persons in active concert or participation with any consenting defendant who shall have received notice

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of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to acts, contracts, agreements, arrangements, understandings, plans or programs of foreign subsidiaries of any consenting defendant unless such acts, contracts, agreements, arrangements, understandings, plans or programs concern the foreign or domestic commerce of the United States. This Final Judgment shall not apply to transactions solely between a consenting defendant and its subsidiaries and the officers, directors, agents and employees of either when acting in such capacity.

(B) Each consenting defendant is ordered and directed (1) to serve a copy of this Final Judgment upon (a) each present and future member of its Board of Directors; (b) each of its present and future Vice Presidents and chief managerial officers who are not members of its Board of Directors and (c) the present and future chief executive officers of each of its subsidiaries engaged in the manufacture, processing or sale of resistance materials or resistance products, and (2) within thirty (30) days after the effective date of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit as to the fact and manner of its compliance, as to its present officers and directors, with this subsection (B), setting forth in said affidavit the name, position and address of each person upon whom a copy of this Final Judgment at that time shall have been served as herein ordered and directed.

(C) Each consenting defendant is ordered and directed for a period of five (5) years after the effective date of this Final Judgment to furnish, without charge, to any person requesting the same, a copy of this Final Judgment together with a copy of the affidavit required to be filed by subsection (B) of Section V hereof.

IV

[Price Lists— Customer Selection]

Each consenting defendant is ordered and directed:

(A) With respect to its domestic and Canadian operations, to cancel each of its current price lists pertaining to resistance materials or resistance products and individually to determine new prices in lieu thereof for such materials and products then being manufactured or offered for sale by the defendant; such new prices to be individually determined by each defendant on the basis of its own costs and its own judgment as to margins of profit and other lawful considerations; and after the effective date of this Final Judgment to issue new price lists containing the prices determined in accordance with this subsection (A) and to serve upon the plaintiff copies of work papers used by it in determining the prices contained in such new price lists. New price lists covering electrical resistance materials and electrical resistance products in the form of rod shall be issued and served upon plaintiff thirty (30) days after the effective date of this Final Judgment. New price lists covering resistance materials and resistance products other than rod shall be issued and served upon plaintiff ninety (90) days after the effective date of this Final Judgment. Cancellation of said current price lists shall be effective as of the date fixed for the issuance of the new price lists covering the respective materials and products.

(B) If a consenting defendant has sold to or processed for, or hereafter sells to or processes for, any person any resistance material or resistance product, either directly or through regularly designated distributors, to sell to or process for, or cause such distributors to sell to or process for, any other person on the same functional industry level as the defendant's other customers, upon request of such other person and upon uniform and non-discriminatory prices and other terms and conditions, except as otherwise permitted by way of defense under the Robinson-Patman Act; and such defendant and such distributors shall hold themselves out as ready and willing so to sell or process? provided, however, that in cases of short supply the defendant shall make a reasonable allocation among its customers, but not to the exclusion of new customers.

This subsection (B) shall not require a defendant (i) to submit any bid, (ii) to continue to sell any size or line of material or products which it discontinues making, or (hi) to sell to a person an electrical resistance material or electrical resistance product designated by such person as having been made by the defendant for a particular customer if (1) such material or product has been made by the defendant according to specification developed by the particular customer without the assistance of the defendant and (2) the defendant has not during the preceding year made an identical or substantially identical material or product for any other customer, and (3)

if such defendant after having made a request therefor has not secured the consent of such customer to make such sales*

(C) To file with the Assistant Attorney General in charge of the Antitrust Division within ten (10) days after its execution a copy of any contract or agreement relating to activities covered by this Final Judgment (other than orders, contracts or agreements relating to routine sales and purchases and which do not create any obligation upon either party thereto extending more than six months) entered into within a period of five (5) years after the effective date of this Final Judgment between (i) such defendant and any other defendant and (ii) such defendant and any other manufacturer or distributor;

(D) To retain any and all of its records relating to activities covered by this Final Judgment for a period of ten (10) years from the date of the making thereof except that this subsection (D) shall not require the retention of routine sales and purchase data longer than seven (7) years.

V

[Patents]

(A) To the extent that a consenting defendant has any interest in the patents listed in Appendix A ¹ to this Final Judgment, such defendant shall, at its option, dedicate such interest to the public within thirty (30) days after the effective date of this Final Judgment or shall license to any applicant any right it may have under such patents, without any royalty therefor. If such defendant claims it has no interest in said patents, it shall file an affidavit to that effect at the time of the entry of this Judgment or within ten (10) days thereafter;

(B) Each consenting defendant is ordered and directed, within sixty (60) days after the effective date of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit showing separately, as of the effective date of this Final Judgment, the number, date of issue (or filing as to applications) and name of owner of each existing patent (other than those listed in Appendix A) required to be licensed under this Final Judgment;

(C) Each of the consenting defendants is ordered and directed to grant, to the extent of its legal right to do so, to any person making written request therefor a nonexclusive license for the life of the patent, or patents, to make, have made, use and sell electrical resistance materials or electrical resistance products under any, some, or all of the patents as the applicant may request except those covered by subsection (A) above, which on the effective date of this Final Judgment are owned or controlled by the defendant, or under which it has the right to issue sublicenses, or which within five (5) years from the effective date of this Final Judgment, are issued to, or applied for, or acquired by the defendant, or under which it obtains sublicensing rights within such period;

(D) Each consenting defendant is enjoined and restrained from including in any license issued pursuant to subsection (C) of this Section V any restriction or limitation whatsoever except that:

(1) A reasonable royalty may be charged, which royalty shall be uniform and nondiscriminatory as among licensees procuring the same rights under the same patents;

(2) Reasonable provisions may be made for periodic reports by the licensee to the defendant as to the amount of royalties due and inspection of the books and records of the licensee by an independent auditor or any other person acceptable to both defendant and the licensee, who shall report to the defendant only the amount of the royalty due and payable;

(3) Reasonable provisions may be made for cancellation of the license upon failure of the licensee to pay the royalties or permit inspection of his books and records as herein provided;

(4) The license may be made non-transferable if the licensee is unwilling to agree to notify the defendant of any contemplated transfer and must provide that the licensee may cancel the license at the end of one (1) year and thereafter at any time by giving to the defendant sixty (60) days' notice in writing;

(5) The license may require such patent markings as may be required by statute;

(E) Upon receipt of a written request for a license under the provisions of subsection (C) hereof, defendant shall advise the applicant, in writing, within thirty (30) days, of the royalty it deems reasonable for the patent or patents to which the application pertains. If such applicant and defendant are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date the written application for the license was received by the defendant, either the applicant or defendant may, upon notice to the plaintiff, apply to this Court for the determination of a reasonable royalty. In any such proceeding the burden of proof shall be upon the defendant to establish the reasonableness of any royalty requested. Pending the completion of any such negotiations or court proceeding, the applicant shall have the right to make, have made, use and vend under the patent or patents to which his application pertains without payment of royalty or other compensation, but subject to the following provisions: Defendant may, upon notice to the plaintiff, apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim royalty rate, defendant shall then issue and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date upon which the applicant requested the license. If the applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action may be grounds for the rejection or dismissal of his application for a license; in the case of such rejection or dismissal, the applicant shall pay any royalties found by the Court to be due to the defendant. Whether or not an interim royalty is fixed by the Court, a final Court determination of a reasonable royalty shall be applicable to the applicant for a license from the date upon which the applicant requested such license, and, from the date of such determination, to any other licensee, at its option, then having the same rights under the same patents;

(F) Nothing herein shall prevent any applicant from attacking, in the aforesaid proceedings or in any other controversy, the validity or scope of any of the patents, nor shall this Final Judgment be construed as imputing any validity or value to any of said patents;

(G) Each consenting defendant is enjoined and restrained from (i) granting, after the effective date of this Final Judgment, any license or sublicense under any patents to which this Section V shall apply, except in accordance with, and pursuant to, the terms of this Final Judgment, and (ii) taking or accepting after the effective date of this Final Judgment, any right, license or immunity, under any patent owned or controlled by any person other than such defendant, which right, license or immunity is by its terms, or in fact, exclusive to the defendant unless such defendant is also granted the right to grant sublicenses to others as required by this Final Judgment (for the purpose of this subparagraph (ii), any right or immunity under a patent shall be deemed to be a license subject to the provisions of this Section V);

(H) Each consenting defendant is enjoined and restrained from making any sale or other disposition of any patent or rights in or under patents which deprives it of the power or authority to grant the licenses required by this Section V unless the purchaser, transferee or assignee shall file with this Court, and serve upon the plaintiff, prior to consummation of any such transaction, its consent to be bound by the applicable provisions of this Section V with respect to such patent;

(I) Each consenting defendant is enjoined and restrained from using or attempting to use any foreign patent, or any rights under any foreign patent, to hinder, restrict, limit or prevent any person licensed pursuant to this Section V from exporting from the United States any electrical resistance materials or electrical resistance products manufactured in the United States pursuant to such license;

(J) Each consenting defendant is enjoined and restrained from maintaining, instituting or threatening to institute any action, counter-claim, set-off, suit or other proceeding against any person for use of or any act of infringement of any existing patent alleged to have occurred prior to the effective date of this Final Judgment.

VI

[*Technical Information and Assistance*]

(A) For five (5) years after the effective date of this Final Judgment, each consenting defendant is ordered and directed, upon written request therefor from any actual or potential manufacturer within the United States or any State, territory or possession thereof, to furnish to such applicant copies of any technical manuals, books

of instructions, drawings, specifications, blueprints, pamphlets, diagrams or other similar documents (other than those supplied to a defendant by a customer who has developed them for its use without assistance by a defendant, and which the customer, upon request by the defendant to whom the application has been made, refuses to permit to be made available) which the applicant desires owned by or subject to the control of the defendant on the effective date of this Final Judgment, and which documents have been used, or prepared for use, by the defendant in the manufacture or processing of electrical resistance materials or electrical resistance products for the purpose of (i) melting, rolling, drawing and finishing, or (ii) drawing and finishing the same, or (iii) any of the processes enumerated in (i) or (ii) above. For this data the defendant may charge the applicant a reasonable amount but not to exceed, if all data is furnished (a) \$2,000 if the data relates to the processes of melting, rolling, drawing, and finishing or (b) \$1,000 if the data relates to the processes of drawing and finishing.

(B) Each consenting defendant is ordered and directed, upon written request of any person licensed under any patent or patents pursuant to Section V of this Final Judgment, to furnish during the life of the patent or patents to such licensee such of the defendant's technical information as the licensee may request as may be necessary in order to practice the invention or inventions of any of the patents licensed by such defendant to the licensee, in such licensee's own manufacture or processing of electrical resistance materials or electrical resistance products. For this information the defendant may make a reasonable charge which shall not be more than the cost to the defendant of furnishing such information.

(C) Upon receipt within a reasonable time of a written application from any actual or potential manufacturer representing that the written technical information furnished to such applicant by the defendant pursuant to sub-sections (A) or (B) of this Section VI is inadequate or insufficient to enable such applicant satisfactorily to practice the inventions, or to perform the said manufacturing processes for which it sought information under said subsections, and specifying in reasonable detail the difficulties experienced, such defendant is ordered and directed to make available to such applicant, if feasible, such additional written information relating to such technical information or manufacturing processes as may be reasonably necessary to enable the applicant to practice the inventions or to manufacture under the specific processes, and if not feasible or sufficient, to make available at reasonable times and for reasonable periods, and without subjecting defendant to hardship, technically qualified personnel from among its own employees for consultation with such applicant at the applicant's place of manufacture regarding the said inventions or manufacturing processes for which the applicant sought information. This subsection (C) shall not require a defendant to send any person outside of the United States. For this data or service the defendant may make a reasonable charge; provided, however, that if such written data were within the control of the defendant at the time when defendant furnished the data under subsections (A) or (B) above, no charge for such written data shall be made unless agreeable to the applicant or unless defendant shows to the satisfaction of the Court that it could not reasonably have contemplated that the applicant would need such written data.

(D) Any person entitled and qualified to receive the documents under subsection (A) of this Section VI, upon written application to a defendant shall be permitted at his own expense and at and for reasonable times, to visit the principal plant of such defendant performing such operations for the purpose of observing and being advised as to the methods, processes, machines and equipment, in use at or before the effective date of this Final Judgment and then being used by such defendant in the manufacture or processing of electrical resistance materials or electrical resistance products, if (1) within five years from such effective date such person shows to the satisfaction of the defendant, or to the satisfaction of the plaintiff in the event of failure to satisfy the defendant, that he does not need or desire information or assistance otherwise provided for in this Section VI, or (2) such person represents that the information or assistance furnished to such applicant by the defendant under this Section VI is inadequate or insufficient to enable such applicant satisfactorily to carry out the manufacture or processing for which the applicant applied for such information or assistance; provided, however, that such visits may be further restricted as follows:

(1) to not more than three officers or employees of the applicant at any one time;

(2) to not more than four such visits per year within three years after such persons first application under this subsection relating to the same information.

For such observations and advice the defendant may make a reasonable charge which, in the case of any person referred to in Clause (1) of this subsection shall not exceed that permitted under subsection (A) above for comparable data and, in the case of any person referred to in Clause (2) of this subsection shall be based on the services and advice given, but not to exceed a rate of \$150 per day.

(E) If the applicant and the defendant are unable to agree upon what constitutes a reasonable charge, the applicant, the defendant or the plaintiff may apply to this Court for a determination of a reasonable charge. In any proceedings for a determination of a reasonable charge, the burden of proof shall be upon the defendant to establish the reasonableness of any charge requested by the defendant.

(F) In the event of an application to a consenting defendant for know-how under this Section VI, except subsection (B), by a person, other than a consenting defendant, (a) who is a substantial customer of a consenting defendant for electrical resistance materials or electrical resistance products and not a competitor of any consenting defendant with respect thereto, (b) whose resources are substantially in excess of those of the consenting defendant whose customer applies, and (c) who desires to use such know-how to manufacture such materials or products only for incorporation in products sold by it, any consenting defendant may apply to this Court within thirty (30) days after the application was made, with notice to plaintiff and the applicant, for an order permitting or requiring rejection of such application, which the Court may grant upon the defendant's establishing to the satisfaction of the Court that such rejection is necessary to prevent substantial injury due to the prospective loss of the applicant as a customer and that such rejection would not unduly restrain competition.

(G) No consenting defendant shall be deemed, in connection with the furnishing of any of the foregoing pursuant to this Final Judgment, to have given any implied warranty, representations or guaranty against infringement of patents of others by, or any warranty of success in connection with, its use.

(H) Every agreement under which technical information is furnished pursuant to this Section VI shall contain, if the party furnishing such information shall so request, reasonable provisions requiring the recipient of such information and its subsidiaries to keep such technical information confidential and use the same only for their own manufacturing and selling operations.

(I) Each consenting defendant within ten (10) days from the effective date of this Final Judgment, shall file with the Court and with the plaintiff a listing by categories of all documents it believes come under subsection (A) of this Section VI and a separate list, by customer, of all documents which it believes come under the parenthetical clause in that subsection, and, for a period of five (5) years, to furnish a copy of such lists to any person upon request.

VII

[Pricing Practices—Territories-Identical Bids]

The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, renewing or claiming any rights under, any combination, conspiracy, contract, agreement, understanding, plan, program, or common course of action with any other person, directly or indirectly, to:

(A) Establish, fix, determine, maintain or adhere to prices, differentials, discounts, extras or any other term or element of prices, differentials, discounts or extras for the manufacture, processing or sale to or for third persons, including another defendant, of any resistance materials or resistance products, either through the device of establishing technical standards for such materials or such products, or otherwise; provided, however, that this subsection (A) shall not be construed to prohibit the consenting defendants or any of them from participating in a program for the sole purpose of establishing voluntary, uniform technical standards for resistance materials or resistance products. In any proceedings brought by the plaintiff to enforce this Final Judgment against any consenting defendant, a showing by plaintiff, to the satisfaction of the Court of an appreciable number of identical bids in excess of \$50.00 by a consenting defendant with any other defendant (except where the bids

are minimum charges) for the sale of electrical resistance materials or electrical resistance products, shall be *prima facie* evidence of price fixing;

(B) Divide, allocate or apportion territories, markets or customers for the manufacture, processing or sale of any electrical resistance materials or electrical resistance products;

(C) Refrain from the manufacture, processing or sale of electrical resistance materials or electrical resistance products or refrain from competition with any other person in any territory or market in the manufacture, processing or sale of any such materials or such products;

(D) Hinder, restrict, limit or prevent any other person from manufacturing, processing or selling any electrical resistance materials or electrical resistance products;

(E) Limit the purchase or sale of electrical resistance materials or electrical resistance products to any particular person or group of persons; provided that this shall not prevent lawful contracts for purchases over reasonable periods to secure supplies for such materials or products.

Nothing in this Section VII shall be deemed to prevent a defendant from (i) giving a distributor an exclusive territory provided the distributor is free to sell in any area and to handle electrical resistance materials and electrical resistance products manufactured by others; (ii) selling its business with a one year covenant not to compete or (iii) making lawful contracts with any person other than an actual or potential competitor of a defendant, that they will not reveal trade secrets of the defendant.

VIII

[*Exchange of Information— Interlocking Interests*]

Each consenting defendant is enjoined and restrained from, directly or indirectly:

(A) Circulating outside its own organization and its own distributors any price list or price information relating to the manufacture, processing or sale of any electrical resistance materials or electrical resistance products in advance of the circulation or dissemination of such price list or price information to its own customers and to the trade generally;

(B) Permitting any of its officers, directors, agents or employees to serve simultaneously as an officer, director, agent or employee of any other manufacturer not a subsidiary of the defendant;

(C) Except for the purchase and sale of products bought and sold in the normal course of business,
(1) acquiring or holding, directly or indirectly, any of the assets or capital stock of, or any financial interest in any other defendant or any other person which becomes a manufacturer other than a wholly owned subsidiary of the consenting defendant, or acquiring, directly or indirectly, any of the assets or capital stock of, or any financial interest in any other manufacturer;

(2) Knowingly permitting any of its officers, directors, or managerial or policy-making agents or employees to acquire or hold, directly or indirectly, any of the assets or capital stock of, or any financial interest in, any other defendant or any person which becomes a manufacturer, or to acquire, directly or indirectly, any of the assets or capital stock of, or any financial interest in, any manufacturer;

(D) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent any person from serving as a dealer or distributor of or for electrical resistance materials or electrical resistance products manufactured, processed or sold by any other person;

(E) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent except for lawful action to prevent patent infringement or to protect property rights in trade secrets, any other person from engaging in the manufacture, processing or sale of any electrical resistance materials or electrical resistance products;

(F) Entering into, adhering to, maintaining, furthering, renewing or claiming any rights under, any contract, agreement, understanding, plan or program with any other person, the purpose or effect of which is to hinder,

restrict, limit or prevent either (i) such defendant or (ii) any other person, from granting a license or sublicense under any patent or patents whether owned or controlled by such defendant or such other person. This subsection shall not be deemed to prohibit the mere assignment of any patent or the grant of any exclusive license under any patent if such license grants sub licensing rights.

IX

(A) Each consenting defendant is ordered and directed:

(1) to cancel within thirty (30) days after the effective date of this Final Judgment each provision of each contract to which it may be a party which is contrary to any of the provisions of this Final Judgment;

(2) to file with this Court and serve upon the plaintiff an affidavit setting forth the fact and manner of its compliance with the foregoing subsection (1).

(B) The consenting defendants, and each of them, are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering or claiming any rights under any contract, agreement, plan or program which is or shall be contrary to or inconsistent with any of the provisions of this Final Judgment.

X

[Supervision]

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access, during the office hours of said defendant, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant which relate to any matter contained in this Final Judgment;

(2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of any defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing, and under oath or affirmation if so requested, with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

(C) No information obtained by the means provided in this Section X 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 plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of 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 or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Footnotes

1

Appendix A			
Patent No.	Patent Date	Inventor	Filing Date
2,581,420	1/8/52	James M. Lohr	9/23/49
2,687,954	8/31/54	James M. Lohr	10/19/51

2,687,956	8/31/54James M. Lohr	12/28/51
Reissue No. 24,243	12/ 4/56James M. Lohr	6/29/56
Reissue No. 24,242	12/ 4/56James M. Lohr	6/29/56
Reissue No. 24,244	12/ 4/56James M. Lohr	6/29/56
2,587,275	2/26/52Francis E. Bash ..	9/23/49