

### Patent Licensing Agreements--Price Fixing--Elimination of Competition (United States v. United States Gypsum Company, 333 U.S. 364 (1948))

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It would seem then that the New York courts today as a matter of policy will prevent any attempt by the mortgagor to defeat the mortgagee's security by means of a lease. They will disregard the lease and find either a principal and agent relationship as in the *Equitable* case, or an assignor-assignee relationship as in the instant case. It is submitted that the latter is the more logical.

W. A. H.

PATENT LICENSING AGREEMENTS—PRICE FIXING—ELIMINATION OF COMPETITION.—Respondents were charged in a civil complaint with conspiring, in violation of the Sherman Act<sup>1</sup> to organize the entire gypsum industry in the area east of the Rocky Mountains and to stabilize prices by means of patent licenses. The licensor, United States Gypsum Co., and its licensees constituted a group which controlled the manufacture and distribution of 100% of the gypsum board, 80% of the plaster and miscellaneous gypsum products, manufactured and sold in that area. The licensor established price schedules and uniform production and distribution methods to which the licensees conformed. *Held*, a prima facie case of conspiracy in violation of the Sherman Act is established by proof of industry-wide license agreements to stabilize prices and control methods of distribution. *United States v. United States Gypsum Company*, 333 U. S. 364, 92 L. ed. 552 (1948).

The Supreme Court held that the evidence established an agreement to organize the entire industry and to stabilize prices and that such an agreement is unlawful even though the legality of each separate patent license be assumed. The Court held that the control which the patentee exercised went beyond what the *General Electric* case<sup>2</sup> had sanctioned as lawful. The Court declared illegal those license provisions which require the licensees to pay a royalty on all

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Appeals in reversing found the parties to be principal and agent but did not disapprove of the test as enunciated by the lower court. 265 N. Y. 398, 193 N. E. 246 (1934). To sustain its proposition of the results that would flow from a landlord and tenant relationship the Appellate Division cited *Holmes v. Gravenhorst*, 263 N. Y. 148, 188 N. E. 285 (1933). See Note, 8 ST. JOHN'S L. REV. 346 (1934); 33 COL. L. REV. 168 (1933). See also *Prudence Co. v. 160 West 73rd Street Corp.*, 260 N. Y. 205, 183 N. E. 365 (1932). Later decisions have confined these cases to the proposition that the receiver cannot increase the amount of rents and profits being produced by the mortgaged property. See *Bank of Manhattan Trust Company v. 571 Park Ave. Corp.*, 263 N. Y. 57, 188 N. E. 156 (1933). Although the court in the instant case distinguished it from the *Equitable* case these facts should be kept in mind in that the courts at some later date, finding a landlord and tenant relationship, may seek to apply the rule enunciated by the Appellate Division in the *Equitable* case.

<sup>1</sup> 26 STAT. 209 (1890), 15 U. S. C. §§ 1, 2 (1946).

<sup>2</sup> *United States v. General Electric Co.*, 272 U. S. 476, 71 L. ed. 362 (1926), where the court was dealing with a situation involving a licensor (*General*

gypsum board sold by them, whether patented or unpatented; or require licensees to sell to jobbers at the same prices as charged to customers of jobbers; and those controlling the prices of unpatented products. These provisions were held to have the effect of suppressing the manufacture and sale of unpatented gypsum board, of eliminating jobbers for the purpose of preventing uncontrolled resale prices, and of controlling the prices of unpatented products, each of which was held to be beyond the privileges conferred by the patent law. The Government challenged the adoption of arrangements by the gypsum industry which were similar to but broader than the one involved in the *General Electric* case on the ground that a combination of licenses blanketing an industry was an unwarranted extension of the *General Electric* doctrine. This contention was rejected by the trial court in the instant case<sup>3</sup> and in *United States v. Line Material Co.*<sup>4</sup> Both courts relied upon and extended the *General Electric* doctrine; and both courts were reversed by the Supreme Court.<sup>5</sup> But the Supreme Court did not overrule the *General Electric* doctrine. In the *Line Material* case the question was squarely presented by the Government's appeal, and the court construed the *General Electric* case as not authorizing price fixing where dominant and subservient patents owned by two or more persons are combined. Mr. Justice Douglas, in a concurring opinion, expressed the view that the *General Electric* case rests on an erroneous interpretation of the scope of the patent privilege and should therefore be overruled.<sup>6</sup> A dissenting opinion by Mr. Justice Burton concluded that the doctrine of the *General Electric* case was sound and that it was applicable to price fixing in a cross-licensing situation. In the instant case, decided the same day, the Court was constrained to adhere to this view, and so unanimously reversed the district court on the ground that the license agreements went beyond what the *General Electric* case had sanctioned and was unlawful.

This decision clears a new path for the vigorous enforcement of the Sherman Act against those who would, under the guise of patent monopolies, strangle our traditional system of free competition.

H. G.

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Electric) and a single licensee (Westinghouse) under an agreement whereby the former set the prices for its licensee's sales or consignment contracts with distributors. This decision has often been criticized. See Note, *The Patent Refuge of Monopolists*, 21 ST. JOHN'S L. REV. 190 (1947); Steffen, *Invalid Patents and Price Control*, 56 YALE L. J. 1, 2-6 (1946); Havighurst, *The Legal Status of Industrial Control by Patent*, 35 ILL. L. REV. 495, 517-518 (1941); Chafee, *Equitable Servitudes on Chattels*, 41 HARV. L. REV. 945, 993 (1928).

<sup>3</sup> 67 F. Supp. 397 (D. D. C. 1946).

<sup>4</sup> 64 F. Supp. 970 (E. D. Wis. 1946).

<sup>5</sup> *United States v. United States Gypsum Co.*, 333 U. S. 364, 92 L. ed. 552 (1948); *United States v. Line Material Co.*, 333 U. S. 287, 92 L. ed. 510 (1948).

<sup>6</sup> For a complete discussion of this point and of the scope and abuse of the patent monopoly see Note, *The Patent Refuge of Monopolists*, 21 ST. JOHN'S L. REV. 190, 195-197 (1947).