Patent Racketeering

Government Suit Against the Radio Trust—"The Most Important Anti-Trust Suit in the History of this Country—If Prosecuted to Logical Conclusion, It Will Result in the Dissolution of the Most Powerful, Wealthiest, Most Sinister, and Most Arrogant Monopoly Which Ever Oppressed the Public, Terrorized Its Competitors, or Flaunted the Laws of Any Country."

Explanation of Dill-Davis Bill (H. R. 13157)—"This Bill Will Stop Patent Racketeering. It Will Put an End to the So-Called 'Patent Trusts.' It Will Stop the Pernicious and Unlawful Practice Employed by Some Monopolies to Cover Their Illegal Operations Under the Pretense of Patent Ownership. * * * This Bill Should Have the Enthusiastic Support of Every Member of Congress Who Believes in the Enforcement of the Anti-Trust Laws. I Shall Ask for Its Immediate Consideration by the House Committee on Patents when Congress Reconvenes in December."

Speech of

Hon. Ewin L. Davis

of Tennessee

in the House of Representatives

June 19, 1930

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"A bill (H. R. 13157) relating to suits for infringement of patents where the patentee is violating the antitrust laws.

"Be it enacted * * * That it shall be a complete defense to any suit for infringement of a patent to prove that the complainant in such suit is using or controlling the said patent in violation of any law of the United States relating to unlawful restraints and monopolies or relating to combinations, contracts, agreements, or understandings in restraint of trade, or in violation of the Clayton Act or the Federal trade commission act.

"Sec. 2. Where the defendant in any patent-infringement proceedings pleads any of the defenses set forth in section 1 hereof such defense or defenses and the issue or issues raised thereby shall be tried separately and judgment entered thereon prior to the hearing on any other issues raised by any other defenses."

SPEECH

OF

HON. EWIN L. DAVIS

The House in Committee of the Whole House on the state of the Union had under consideration the bill H. R. 12912, the second deficiency bill.

Mr. DAVIS. Mr. Chairman and members of the committee, as fully as time permits I shall discuss one of the gravest and most important problems confronting the American people. Under the leave granted, I shall extend my remarks by including certain documents and quotations which I shall not have time to read.

GOVERNMENT SUIT AGAINST THE RADIO TRUST

On the 13th of last month there was filed in the United States District Court of Wilmington, Del., the most important antitrust suit in the history of this country, because, if prosecuted to a logical conclusion, it will result in the dissolution of the most powerful, wealthiest, most sinister, and most arrogant monopoly which ever oppressed the public, terrorized its competitors, or flaunted the laws of any country.

This action was commenced by the Attorney General of the United States against 10 corporations with aggregate assets of $6,000,000,000, who are charged in the petition with violating the Sherman antitrust law. The combination against which this suit was directed are generally known to the public as the Radio Trust.

The 10 corporations against whom this suit was brought are the Radio Corporation of America, General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., R. C. A. Photophone (Inc.), RCA Radiotron Co. (Inc.), RCA Victor Co. (Inc.), General Motors Radio Corporation, and General Motors Corporation.

According to their balance sheets of December 31, 1928, the assets of the chief defendants were:

R. C. A.-Victor Cos	$141, 563, 336
General Electric Co	460, 455, 322
Westinghouse Electric & Manufacturing Co	233, 690, 111
American Telephone & Telegraph Co	3, 826, 683, 584
General Motors Corporation	1, 242, 894, 869
	5, 905, 287, 222

The assets of these companies have since been materially increased; the assets of the American Telephone & Telegraph system, at the end of 1929, according to the company's statement, were $4,228,430,088.

This does not enumerate the assets of several of the defendant companies.

The petition in this case, which is signed by the Attorney General of the United States and five assistants to the Attorney General, as well as by the United States Attorney, is admirably drafted, apparently after careful and deliberate thought and preparation.

The petition in this case constitutes a ringing indictment against this lawless Radio Trust. For the information of those who may desire to read the entire petition, I beg to advise that this petition was inserted in the CONGRESSIONAL RECORD, on May 14, 1930.

However, a strange and disappointing feature of this suit is that the petition does not clearly cover the Radio Trust monopoly in the communication field, and furthermore, two companies whose contracts and conduct clearly align them with this powerful Radio Trust, and who were specifically charged by the Federal Trade Commission with being members of this monopoly, are conspicuous by their absence, as defendants.

One of these members of the Radio Trust is the United Fruit Co., with assets of about $250,000,000. The United Fruit Co. also has a virtual monopoly of the banana business in this country and in Europe. It has powerful influence in Washington. It operates a fleet of ships, primarily for the transportation of its bananas; many of these ships are operated under foreign flags and with alien crews.

This company desired some valuable ocean-mail contracts, and with the aid of two other hybrid shipping companies and of the Postmaster General, who eagerly rushed to their rescue, succeeded in having chloroformed the bill which very properly provided that no ocean-mail contract should be awarded to any company operating foreign-flag ships in competition with American-flag ships, after such bill had been unanimously reported by the Committee on the Merchant Marine and Fisheries, a resolution for its consideration had been unanimously reported by the Committee on Rules, and it had passed the House without a dissenting voice or vote. While this bill was still pending in the Senate committee the United Fruit Co. succeeded in inducing the Postmaster General to award it three valuable mail contracts amounting in the aggregate to about $9,000,000. This unseemly haste notwithstanding the fact that performance under two of said contracts was not to commence for about three years, for the very good reason that the United Fruit Co.

does not now have adequate American ships to perform the service.

Great is the Radio Trust! Great is the Banana Monopoly!

The other members of the Radio Trust not included among the defendants in this suit is the International Telephone & Telegraph Co., with assets of $389,914,333, which has an agreement to buy the Radio Trust foreign communication services, worth about $15,000,000 for $100,000,000 worth of stock in said International Telephone & Telegraph Co., if and when Congress can be induced to so far forget the public interest as to repeal section 17 of the radio act of 1927, which prohibits such a monopoly. The Radio Trust has for more than a year been disseminating false propaganda and exerting strenuous efforts to effect the repeal of said section, but has made no appreciable impression upon the Members of Congress.

Not only are these two companies omitted from the defendants in the Government suit, but likewise the communication subsidiaries of the Radio Corporation of America, particularly RCA Communications (Inc.) and the Radio Marine Corporation.

No explanation has been offered as to why these members of the Radio Trust were omitted. Surely the Department of Justice does not wish to safeguard this monopoly against the very salutary provisions of section 13 in the radio act of 1927, which directs that the licensing authority shall refuse a radio license for broadcasting, commercial communication or other purpose, to any corporation which has been adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. This provision of the radio law is self-inforcing. However, immunity from its provisions continues so long as the violator of the law is not adjudged guilty, notwithstanding the fact that the members of the Radio Trust are daily and flagrantly violating the laws. These omitted companies hold licenses for the use of hundreds of most valuable wave lengths in the field of both domestic and international communication.

Furthermore it is admitted that the Radio Corporation of America and its communication subsidiaries have an absolute monopoly in international radio service between this and foreign countries. David Sarnoff, vice president and general manager of the Radio Corporation of America, testified before the Committee on the Merchant Marine and Fisheries "that the international radio service is a natural monopoly and should be." Owen D. Young, the leading figure in the Radio Trust, has several times given utterance to similar sentiments.

This aspect of the case is accentuated by the boasts of the Radio Trust that it has used and will continue to use its monopolistic control of radio patents to keep competitors out of the wireless communication field. In the hearings of the House Committee on the Merchant Marine and Fisheries, in January, 1929, in answer to a question put by me, Manton Davis, vice president and general attorney for the Radio Corporation, testified that—except for a recent restricted modification with respect to press associations—"the refusal to sell or lease apparatus to competitors for international communication purposes

is included in the well-defined policy of the Radio Corporation of America."

In the hearings of the Senate Committee on Interstate Commerce, December 10, 1929, page 1196, Owen D. Young testified that this policy of the Radio Trust was still maintained.

So we have the spectacle of this huge combination defiantly announcing that it intends to use its alleged patent monopoly to keep competitors out of the field of radio communication, even though they have licenses from the United States Government.

However, with the exceptions noted, the petition in the Government suit against the Radio Trust is, in my opinion, ably and admirably drawn and constitutes a severe arraignment of the infamous conduct of the trust and forcefully seeks to terminate same.

Another rather disconcerting feature of this suit is that at the time it was instituted the Department of Justice gave out a statement, in part, as follows:

> It is announced at the Department of Justice that there is to-day (May 13) filed on behalf of the United States a suit under the Sherman Act in the district court of Wilmington, Del., to test the legality of the arrangement existing between the Radio Corporation, General Electric, Westinghouse, American Telephone & Telegraph Co., and six other corporations.
>
> The patent arrangements originally made between several of the defendants have been steadily increased in number and enlarged in scope until the defendants now practically have control of radio and its development. This control has been brought about by a novel method of cross licensing patents. The suit is concerned chiefly with the legality of these patent arrangements.

Upon the commencement of this action, the chairman of the executive committee of the Radio Corporation of America gave out a statement in which he, among other things, declared:

> The Radio Corporation of America welcomes a suit of the Government of the United States to test the validity of its organization, which has now existed for more than 10 years—

And so forth.

This notwithstanding the fact that it is a matter of common knowledge that the Radio Trust has all along exerted every effort to prevent action.

However, I am going to assume that this suit was brought in good faith, and that the Department of Justice officials in charge of same will patriotically, honestly, efficiently, and vigorously perform their full duty.

This belief is strengthened by the attitude of President Hoover, which he so aptly and forcefully stated a few years ago at a hearing before the Committee on the Merchant Marine and Fisheries.

In view of the position of Mr. Hoover and his former connection and great familiarity with radio, I want to particularly invite the attention of the Members to what he said upon this subject. Mr. Hoover, then Secretary of Commerce, and in full charge of radio regulation, among other things declared:

> Not only are there questions of orderly conduct between the multitude of radio activities in which more authority must be exerted in

the interest of every user, whether sender or receiver; but the question of monopoly in radio communication must be squarely met.

It is inconceivable that the American people will allow this newborn system of communication to fall exclusively into the power of any individual, group, or combination. Great as the development of radio distribution has been, we are probably only at the threshold of the development of one of the most important of human discoveries bearing on education, amusement, culture, and business communication. **It can not be thought that any single person or group shall ever have the right to determine what communication may be made to the American people.**

In this connection, I wish to state that I am glad I am not speaking over the radio, but in this forum, where I shall not be cut off from my auditors, as former Senator James A. Reed was the other night while speaking over the radio, when he commenced an arraignment of the Radio Trust.

Reverting to the quotation from Mr. Hoover, he further stated:

We can not allow any single person or group to place themselves in position where they can censor the material which shall be broadcasted to the public.

Radio communication is not to be considered as merely a business carried on for private gain, for private advertisement, or for entertainment of the curious. It is a public concern impressed with the public trust, and to be considered primarily from the standpoint of public interest to the same extent and upon the basis of the same general principles as our other public utilities.

ATTORNEY GENERAL DAUGHERTY'S ATTITUDE

The commencement of this suit, I trust, terminates an immunity which has existed with respect to this trust for approximately nine years. [Applause.] When they first began the formation of this trust they sought an assurance of immunity from Attorney General Harry M. Daugherty, and while in his letter of reply—which I shall insert in the RECORD—he admitted that he had no authority to grant such immunity or to render an opinion upon the validity of the contracts into which they had entered, yet he then proceeded to express such great friendliness and sympathy and gave such strong personal assurances of protection that they treated it as an immunity and have ever since boldly asserted that they have been operating with the approval of the United States Government. I am glad we now have an Attorney General who views his official responsibility and duty differently from the former Attorney General, who was so completely discredited and driven from his office in disgrace.

FEDERAL TRADE COMMISSION INVESTIGATION

On February 12, 1923, the gentleman from Maine [Mr. WHITE] introduced a House resolution requesting the Federal Trade Commission to investigate and report to the House of Representatives as to the various contracts and activities of the Radio Trust.

The Committee on the Merchant Marine and Fisheries unanimously reported said resolution to the House February 22, 1923, accompanied by the following report:

[To accompany House Resolution 548]

The Committee on the Merchant Marine and Fisheries, having considered House Resolution 548, reports the same to the House without amendment, with the recommendation that the resolution be passed. The members of the committee are unanimous in their approval of the resolution.

The House recently passed House bill 13773. In the preparation of that bill the members of your committee felt constrained to limit its scope because of a lack of accurate information on certain important phases of the general subject of radio. That bill, therefore, dealt only with those matters concerning which we were advised and upon which we deemed it vital that there should be prompt action by the Congress.

It is a matter of common assertion that the development of the art, its use, and enjoyment is being hampered and restricted through the acquisition of a few closely affiliated interests of basic radio patents, and that the intent and effect of the practices of these interests is to establish a monopoly in radio instruments and parts thereof. It is charged that agreements have been entered into between manufacturers and dealers in radio apparatus the purpose and effect of which is to eliminate competition, to restrict the sale, and to unwarrantably maintain the price of instruments and their parts. There is evidence of record of contracts or agreements made which purport to give exclusive rights in the transmission, reception, and exchange of radio messages, with the result that no competition in service is possible in the localities covered by such contracts.

Your committee feels that an investigation should be made to ascertain the facts in connection with the matters specifically suggested and more generally covered by the reported resolution. We desire to know the truth. We must have this information in order to satisfy ourselves whether unlawful agreements have been entered into, whether unlawful practices have been and are being engaged in, and to guide us in framing legislation for the consideration of the House. The Members of this House must have the facts if they are to legislate advisedly in the public interest on this subject.

This resolution was called up by the gentleman from Pennsylvania, Mr. Edmonds, under a unanimous-consent request and adopted by the House without opposition March 3, 1923.

REPORT OF THE FEDERAL TRADE COMMISSION

The Federal Trade Commission conducted the investigation and made its report December 1, 1923, in accordance with said resolution. This report on the radio industry, together with the appendix, contains 347 printed pages. The appendix of this report includes the admitted written contracts between the different members of the Radio Trust, which in themselves constitute violations of the antitrust laws in various particulars.

While the said House resolution did not request the Federal Trade Commission to take action against the radio trust, yet the investigation disclosed such flagrant violations of the laws that the Federal Trade Commission, upon its own motion, filed a complaint against the General Electric Co., the American Telephone & Telegraph Co., the Western Electric Co., Westinghouse Electric & Manufacturing Co., the International Radio

Telegraph Co., the United Fruit Co., Wireless Specialty Apparatus Co., and Radio Corporation of America.

It may be noted that the Western Electric Co. (Inc.) is a subsidiary of the American Telephone & Telegraph Co.; the International Radio Telegraph Co. is a subsidiary of the Westinghouse Electric & Manufacturing Co.; and the Wireless Specialty Apparatus Co. is a subsidiary of the United Fruit Co.

According to stock exchange quotations, the market value of the stock of the said five parent companies, against whom said complaint was filed, then amounted to about $2,500,000,000; this has since been greatly increased.

With respect to this complaint filed by it, the Federal Trade Commission gave out a statement, which I shall insert at the end of my remarks.

However, the charges are briefly summarized in the following language of the complaint:

> The respondents have combined and conspired for the purpose and with the effect of restraining competition and creating a monopoly in the manufacture, purchase, and sale in interstate commerce, of radio devices and apparatus, and other electrical devices and apparatus, and in domestic and transoceanic radio communication and broadcasting.

After numerous delays the Federal Trade Commission completed the taking of about 10,000 pages of sworn testimony and exhibits in support of the charges in the complaint. Thereupon, following a decision of the Supreme Court of the United States in another case involving the jurisdiction of the Federal Trade Commission, in which the court held that said commission had no jurisdiction over violations of the antitrust laws and that the remedy for such violations must be administered by the courts in appropriate proceedings therein instituted, the Federal Trade Commmission dismissed its said complaint against the members of the Radio Trust.

Shortly thereafter I prepared and introduced House Concurrent Resolution 47 on January 11, 1929, which resolution briefly recited the facts with respect to the investigation and complaint of the Federal Trade Commission and then requested the commission to immediately transmit to the Attorney General of the United States all such testimony, exhibits, and other information obtained by it in connection with its said investigation, and requested the Attorney General to have immediate consideration given to the evidence so presented, and to have the Department of Justice take such action on the charges of violation of the antitrust laws of the United States as such evidence and information may warrant, and to report to Congress as soon as convenient his decision and action in the premises. I shall insert at the end of my remarks said resolution.

Within a few days after the introduction of said resolution the Federal Trade Commission transmitted to the Attorney General of the United States all of the testimony which had been taken by it.

On April 22, 1929, I addressed a letter to the Attorney General, inclosing a copy of said resolution, advising that I was informed that the Federal Trade Commission had transmitted to him the record in the case and expressing the hope that the

matter might have the early consideration of the Department of Justice and appropriate action taken. I also offered to furnish such information relating to the subject as I had. I shall insert at the end of my remarks the reply which I received from the Attorney General.

Thereafter efforts were made from time to time, particularly by the Commerce Committee of the Senate, to expedite action by the Department of Justice. In the meantime, according to common report, the Radio Trust was making strenuous efforts to prevent action by the department.

However, the matter finally culminated in the action before referred to being commenced by the Department of Justice, on May 13, 1930.

The illegal and indefensible immunity from prosecution sought to be given to the radio monopoly by the malodorous Harry M. Daugherty nevertheless proved to be effective from August 25, 1921, to May 13, 1930, a period of nearly nine years, during which time the Radio Trust has grown more powerful, more effective, more oppressive, and more arrogant. However, I sincerely trust that it will be demonstrated that it is not stronger than the Government of the United States. I sincerely hope that this great and defiant law violator will be brought to justice.

On March 5, 1926, in the Sixty-ninth Congress, the Committee on the Merchant Marine and Fisheries reported H. R. 9971, to regulate radio communication, and for other purposes, which bill culminated in the radio act of 1927. This bill contained several provisions designed to prevent monopoly of radio, in the drafting and adoption of which I am glad to state that I had a part. However, I filed minority views on said bill, in which I set forth in substance many of the facts which I have recited, as well as many other facts relating to the radio monopoly, and took the position that we should incorporate in the bill additional and more stringent provisions against monopoly. Among other things I took the position that no radio license should be granted to any applicant who was violating the antitrust laws. In my said views and by amendments offered in the House during the consideration of the bill, I proposed several amendments along that line. With respect to same I made this observation:

> The enactment and enforcement of such provisions would force a dissolution of the powerful radio monopoly. It surely will not be contended that the United States should license applicants to continue to violate its laws. Applicants should be required to "come with clean hands" before the Government throws its mantle of protection around them.

However, most of my amendments offered on the floor were rejected, although by close margins.

An unfortunate feature of this whole situation is that the licensing authority, first the Secretary of Commerce (the matter doubtless being handled by subordinates) and then the Federal Radio Commission have greatly favored members of the Radio Trust. While I regret to have to state it, yet I am convinced that the major policies of a majority of the Radio Commission are controlled by the Radio Trust.

HISTORY OF RADIO TRUST

The history of the Radio Trust is an interesting story of commercial, political, and legal intrigue—domestic and international.

At the close of the World War the American Marconi Co.—whose corporate name was Marconi Wireless Telegraph Co. of America, a New Jersey corporation—was the dominant factor in our international radio communications. It was a subsidiary of the British Marconi Co. and was so completely under British domination that during the war the Government had refused to do business with it as an American corporation.

In March, 1919, the British Marconi Co. undertook to buy from the General Electric Co. the exclusive right to the use of the Alexanderson alternator, a powerful radio-telegraphic device, which was believed to be the only one able to span the Atlantic and give efficient service.

Rear Admiral Bullard, who was then Director of Naval Communications, asked the officials of the General Electric Co., as "patriotic American citizens" not to sell these rights to the British company. The General Electric officials declared that they were in the business to sell radio apparatus to anybody who could buy it, and that the British company was the only purchaser in the field, but that if the Navy Department would sanction an American radio monopoly it would create such a company and sell the alternator only to that corporation.

Secretary Daniels rejected that proposal because he said he favored Government control and that, even if he did not, only Congress could sanction such a monopoly. That was the end of the proposal for a Government-sanctioned Radio Trust. However, on October 17, 1919, the General Electric Co. incorporated the Radio Corporation of America under the laws of the State of Delaware. On October 22, 1919, the General Electric Co. made a preliminary agreement with the Marconi Wireless Telegraph Co. of America for the purpose of paving the way for the absorption by the Radio Corporation of America of the American Marconi Co. Under this agreement the Radio Corporation of America was to acquire all the assets of the Marconi Co., including its concessions, contracts, patent rights, and applications.

On November 20, 1919, the General Electric Co. also made an agreement creating its said new subsidiary as its selling agency in the field of manufactured radio products and its subsidiary in the field of international communications.

RADIO CORPORATION OF AMERICA IN FOREIGN MONOPOLY

On November 21, 1919, the Radio Corporation of America made an agreement with the Marconi Wireless Telegraph Co. (Ltd.), of London, which divided the entire world into fields of exploitation between the Radio Corporation of America, General Electric interests in the United States, and the Marconi interests in Great Britain. This agreement divided the world into four sections: American territory, apportioned exclusively to the Radio Corporation; British territory, given exclusively to the British Marconi Co.; neutral territory, made up chiefly of such important countries as Holland, Spain, France, Russia, Germany, Japan, and so forth, in which both companies were to be allowed to use each other's patents, and no man's land, which

covered the rest of the world, and in which the companies might operate without the use of each other's patents.

In a desperate effort to effect the repeal of section 17 of the radio act of 1927, the Radio Trust has insisted that it was necessary for them and the cable companies to combine in order to combat the British or foreign monopoly.

As a matter of fact the Radio Corporation of America and its affiliated and subsidiary companies are leading members of the British monopoly and of whatever world monopoly exists. In fact, they originated the idea and took the lead in organizing such a monopoly.

An Associated Press dispatch of September 30, 1921—nearly nine years ago—reads as follows:

WORLD RADIO COMBINE TO BE FORMED IN PARIS—UNITED STATES INITIATES PROJECT TO END DUPLICATION AND FURNISH CHEAPER SERVICE

PARIS, September 30 (by the Associated Press).—An international wireless company for control and development of the greater part of the world's radio facilities is in process of organization here by representatives of the wireless interests of Great Britain, France, Germany, and the United States. The delegates expect to complete arrangements in two weeks.

The American delegation is headed by Owen D. Young, vice president of the General Electric Co., and includes Edward J. Nally and J. W. Elwood, president and secretary, respectively, of the Radio Corporation of America, and a large staff of experts. The Westinghouse interests also are represented.

The proposed agreement is the outgrowth of a desire of the four countries to place wireless on a sound commercial basis. The governments concerned have approved the conference and, it is understood, will back the organization to be formed.

Wireless facilities of the four countries will, in effect, be pooled, but each country will retain control over its respective territory. It is thus hoped to eliminate great waste occasioned by duplication and to place at the disposal of the international company unlimited funds for research.

As the United States initiated the meeting, it is expected American interests will have the most prominent part in the proposed company.

ILLEGAL CONTRACTS

From 1919 to 1921 the American Telephone & Telegraph Co., the General Electric Co., the Radio Corporation of America, the Westinghouse Electric & Manufacturing Co., the United Fruit Co., and the International Radio Telegraph Co. entered into a series of what they term "cross-licensing agreements," to the end that every vestige of competition between these companies has been eliminated in all of the commercial fields pertaining to radio, in the fields of patents and invention, in the field of development, and in the field of communication. Furthermore, under these agreements the combined resources of all these great companies must be used as a single instrument to destroy outside competition.

These companies, by an elaborate series of restraints written into these agreements, jointly conspired to monopolize the new art of radio, not only in the field of manufacture of radio apparatus but in the field of communications, of modern broad-

casting, and in all other branches of this revolutionary art. These agreements are all set forth in the report of the Federal Trade Commission on the radio industry of 1923.

EFFECT OF THE RADIO MONOPOLY

According to the complaint of the Federal Trade Commission, and, as clearly shown by the admitted written contracts between said various parties, copies of which may be found in the appendix to the Federal Trade Commission report, these parties have already firmly established monopolies in the field of manufacture, sale, and use of apparatus for wire and wireless telephony, wire and wireless telegraphy, and wireless broadcasting. The more offensive provisions of the contracts are—

(a) These for the pooling of all patents of all the parties for all wire and wireless telegraph devices, for all wire and wireless telephone devices, as well as for all radio devices of whatsoever kind and for whatsoever use, for a period fixed or arranged to terminate in 1945.

(b) Those giving to different members of the combination a monopoly in one or more of the fields and containing covenants of all the parties to the contract not to compete or aid others to compete in such fields and to prevent such competition by others.

(c) Those providing for a representation of all the members in the purchase of patents by any member; and for the requirement by all the members that employees should assign their inventions and patents to their employer.

The effect of this combination upon the public is in part disclosed by a reference to a few of the many monopolistic features:

The public-service system of the telephone company is protected from radio competition.

With relatively unimportant exceptions, the monopoly of manufacturing radio devices is secured to the General Electric and to the Westinghouse Cos.

With relatively unimportant exceptions, the Radio Corporation has no right to manufacture radio devices, and while it has the monopoly, with relatively unimportant exceptions, of using and selling radio devices, it is not allowed to use them in competition with the public service telephone business of the telephone company and the public are thus cut off from the present and future advantages of like radio service. The Radio Corporation has an absolute monopoly in wireless communication between this country and foreign countries, except that radio service between this and a few Central American and West Indies points is reserved to the United Fruit Co., another member of the monopoly.

Even if a prospective broadcaster can procure a license from the Department of Commerce, it is necessary for him to purchase his broadcasting apparatus from the monopoly, and if the monopoly sees proper to sell to him at all he must buy the apparatus and operate same upon such terms and under such conditions as the monopoly dictates.

The inventor and scientist is in the grip of a monopoly which can exclude his inventions and patents from use or sale, excepting at a tremendous disadvantage to him, with corresponding benefit to the monopoly.

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As a result of these agreements, radio was placed in this position: Anyone desiring to go into any field of radio activity was and is faced with the problem of meeting the combined financial and patent resources of all of these concerns, involving billions of dollars and thousands of patents—not only those in existence, but those that may be brought into existence. The exclusive licenses that were given in the various fields were not only on existing patents, but on future inventions and future patents, so that the exclusive grants would continue until at least 1950. Under the covenants in these agreements, the members of this combination not only admit the scope and validity of issued patents claimed by the respective members of the monopoly, but of their future and unborn inventions. In other words, they have eliminated all possible litigation and contest between themselves.

SIMILAR CONTRACTS ADJUDGED ILLEGAL

With reference to agreements of the latter type, the Federal district court at Chicago recently held in the Oil Cracking case brought by the United States Government against the Standard Oil Cos. and 48 other companies under the Sherman Act, as follows:

Such agreements can not be sustained. While a patent is presumptively valid, many of them, although duly issued, are invalid for various reasons. The public, in whose interest the patents laws are enacted (Kendall v. Winsor, 21 How. 322), is ordinarily protected against the burden of such void patent grants by the action of competitors of the patentee who, prompted by motives of self-preservation, refuse to recognize these void patents and therefore successfully contest them. The public is thereby relieved of the burden which their existence entails.

By these clauses of agreement 31 and similar clauses in the other agreements, the parties purchased immunity from attack on their patents. Tying the hands and sealing the lips of the only parties who would ordinarily stand suit and contest the validity of the patents, the primary defendants attempted to fasten on the public burdens which it was not the purpose of the patent law to impose. Such agreements violate the letter and the spirit of the patent law and are contrary to public policy. The far-reaching consequences of such agreements is illustrated by the present case.

We have considered the nature and position of the parties to this great combination. Let us consider how they have conducted themselves since they were organized.

MONOPOLY IN INTERNATIONAL WIRELESS COMMUNICATION

Take first the field of communication by wireless telegraphy. Under these agreements this field was given exclusively to the Radio Corporation of America. That company, either on its own behalf or substantially through a subsidiary, the RCA Communications (Inc.), owned entirely by it, has entered into exclusive contracts with practically the entire world under which it is the sole medium which may be used for transoceanic radio communication to and from the United States.

Traffic agreements were also entered into by the companies of this combination with the outstanding communications companies throughout the world, including those in Great Britain, Canada, Germany, France, Italy, Russia, Belgium, Australia, Holland, Spain, Norway, Sweden, China, Japan, and

South American countries, whereby communication with these and other countries of the world was controlled. These arrangements are in nearly all instances exclusive. The contracting parties agree to use each other's facilities exclusively, and in most instances the foreign contracting party has a monopoly in its territory, and in some instances the agreements are with sovereign powers.

DOMESTIC WIRELESS TELEGRAPHY

Now let us consider the field of domestic communication by wireless telegraphy. The Universal Wireless Co., a domestic corporation, was granted licenses to operate on 28 short wave lengths by the Federal Radio Commission. They were given permits to build commercial stations for the transmission of messages for toll in and between 110 cities in the United States. The Federal Radio Commission was created by act of Congress to grant such licenses. Immediately upon commencement of operations the Universal Wireless Co. was sued for patent infringement. It was not sued by an individual patentee or an individual patent owner, it was sued concertedly by various members of this combination on various patents claimed to be owned by them individually. This sinister group, as a combination formed in defiance of law, through its combined illegal power, thus seeks to crush an independent competitor.

Joseph Pierson, president of the Press Wireless (Inc.), on January 13, 1930, told the Committee on Interstate Commerce of the United States Senate, of the attempt of his organization, representing such newspapers as the Chicago Daily News, Chicago Tribune, Boston Monitor, Los Angeles Times, and the San Francisco Chronicle, to develop a wireless telegraphic press service. He states as follows:

Owing partly to the rigid monopoly maintained by the General Electric-Radio Corporation combine of equipment in the United States, even controlling that imported from abroad, it was decided to establish our North American stations in some near-by country where the laws were more favorable to independent initiative and even more rigidly enforced against unfair practices and oppressions of enterprise. We decided, therefore, to set up our station at the terminus of the British Government cables.

Mr. Pierson further stated:

This license agreement does not appear to us to be for the purpose of recouping for the Radio Corporation combine the costs of its wireless development and research plus a fair profit. It seems to be for the purpose of preventing competition and fencing in the field of wireless communication. Consequently, some of my directors say they can regard this license agreement only as specially designed to make of the American press a colony of the electric-power empire which seems to be grasping after complete control of the water and the air of the United States.

Mr. Pierson set forth some of the conditions and terms upon which they alone could purchase apparatus from this combination, as follows:

(a) Press Wireless must pay Radio Corporation of America the General Electric Co.'s price for building the apparatus plus 45 per cent profit to the Radio Corporation of America; and

(b) Press Wireless must pay, as royalty or rental, 5 per cent of the gross receipts to Radio Corporation of America.

3. Use can be for press messages only.

4. Press Wireless must charge its clients "with a view to earning a reasonable profit" and not as a mutual company.

5. Press Wireless must allow Radio Corporation of America to inspect its apparatus and its accounts at will.

6. Press Wireless (Inc.) must surrender to Radio Corporation of America, without any charge whatsoever, all patents or patent rights it now has or will ever have and must give Radio Corporation of America total and exclusive right to lease, transfer, or assign rights of said patents.

7. Radio Corporation of America grants Press Wireless (Inc.) nontransferable right to use Radio Corporation of America patents.

8. Press Wireless (Inc.) must use apparatus in telegraphic code work only, and not for "transmission or reception of facsimiles, pictures, and the like."

9. Press Wireless (Inc.) must buy all parts from Radio Corporation of America.

10. "Article VII. The lessee hereby agrees to extend to the Radio Corporation of America at its request and through Radio Corporation of America Communications (Inc.) and for the benefit of its newspaper clientele, the same facilities, quality of press service, and like tariffs which it extends to its other press customers at the time of the request."

Mr. Pierson further stated:

In our effort to enter the wireless field in the United States we have been presenting our case to the appointed agency of the Government, the Federal Radio Commission. We all would rather have had private grants for the use of frequencies without putting our stations under the public-service obligation, but those newspapers associated in our company bowed to the far-seeing wisdom of the commission, particularly Judges Robinson and Sykes, in their interpretation of public interest, convenience, and necessity. We have submitted to the most rigorous scrutiny, and properly so, of our plans, our resources, and our experience in the communications business. We have been found to meet the test imposed by law. The tribunal which Congress has created to decide such questions for the United States Government has found that we are eligible and entitled to operate stations for certain purposes and on certain channels.

But it seems we did not see the right people. In order to operate a radio station in the United States, it appears, we have to wait upon the secret radio commission of America. You will note that they not only want high tribute indefinitely prolonged, but they even would force us to give up to them use of these valuable frequencies which the Federal Radio Commission licensed to us only. We are almost getting used to these tactics. The dominating wireless interests have succeeded in placing every conceivable obstacle in our way, but I venture to say that we will succeed eventually in setting up our network of press communication without becoming serfs in this new system of industrial feudalism.

WIRELESS TELEPHONY

Let us take up the question of wireless telephony. Apparently one of the principal reasons for the formation of this combination through these agreements was to protect the monopoly of the American Telephone & Telegraph Co. in the business of wire-telephonic communications for toll. For that reason the Ameri-

can Telephone & Telegraph Co. is given an exclusive license in the field of wireless telephone communication, and these other concerns agree not to enter into that field. The result is known to you all. While in Germany traveling upon a train, you can pick up a telephone receiver and talk via wireless. The same innovations are being introduced in Canada. There has been no such development in this country. This is not because Americans have not had sufficient ingenuity.

The real purpose of the combination, however, has been achieved in giving to the American Telephone & Telegraph Co., and its subsidiaries, the control over any potential or possible competition arising from the radio art.

MONOPOLY IN TALKING MOTION-PICTURE FIELD

This combination also asserts that it has the right to complete control over the talking motion-picture field. The American Telephone & Telegraph Co., through its subsidiaries, the Western Electric Co. and Electrical Research Products (Inc.) is fast establishing such control. The Radio Corporation and the Telephone Co. have entered into exclusive arrangements in the talking-picture field with the great motion-picture companies of America, including such companies as Paramount-Famous-Lasky Corporation, the Fox Co., Warner Bros., Vitaphone, and so forth. They are fast tying up the motion-picture theaters with as diabolical a contract as has ever been written. This contract is modeled along the same lines as the old United Shoe Machinery leases, which were declared illegal by the United States Supreme Court (258 U. S. 451). Under them the Electrical Research Products (Inc.) a subsidiary of the Western Electric Co., a member of this great combination, leases talking apparatus for talking motion pictures. Under this lease the motion-picture exhibitor or theater owners can not buy any parts, or accessories, or replacements from anyone except the Electrical Research Products (Inc.). The lease provides in part as follows:

> Also, in order further to secure proper functioning of the equipment as aforesaid satisfactorily to the parties hereto, it is agreed that all additional and renewal parts and assembled parts for the equipment shall be obtained from Products—Electrical Research Products, (Inc). * * *
>
> Products may from time to time install such spare and renewal parts as may, in its opinion, be necessary to the satisfactory operation and maintenance of the equipment.
>
> The lease may be canceled, among other reasons—
>
> "Upon the removal of the equipment or any part thereof without the consent of products from the location and position in which it was installed by products."

These tying clauses as effectively shut out manufacturers of competing talking-motion-picture apparatus as did the famous and nefarious United Shoe Machinery leases. Any exhibitor who does not wish to sign such a lease must face patent attacks of this nature. No patents have been adjudicated in this field.

Sensational evidence of the manner in which ownership of patents may be used to extort excessive profits and to foster monopoly was presented to the Senate Committee on Patents during the hearings on a bill by Senator DILL which is designed to end such abuses.

C. C. Colby, chairman of the board of directors of the Audio Research Foundation, declared that the American Telephone & Telegraph Co. now claims the exclusive right to all patents covering sound amplification, including talking-motion-picture machines, and all announcing systems used in theaters, churches, and elsewhere.

"The motion-picture theaters have already paid or contracted to pay to the telephone monopoly upwards of $25,000,000 more than they would have had to pay independent manufacturers for the same service," Mr. Colby said.

"In addition, they have been forced to contract for 'service' to the amount of $50,000,000 more under the threat of patent litigation with the monopoly."

MONOPOLY IN BROADCASTING APPARATUS

The manufacture of broadcasting apparatus employed by the broadcasting stations is produced almost entirely by this combination. They have frightened away by their combined power and terrorizing tactics any competition in the manufacture of that type of apparatus. The development of that art lies solely in their hands. Instead of the General Electric Co. and the Westinghouse Electric & Manufacturing Co. and the American Telephone & Telegraph Co. competing for that business, they work in unison.

BROADCASTING SITUATION

The Radio Corporation of America, and its subsidiary and affiliated companies, all members of the Radio Trust, have either an absolute or a substantial monopoly in all branches of the radio industry, including radio communication. As I have already shown, they have a monopoly in international radio communication services. They have a large part of the choicest broadcasting facilities. In addition to the broadcasting stations directly owned and operated by them, the Radio Corporation of America, the General Electric, and the Westinghouse Co. organized and own all the stock in the National Broadcasting Co., which renders a chain service. Of the 40 cleared channels, which are the only broadcasting channels upon which stations are authorized to operate with 1,000 watts power or more, stations receiving the National Broadcasting Co. service are operating on 27 cleared channels; these stations embrace practically all of the high-powered stations. The approximately 550 broadcasting stations not on these cleared channels are crowded together on the remaining 49 broadcasting channels, 12 of which channels are shared with Canada; the result is that, generally speaking, such stations are so crowded together and so interfere with each other, and are so blanketed and heterodyned by the super-Power Trust stations, that they can rarely be satisfactorily heard. The result is that the air is dominated by the chain program.

OPPRESSIVE TRUST TACTICS

The strangle hold of this Radio Trust is such that if an American citizen or company obtains a license from the United States Government to operate a broadcasting station, that is not all; the licensee must buy the broadcasting license from the monopoly at such a price and upon such terms as the monopoly dictates; then it must pay annual tribute to the radio monopoly. If the licensee then desires to procure a chain program from the National Broadcasting Co., it must

make a contract with the American Telephone & Telegraph Co., or one of its subsidiaries in the Bell system, to receive the chain program over the wires before the National Broadcasting Co. will make a contract with such licensee. The telephone company will first exact a heavy tribute under the guise of an installation fee.

In order that this hold-up procedure may be more clearly understood I will give a specific instance. The Radio Trust is so powerful and arrogant that it is no respecter of persons. The Supreme Lodge of the World, Loyal Order of Moose, have a broadcasting station at Mooseheart, Ill. The call letters of this station, WJJD, are in honor of Secretary of Labor James J. Davis, the founder of the order. I herewith insert some correspondence which explains what happened to Station WJJD, which is typical of what has happened to other independent stations. The correspondence is as follows:

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, February 18, 1928.

Hon. EWIN L. DAVIS,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: Replying to your letter of February 9 with reference to the use of a Western Union wire in the hook-up of our radio station at Mooseheart with the Palmer House in Chicago, would say that I took this matter up with our radio manager at Mooseheart and am just in receipt of a reply from him, copy of which I inclose for your information.

I trust this explanation is satisfactory.

With kindest regards, I am most cordially yours,

JAMES J. DAVIS.

Here is the letter which he incloses and to which he refers:

LOYAL ORDER OF MOOSE,
Station WJJD, February 16, 1928.

Mr. JAMES J. DAVIS,
United States Secretary of Labor,
Washington, D.C.

Dear Mr. DAVIS: I am returning the letter of Congressman DAVIS regarding the use of Western Union and telephone lines in connection with our broadcasting station, WJJD.

When we connected with the Palmer House in Chicago, necessitating private broadcasting lines in Mooseheart, we procured estimates from the Illinois Bell Telephone Co., also from the Western Union. However, as the telephone company had an installation charge of some $10,000 which was not charged by the Western Union, we contracted for the Western Union lines.

Since that time, however, it has not been possible for us to connect any telephone lines with our Western Union circuits, which has prevented the broadcasting of any chain programs. It seems that the telephone company has a ruling that they will not permit any telephone lines to be connected in any way with Western Union lines, although I understand that the Western Union Co. has no objection to having the telephone lines connected with theirs.

The Western Union lines have proved very satisfactory, although I believe it will be necessary for us to replace them with telephone

lines in the operation of our new transmitter, inasmuch as until we have telephone lines we will be prevented from participating in national broadcasting.

Sincerely and fraternally yours,

C. A. HOWELL.

The actual cost of installation; that is, of connecting up a wire in the radio station, is nominal, and which the Western Union was willing to do without charge, in order to obtain the opportunity to render the wire service for the customary charge in like cases. However, the subsidiary of the American Telephone & Telegraph Co. demanded $10,000 for nothing and then was to charge the customary rates for the service. And the radio station could not procure the chain service, for which it would have to likewise pay, unless it was willing to be held up in this fashion.

The development of the radio art of the greatest interest to our citizens to-day is modern broadcasting. To receive the benefits of it one must purchase the modern radio receiving set which is installed in the home.

RADIO RECEIVING SETS

Let us examine the conduct of this combination in the field of manufacturing such radio receiving sets. The two greatest potential manufacturers of radio-receiving sets were and are the General Electric Co. and the Westinghouse Electric & Manufacturing Co. They are the two greatest manufacturers of electrical apparatus in the United States, no other concern even approximating either of them in size or resources. These companies not only refused to compete with each other as a result of these "cross-license agreements," but agreed to sell on the basis of dividing 60 and 40 per cent between them all of the apparatus manufactured by them exclusively through the Radio Corporation of America, the Radio Corporation of America to buy all such apparatus sold by it from them at 20 per cent over their cost.

LAWLESS PATENT MANIPULATION

The combination does not to-day control patents covering the complete building of a modern radio set. There are numerous other patent holders whose patents have been upheld and with which complete and efficient receiving sets may be manufactured. The Radio Corporation of America itself has been held to infringe a patent covering every radio set attached to the electric-light socket, in the case of Lowell and Dunmore and Dubilier versus Radio Corporation of America, in the United States District Court of Delaware, in a decision rendered by Judge Hugh M. Morris. Yet they have forced the entire radio set manufacturing industry to sign licenses calling for a tribute of 7½ per cent royalty on their business, with a minimum royalty of $100,000 annually. Under these license agreements this great combination only assert that they have patents useful in making a tuned radio frequency receiver, the only kind of a receiver on which they license manufacturers; they do not covenant that they control the patents; they do not agree to defend against other patent holders who may attack their licensees; they do not identify their own patents or any of their own patents; they do not

agree that in the event their patents are held invalid that the license is to be inoperative. In the event a single insignificant claim of any one of their infinite number of patents can be upheld, they can still enact this tribute. As a matter of fact, the licenses run for a term of years, and as a practical matter do not depend upon the validity of any of their patents.

The situation in this field was described to the Senate Committee on Interstate Commerce, in its hearings on the Couzens communications bill, by B. J. Grigsby, president of the Grigsby-Grunow Co., the largest independent manufacturer of radio receiving sets. Mr. Grigsby said:

We are licensees under the receiving-set patents of the Radio Corporation of America, the General Electric Co., the Westinghouse Co., and the American Telephone & Telegraph Co., sometimes known as the Radio Trust. In the year and a half in which we have made radio sets we have paid that monopoly $5,302,879.15 in royalties. If we had not been compelled to add this royalty to our manufacturing cost, the retail purchasers of Majestic sets would have been saved approximately $15,000,000.

We did not pay this royalty because we considered these patents worth such a royalty. We did not believe we needed these patents, and none of them had been adjudicated. But the radio combine had so terrorized the industry and had so intimidated the dealers and jobbers everywhere that they were afraid to handle what they called "unlicensed" sets.

Our bankers said they would not finance us unless we took out a license. They said they would not finance a patent fight against such a monopoly, and there was nothing left for us to do but to sign the license agreement. The merits of the patents were never examined by the bankers. The merits of the patents had nothing to do with the case.

Originally this license contract called for a royalty of 7½ per cent of our gross receipts, not only on the radio apparatus involved, but on the cabinets and even the packing cases in which we sold them. Of course, the Radio Corporation of America had no patent on either cabinets or packing cases, but it had the power to compel the payment of any royalties it pleased, and therefore, put the royalty on the manufacturers' price of the complete set.

As a result some of the manufacturers were not putting their sets in cabinets and thus were saving this royalty. We built our huge sales on the economies effected by our large mass production. One of these economies arose from the fact that our company was perfectly integrated, and that we made everything, including our own cabinets, in one plant. We were the largest furniture manufacturers in the United States.

If the royalty on cabinets had been continued it would have forced us out of the cabinet business and, therefore, would have destroyed the economies of our modern method of production. It was because we served notice on the Radio Trust that unless it changed its policy we would manufacture our cabinets through a separate company, so that it would not be able to collect these royalties that the Radio Corporation of America changed its policy and abandoned the royalty on cabinets.

Even with this deduction, however, no industry can long pay 7½ per cent royalty to its competitor. The combine could sell its products and make a profit of 7½ per cent at a price that would represent only

our cost and, therefore, eventually bankrupt us. If there were merit in any of the combine's patents, we would have no objection to dealing with the individual companies that owned these patents, but we do protest that it is a violation of the antimonopoly laws to compel us to deal with all of them as one group and to take all of their patents and to pay a royalty, not on the merit of a patent but solely on the power of the combination to destroy us unless we surrender.

When we took our license in 1928 the Radio Corporation of America compelled us to buy the license of a bankrupt company, and we were compelled to assume the obligations of that bankrupt company, which protected the Radio Corporation against loss.

The patent situation in the radio industry is becoming intolerable. When the Radio Corporation fixed its royalty rate at 7½ per cent it did so on the pretense that it had a complete monopoly of the radio-patent situation and that its patent covered every part of the radio-receiving set. This is not true. We are now paying royalties to three other patent owners, and have been sued by five additional companies claiming infringement of seven patents. In no case has the Radio Corporation protected us against these patents or helped us in the suits which have been filed against us.

The patent licenses we were thus compelled to take out include one under the patents of the Radio Frequencies Laboratories on a circuit. We have also had to take out a license under the Lektophone patent. This is a patent on the loud-speaker cone. When we manufactured our loud speaker under the R. C. A. patents, we copied directly the 104–A type of Radio Corporation speaker. When the Lektophone Co. charged us with infringement we tried to get some help from the Radio Corporation of America, but they refused to give it to us, because they had taken out a personal license from the Lektophone Co. and had thus acknowledged the validity of its patents. But the radio combine did not take out a license to protect its licensees, and so we had to pay additional royalties to the Lektophone Co. on the same speaker which we were making under the Radio Corporation of America patents. Later, again on this same speaker, we were threatened by the Magnavox Co., who brought suit against us, but not against the Radio Corporation, although the construction of the speakers is identical.

VACUUM TUBES

There is another aspect of radio which has become a vital factor in our modern life. That is the development of the vacuum tube. In fact, the vacuum tube is the heart of radio. Everything else is hardware and furniture. The vacuum tube is used not only in broadcast-receiving sets, but in all broadcast transmitters, in all radio-communication transmitters, and in every form of wire communication. It is the tube which makes possible the motion picture of to-day, and particularly the talking movies.

The tube is the closest approach to the human brain that man has been able to devise. It has extended man's sight and hearing to span the globe. A new technique in the control of electrical apparatus has been built up around the vacuum tube. Elevators can be controlled with quick accuracy by its aid; industrial operations can be controlled by it; continuous-flow processes may be reduced to absolute precision and uniformity; street-traffic signals can depend for their actuation upon approaching cars; factory and agricultural products are counted, inspected, and graded automatically; colors may be selected by

it; it may be used for fire and theft protection; a new science of metering and measurements is being developed by it; phenomena of incredible delicacy, mere indications become dependable yardsticks capable of everyday handling by plant workmen; airships, automobiles, water craft, and so forth can be guided and controlled by it.

The vacuum tube has now established itself as a universal tool. It finds uses in the sciences of medicine, chemistry, geology, geophysics, minerology, and photometry. It is applied in crime detection in many ingenious ways to discover as well as to convict the criminal.

The Radio Trust, knowing full well that the development of the vacuum tube would revolutionize the entire electrical art, and that future developments will be built up around this miracle device, have concentrated their efforts ever since their inception upon securing a complete monopoly of that product.

In the first instance, on their cross-licensing agreements, the General Electric and the Westinghouse Electric & Manufacturing Co., who were the potential competitors in the vacuum-tube field, agreed not to compete, but rather to divide the vacuum-tube business between them on a 60 and 40 per cent basis, and to sell their products exclusively through the Radio Corporation of America on the same arrangements by which radio sets were merchandized. As an article of manufacture, the radio vacuum tube is probably more like the incandescent lamp than any other product. These great concerns have monopolized the incandescent lamp business, and with their tremendous facilities in the lamp field, are the most powerful factors in the manufacture of vacuum tubes. As in every other part of the agreements, however, between the members of this combination, competition between them, in the manufacture and sale of vacuum tubes, was eliminated.

The field, which has been big enough for commercial exploitation in the radio tube art, has been the building of vacuum tubes for radio-receiving sets. When this field developed, various independent companies started to manufacture and sell vacuum tubes. When the Radio Trust succeeded, however, in terrorizing the manufacturers of radio-receiving sets and forcing the execution of the license agreements, they compelled the licensees, as one of the parts of those agreements, to agree to buy from the Radio Corporation of America the vacuum tubes needed to initially actuate the sets manufactured by the independent manufacturer and licensee. Radio sets theretofore had always been shipped by the manufacturers into the trade without tubes. Tubes were shipped separately in interstate commerce, to jobbers, distributors, and dealers in radio receiving sets. These merchants would buy vacuum tubes from the trust or one of its independent competitors, and insert the tubes in the radio-receiving sets. Under the license agreements, however, 95 per cent of the sets manufactured were thereafter shipped with tubes.

The distributors, jobber and dealer, in order to secure radio sets to sell, had to accept with that set vacuum tubes manufactured by the Radio Corporation of America in sufficient quantity to actuate the set. This completely obliterated the independent tube makers from the market. The independent manufacturers filed suit to enjoin enforcement of this clause in the

United States District Court of Delaware, alleging that it was a violation of section 3 of the Clayton Act, in that it substantially lessened competition and tended to create a monopoly. This contention was upheld by the district court and by the court of appeals. There has been, therefore, an adjudication of the intention of this combination to monopolize the vacuum tubes. It is also perfectly clear that, if at any time they have or do secure a monopoly of the vacuum tube, they will thereby, as a practical matter, secure a monopoly of all branches of the radio art and of many branches of the electrical art, and will control one of the greatest developments in the history of the human race.

Having failed to secure any favorable adjudication on their patents pertaining to vacuum tubes, having been thwarted in their efforts to monopolize interstate commerce in vacuum tubes by compelling receiving-set manufacturers to buy and install their tubes, they started the same program of concerted terroristic tactics. They threatened jointly to sue the independent tube makers. They, through one of their banking associations, merged and financed four of the five complainants who had beaten them in the litigation involving the violation of the Clayton Act. They loaned $2,000,000 to this merged company with an option on its stock and completely dominated its affairs. This concern they then had execute a tube license, under which it was agreed to pay a 7½ per cent royalty to the Radio Trust. They created conditions in the trade similar to that which has been described as existing in the trade with respect to radio-receiving sets. Without a single favorable adjudication upon a patent in the tube art, having been repeatedly beaten in the courts whenever they asserted infringement of their patents on tubes, yet by their great size and power they have placed most of the independent tube manufacturers under a 7½ per cent royalty by license agreements. I am reliably informed that it is extremely doubtful whether in the radio vacuum-tube field any competitor can give a 7½ per cent handicap to the radio combination and survive.

The most flagrant thing, however, in connection with these licenses on vacuum tubes is that the licenses absolutely prohibit the making of vacuum tubes by the licensees for any purpose except for installation in radio receiving sets.

All of the fields of application of the vacuum tube which I have referred to are closed to those in the business with the exception of the Radio combination. They are rapidly fastening their tentacles upon this marvelous instrumentality. The vacuum tube has brought the vibration of sound around the globe to the human ear. Through television it is expected to bring all things within the vision of the human eye. There has been a stupendous change in the veritable organism of man, and there is a cunning, wicked plot to place it all under the domination of a private monopoly.

PATENT RACKETEERING

The Radio Trust claim to monopoly has been built up under the pretense of an alleged patent situation. Asserting the ownership of 4,000 patents it insists that it controls radio so completely that no competitor can enter the field without infring-

ing one or the other of that multitude of patents, owned by its various members.

That is what witnesses before House and Senate committees have called "patent racketeering." Other trusts have been built up on such a pretense, but none has ever attained the size and the arrogant insolence of the Radio Trust.

"The patent system of the United States was originally conceived to provide unusual rewards for human labor of a high order," said E. B. Reichmann, representing the Radio Protective Association and other independent radio interests.

"It is now being used by aggregations of capital as an instrument for monopolistic control of great arts and industries. This development is exactly and completely destroying the original purpose of issuing patents and human labor is being excluded from any of the rewards which result."

The conduct and contentions of the members of this combination raises one of the most serious problems that has ever been presented to this Congress. If the contentions of this group can be upheld as a matter of law through the patent statutes, then the antitrust statutes can and will be destroyed. They take the position that the grant of a patent by the Patent Office entitles them to center into commercial arrangements and build institutions which have the effect of monopolizing interstate commerce. This is clearly a perversion of the patent statutes. A patent is issued by an administrative body after a hearing which is secret and ex parte. A patent examiner, in passing upon an application to determine whether it has novelty and invention, is governed only by the art which has been disclosed by a search in the Patent Office, and what the examiner may know of the art of his own personal knowledge. His findings are not conclusive, and are not adjudications as to persons not parties to the Patent Office proceedings. The Government does not guarantee the validity of a patent; it makes no pretense of standing back of a patent. The patent statutes clearly provide the only method by which a patent may be enforced, namely, by judicial proceedings to enjoin infringers, or by an action to recover damages for infringement, or both. Under the patent statutes an alleged infringer has his day in court. He is entitled to all the protection of a judicial hearing. No matter to what a degree a patent may have been adjudicated against others, an alleged infringer may not be excluded from interstate commerce under the patent statutes without having his day in court. The patent statutes provide only for the enforcement of the rights arising out of a patent by actions in personam.

The members of this combination claim that a patent being a monopolistic right, they may enter into commercial arrangements and combinations and develop an economic situation, where by economic action and not by process of law, their competitors, whom they allege to be infringers, are shut out of commerce. This is a lawless and a profoundly dangerous doctrine. In essence it means that the Patent Office, in a secret ex parte proceeding, can grant a right that was once only a prerogative of the Crown—and was taken away from the Crown by the blood and tears of our ancestors. A patent gives exclusive rights—yes—but, if valid, it must be enforced through the courts and put to the acid test of litigation.

MONOPOLY METHODS DECLARED ILLEGAL BY COURTS

The patent statutes provide and the courts have consistently held that the rewards of the patent must be confined to the specification of the patents. It is perfectly clear that when you combine as one single patent threat the many thousands of patents controlled by this combination, backed by their enormous resources, such a situation develops power which is infinitely greater than the same patent or patents individually owned.

In the Oil Cracking case, which is the most recent decision on questions involved here, the court said:

Defendants contend that the grant of a patent is a grant of a monopoly; that while such a monopoly is a burden on commerce it is a lawful burden; that the owner of a patent may grant licenses thereunder, whether few or many, and the effect of each license agreement is to partially lift the lawful monopoly evidenced by the patent. In short, it is argued, licenses promote instead of restrict competition and license agreements, no matter what their conditions may be, necessarily extend the freedom to manufacture and to sell the patented article. They therefore contend their arguments are not within the condemnation of the Sherman antitrust law.

The ownership of a patent unquestionably carries with it certain rights, monopolistic in character. Nevertheless, the owner of a patent can use it as property, only subject to the Sherman antitrust law; that is to say, A. B, C, and D can not legally contract respecting their patents in violation of the terms of this law.

To illustrate, A has a valid patent used by numerous licensees. B has a valid patent which other licensees use. Notwithstanding A and B each has a monopoly, there is competition. But it would be a plain violation of the antitrust act for A and B, thus having certain monopolies which are in competition one with another, to combine to eliminate competition between their monopolies and impose or maintain burdens which exist, not by virtue of the monopolies, but by virtue of the agreements dealing with their monopolies as property.

It is in this respect that these various agreements step outside the limits of lawful monopolies which arise from the issuance of the patents. The patent monopoly itself is a property right, and agreements in respect thereto must be subject to the same antimonopoly tests as any other property rights.

There is substantial difference between agreements entered into by competing packing companies respecting the prices at which or territories wherein their products may be sold and an agreement between holders of patent monopolies which fix the rates of royalties that shall be charged to licensees.

In fact, we may go further and say that pooling agreements between holders of patents whereby royalties are fixed and the division of proceeds derived from royalties provided for are within the condemnation of the Sherman antitrust law. * * *

In so far as these agreements are license agreements, they are unobjectionable. To the extent that they go beyond license agreements, they are subject to the inhibitions of the Sherman Act.

BILL TO MEET SITUATION

I have introduced a bill, H. R. 13157, which provides:

That it shall be a complete defense to any suit for infringement of a patent to prove that the complainant in such suit is using or controlling the said patent in violation of any law of the United States relating to

unlawful restraints and monopolies or relating to combinations, contracts, agreements, or understandings in restraint of trade, or in violation of the Clayton Act or the Federal Trade Commission act.

This bill is designed to prevent abuses and lawless tactics which have been disclosed at various hearings before the Committee on the Merchant Marine and Fisheries of the House during the past eight years, and which said committee brought to the attention of the Congress in a House resolution and report thereon as early as February, 1923. I have repeatedly pointed out and condemned these abuses and evils, as have other Members of the House and the Senate.

This bill is similar to one which Senator DILL introduced some time ago, and upon which the Senate Committee on Interstate Commerce held comprehensive hearings, which revealed a startling, illegal, and oppressive abuse of patents by various monopolies, particularly by the Radio Trust. The Committee on Interstate Commerce has unanimously reported Senator DILL's bill.

As before explained, the suit recently commenced by the Department of Justice for the dissolution of the Radio Trust is largely upon an unlawful pooling of patents and the unlawful monopolization thereby of all branches of the radio industry.

This bill is not revolutionary in character, but is designed to effectuate the antitrust statutes and to protect independent inventors and manufacturers against the lawless and terroristic tactics of powerful combinations. It makes no act unlawful, but simply tends to prevent the commission of acts already made unlawful by our statutes. It merely provides that a patent owner who is violating the existing antitrust laws can not enforce its patents in the courts so long as it persists in such violation. It merely requires a patent owner to "come into court with clean hands." That is no new principle of either law or morals. It is a rule of law that is recognized in every civilized country. It is older than the patent laws themselves.

This bill will stop patent racketeering. It will put an end to the so-called "Patent Trusts." It will stop the pernicious and unlawful practice employed by some monopolies to cover their illegal operations under the pretense of patent ownership. It will not interfere with the legal monopoly possessed by the owner of a patent. This bill is not directed against and will not affect lawful cross licensing of patents, which is legitimately employed in some of the industries. This bill should have the enthusiastic support of every Member of Congress who believes in the enforcement of the antitrust laws. I shall ask for its immediate consideration by the House Committee on Patents when Congress reconvenes in December.

The different documents which I have stated I would insert in the RECORD are as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., August 25, 1921.

JAMES R. SHEFFIELD, ESQ.
52 Williams Street, New York City.

MY DEAR MR. SHEFFIELD: I acknowledge with thanks the receipt of your letter of the 12th instant explaining certain agreements entered

into between the Radio Corporation of America, the General Electric Co., the Westinghouse Electric & Manufacturing Co., the International Radio & Telegraph Co., and the American Telephone & Telegraph Co.

Your attitude in thus placing the matter before me is much appreciated. I regret to have to inform you, though, that it would not be permissible for me to comply with your request. To do so would violate the long-standing rule of the department that the Attorney General will not express an opinion on legal subjects except to the President and the heads of executive departments.

However, I see no impropriety in saying to you that if in the future complaint is made in reference to the agreements in question, or in regard to anything that may be done thereunder, the department will give due consideration to all that you have submitted, both orally and in writing.

Indeed, I am prepared to go a step further and say that in the event any complaint should reach the department which it should consider required an investigation, no conclusion will be reached or action taken by the department under my administration without advising you and giving you full opportunity to present your views. While I am the head of the department, if I can prevent it, no hasty action will be taken in cases of doubt and good faith, especially when, as in the present case, the facts are frankly presented to the department. Assuring you of my personal esteem.

Yours very truly,

H. M. DAUGHERTY, *Attorney General.*

COMPLAINT OF FEDERAL TRADE COMMISSION

With respect to this complaint, the Federal Trade Commission made the following statement:

FEDERAL TRADE COMMISSION,
Washington, January 28, 1924.

Monopoly in radio apparatus and communication, both domestic and transoceanic, is charged in a complaint issued by the Federal Trade Commission to-day. Efforts to perpetuate the present control beyond the life of the existing patents are likewise charged.

Radio Corporation of America, General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., the International Radio Telegraph Co., United Fruit Co., and Wireless Specialty Apparatus Co., are named as respondents and are alleged to have violated the law against unfair competition in trade to the prejudice of the public.

In the language of the complaint "the respondents have combined and conspired for the purpose and with the effect of restraining competition and creating a monopoly in the manufacture, purchase, and sale in interstate commerce, of radio devices and apparatus, and other electrical devices and apparatus, and in domestic and transoceanic radio communication and broadcasting."

To attain the present control alleged, the complaint recites that the respondents (1) acquired collectively patents covering all devices used in all branches of the art of radio, and pooled these rights to manufacture, use, and sell radio devices, and then allotted certain of the rights exclusively to certain respondents; (2) granted to the Radio Corporation of America the exclusive right to sell the devices controlled and required the radio corporation to restrict its purchases to certain respondents; (3) restricted the competition of certain respondents in the fields occupied by other respondents; (4) attempted to restrict the use of apparatus in the radio art manufactured and

sold under patents controlled by the respondents; (5) acquired existing essential equipment for transoceanic communication and refused to supply to others necessary equipment for such communication; and also excluding others from the transoceanic field by preferential contracts.

From the series of contracts referred to in the complaint it appears that the Radio Corporation of America has the right to use and sell under patents of the various respondents which relate to the radio art. It has also given to various respondents the right to manufacture under these patents. Thus there has been combined in the hands of these corporations patents covering the vital improvements in the vacuum tube used in long-distance communications and other important patents or inventions in radio which supplement this central device. Approximately 2,000 patents are involved.

The report of the Federal Trade Commission on the radio industry stated that the gross income of the Radio Corporation in 1922 was $14,830,856.76, and that its capital stock on December 31, 1922, was $33,440,033.56. The holdings of the several respondents in the Radio Corporation of America are given as follows:

	Number of shares	
	Preferred	Common
General Electric Co	620,800	1,876,000
Westinghouse Electric & Manufacturing Co	1,000,000	1,000,000
American Telephone & Telegraph Co	400,000	
United Fruit Co	200,000	160,000

It is further stated that up until 1922 the Radio Corporation had an absolute monopoly in the manufacture of vacuum tubes and for the first nine months of 1923 sold 5,509,487 tubes. During the same period the only other concern having the right to make and sell tubes sold 94,100 tubes.

In the communication field, while the Radio Corporation has some competition in the ship-to-shore communication, it has a practical monopoly in transoceanic service. It controls all the high-power stations in this country except those owned by the United States Government. Agreements of an exclusive character have been entered into with the following countries, or with other concerns in control of the situation in those countries, namely, Norway, Germany, France, Poland, Sweden, Netherlands, South America, Japan, and China. Arrangements have also been made with the land telegraph companies in this country whereby messages will be received at the offices of the Western Union and Postal Telegraph Cos.

A summary of the contracts between the respondents as recited in the complaint is: First, the organization of the Radio Corporation of America in 1919 under the supervision of the General Electric Co., which company received large holdings in the stock of the Radio Corporation for capital supplied and for its service in connection with the acquisition of the American Marconi Co. An agreement entered into between these companies granted to the Radio Corporation an exclusive license to use and sell apparatus under patents of the General Electric Co. until 1945; and the Radio Corporation granted to the General Electric Co. the exclusive right to sell through the Radio Corporation of America only, the corporation agreeing to purchase from the General

Electric Co. all radio devices which the General Electric Co. could supply. Subsequently this arrangement was extended to include the Westinghouse Electric & Manufacturing Co., the business of the Radio Corporation being apportioned between the General Electric Co. and the Westinghouse Co., 60 per cent to the General Electric and 40 per cent to the Westinghouse Co.

Meanwhile, in July, 1920, the General Electric Co. and the American Telephone & Telegraph Co. made an arrangement for mutual licensing on radio patents owned by each and providing for traffic relations. The terms of this agreement were extended to the Radio Corporation of America and the Western Electric Co. and thereafter to the Westinghouse Co.

The Radio Corporation in March, 1921, made an agreement with the United Fruit Co., which operated a number of long-distance radio stations in Central and South America, by which licenses under radio patents of the Radio Corporation and of the United Fruit Co. and its subsidiary, the Wireless Specialty Apparatus Co., were exchanged, and arrangements made for the exchange of traffic facilities, and the definition of their respective fields adopted between the Radio Corporation and the United Fruit Co. Provisions of the agreements between the Radio Corporation of America, the General Electric Co., the American Telephone & Telegraph Co., and the Western Electric Co. were extended to the United Fruit Co.

[H. Con. Res. 47, 70th Cong., 2d sess.]

Concurrent resolution

Whereas the House of Representatives of the Congress of the United States on March 3, 1923, unanimously passed a resolution requesting the Federal Trade Commission to investigate and to report the facts concerning attempts to monopolize the manufacture of radio apparatus as well as radio communication to "aid the House of Representatives in determining whether * * * the antitrust statutes of the United States have been or now are being violated by any person, company, or corporation subject to the jurisdiction of the United States," and

Whereas pursuant to said resolution, the Federal Trade Commission did make such investigation and transmitted to the Speaker of the House of Representatives a report of 347 pages embracing various agreements made by and between the General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., International Radio Telegraph Co., United Fruit Co., Wireless Specialty Apparatus Co., and Radio Corporation of America, contracting to pool the radio patents of these companies, allocating to each other their respective fields of manufacture, sale, and use of radio apparatus and facilities, and to restrain their use so as to give to this group what has been alleged to be a monopoly of radio manufacture, and communications in the United States as well as between the United States and foreign countries; and reciting various acts and practices of said companies pursuant to said agreements; and

Whereas said Federal Trade Commission, after submitting said report and upon its own motion, did, on January 28, 1924, issue a formal complaint charging that said General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., International Radio Telegraph Co., United Fruit Co., Wireless Specialty Apparatus Co., and Radio Corporation of America "have combined and conspired for the purpose and with the effect of restraining competition and creating a monopoly in the manufacture, purchase, and sale in interstate commerce, of radio devices and

apparatus, and other electrical devices and apparatus, and in domestic and transoceanic radio communications and broadcasting"; and

Whereas said Federal Trade Commission, at great expense has spent five years in hearing evidence to support these charges and has accumulated 10,000 pages of sworn testimony and exhibits; and

Whereas said Federal Trade Commission, following a recent decision of the Supreme Court of the United States that said commission has no jurisdiction over violations of the antitrust laws, and that the remedy for such violations must be administered by the courts in appropriate proceedings therein instituted, has dismissed said complaint; and

Whereas, if the charges contained in said complaint are true, it is the duty of the Department of Justice to prosecute such violators, and to obtain from the United States courts such injunctions or other orders as may be necessary to dissolve such alleged Radio Trust, and to obtain such other relief as may be proper to assure free competition in radio manufacture, sale, and communications: Therefore be it

Resolved by the House of Representatives (the Senate concurring), That the Federal Trade Commission be, and it is hereby, requested to immediately transmit to the Attorney General of the United States all such testimony, exhibits, and other information obtained by it in connection with its investigation of the complaint aforesaid and such other pertinent information as it may have in connection with this subject; and be it further

Resolved, That the Attorney General of the United States be, and he is hereby, requested to have immediate consideration given to the evidence so presented, and to have the Department of Justice take such action on the charges of violations of the antitrust laws of the United States as such evidence and information may warrant, and to report to Congress as soon as convenient his decision and action in the premises.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., April 27, 1929.

Hon. EWIN L. DAVIS,
House of Representatives, Washington, D. C.

DEAR MR. CONGRESSMAN: Your letter of the 22d instant relative to the radio trade has been received. The department is now making an inquiry into this matter. Thank you for your offer of assistance, which I am calling to the attention of the gentlemen who are at work on the matter.

Very truly yours,

WILLIAM D. MITCHELL,
Attorney General.

[From the Washington Post, June 26, 1930]

PATENT ABUSE BY TRUSTS

When the United States Government issues a patent to an inventor, there should go with that special privilege an equal obligation not to use that patent to violate the laws of the Nation. Surely such a concession deserves at the hands of the recipient a decent respect for the Government which grants it.

To enforce this obligation, Senator DILL, of Washington, has introduced a bill which would make patents unenforceable so long as their owners are using them to violate the antitrust laws. As a result of the testimony concerning the operations of various so-called "patent trusts" the Senate Committee on Patents, headed by Chairman WATER-

.N, of Colorado, made a unanimous report to the Senate, favoring the passage of the Dill bill. In that report the committee says:

"This statute is intended to protect not only independent competitors of patent combinations that are illegal, but also those who are independent inventors in the arts. At the present time independent inventors often find it almost impossible to secure a market for their inventions. They must either sell their patents to an existing monopoly on whatever terms it decides to fix, or they must find capital that will not be intimated by the fear of having to fight a firmly entrenched monopoly, and to carry on defensive litigation to prevent that monopoly from destroying the new invention.

"The very fact that the Government has issued a patent to an inventor, an exclusive privilege, a monopoly, granting him the right, for 17 years, to exclude anyone else from manufacturing, using, or selling his invention should put upon such a patentee the burden of a scrupulous observance of the laws of the United States. It is particularly iniquitous if the holder of such a privilege should use it to violate the antitrust statutes or any other laws.

"It has been charged that legislation of this character threatens to break down the patent system upon which our industrial progress has been largely founded. This is not true. The destruction of the benefits of that patent system will be inevitable if those who abuse it to create illegal monopolies are permitted to continue to protect their infractions of the law under pretense of patent rights."

As Chairman WATERMAN of the committee puts it, the bill requires patent owners "to come into court with clean hands." No patent owner should object to such a requirement. According to its proponents, the bill does not propose to confiscate patents. It merely provides that a patent owner can not enforce his rights while he is violating the antitrust laws. All he needs to do to restore his full patent privileges, is to stop violating the law.

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