

1 California Computer Products, Inc. v. Int'l Bus. Machines Corp., 613 F.2d 727 (9th Cir.
... 1979)

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3 Before CHOY and KENNEDY, Circuit Judges, and PALMIERI,[*] District Judge.

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5 CHOY, Circuit Judge:

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7 California Computer Products, Inc. ("Cal-Comp") appeals from the judgment entered on a
... directed verdict in favor of appellee International Business Machines Corp. ("IBM") as to
... all counts of its complaint charging IBM with violations of § 2 of the Sherman Act, 15
... U.S.C. § 2. We affirm.

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9 I. BACKGROUND AND PROCEEDINGS BELOW

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11 IBM is one of the largest industrial corporations in the world. It achieved technical
... leadership in the computer industry over other early entrants, such as Sperry Rand, in the
... mid-1950's and thereafter pioneered the development of many electronic data processing
... products, including the disk products involved in this litigation. {731}

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13 Disk products are part of a broader category of what is known as peripheral equipment,
... such as disks, tapes, printers, and terminals, which is connected to the central
... processing unit ("CPU") to enable the data processing system to perform particular
... functions. Included in the reference to disk products are disk drives, devices using
... magnetic disks similar in appearance to phonograph records to store information, and
... controllers, used for communication between disk drives and the CPU. Occasionally these
... devices are built into the CPU; alternatively, they exist as external components that may
... be "plugged into" the CPU. As a general purpose computer systems manufacturer, IBM sells
... both CPUs and peripherals, including disk products. {731}

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15 CalComp began manufacturing computer products in 1960 [...] With the acquisition of
... Century Data Systems in 1969, CalComp entered the disk products market, manufacturing disk
... drives and controllers that were "plug compatible" with IBM's and other suppliers' CPUs.
... CalComp's business strategy with respect to IBM-compatible disk products was
... straightforward: copy and, where possible, improve upon an IBM design, and undersell IBM
... to its own customers. By the "reverse engineering" of simply buying a device from IBM,
... taking it apart, and building a similar one, CalComp was able to avoid IBM's expenditures
... for research and development and pass the savings on through lower prices. {731}

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17 CalComp commenced this lawsuit on October 3, 1973. The complaint alleged that IBM's
... introduction of new CPUs and disk products, its price cuts on existing disk products, its
... leasing policies, and other marketing practices prevented CalComp from effectively
... competing with IBM for disk product sales and thus violated § 1 and § 2 of the Sherman
... Act.[1] CalComp alleged and attempted to prove that these acts by IBM took place within a
... ten year span, from late 1963 to 1972, resulting in treble damages of \$306 million.
... Following over three years of discovery and pretrial, trial to a jury began on November
... 15, 1976. At the conclusion of fifty-four days of trial covering three months, the
... district court granted IBM's motion for directed verdict on February 11, 1977. {731}

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19 The records and transcript on this appeal comprise 132 volumes. Voluminous briefs {732}
... and supplemental briefs by the parties and amicus briefs were permitted. We have
... considered all of the arguments advanced and scrutinized pertinent parts of the record,
... particularly in view of the nature of the appellate task on review of a directed verdict.
... {732}

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21 II. ANTITRUST STANDING

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25 B. GENERAL § 2 DOCTRINE

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27 CalComp contends that the evidence was sufficient to show that particular conduct {735} on
... the part of IBM, detailed below, violated either or both the monopolization and attempt to
... monopolize clauses of § 2 of the Sherman Act.[5] [...]

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29 1. MONOPOLIZATION

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31 There are three essential elements to a successful claim of § 2 monopolization:

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- 33 (a) the possession of monopoly power in the relevant market;
- 34 (b) the willful acquisition or maintenance of that power; and
- 35 (c) causal "antitrust" injury.

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39 2. ATTEMPT TO MONOPOLIZE

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41 There are four elements to a successful claim of § 2 attempt to monopolize:

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- 43 (a) specific intent to control prices or destroy competition with respect to a part of
... commerce;
- 44 (b) predatory or anticompetitive conduct directed to accomplishing the unlawful
... purpose;
- 45 (c) a dangerous probability of success; and
- 46 (d) causal "antitrust" injury.

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50 C. CALCOMP'S EVIDENCE

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54 1. MARKET EVIDENCE

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56 Earlier it was noted that CalComp sought to define three relevant product markets: (a) a
... general purpose computer systems market; (b) an all disk drive and associated controller
... market; and (c) a plug-compatible disk drive and associated controller market (which
... excluded disk products for use with the CPU's of other manufacturers).[15] [...] [W]e
... assume arguendo that the third category is an appropriately defined product market. As
... noted earlier, it is the only market about which CalComp has standing to sue. {738}

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60 CalComp offered expert testimony that in 1970, 1971 and 1972, IBM's share of the all disk
... drive and associated controller market was 79.4%, 70.1% and 67.6% respectively, while
... IBM's evidence was that its share was under 30% during these years: CalComp's figures
... reflected cumulative shipments of disk products, while IBM's data was based on annual
... shipments. IBM contended that because its share of market was rapidly declining (from 100%
... when it invented disk products in 1960 to 25% in 1975), cumulative measures were

60... misleading. In the plug-compatible market, IBM – again, because it invented these products
... – began with a 100% share; here too, CalComp's own evidence showed that IBM's share of
... market declined steadily. {738}

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64 2. EVIDENCE OF § 2 VIOLATIONS

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66 CalComp argues that IBM directly injured it in three ways. Principally, CalComp contends
... that IBM engaged in "predatory" pricing by cutting its peripheral equipment prices in
... response to competition from CalComp and other manufacturers. CalComp also attempts to
... show that IBM made design changes on certain of its CPUs, disk drives and controllers of
... no technological advantage and solely for the purpose of frustrating competition from
... plug-compatible manufacturers. Finally, it urges that IBM raised CPU prices in an effort
... to offset revenue losses caused by its price reductions on peripheral equipment, and that
... these price increases constituted impermissible conduct for a monopolist.[16]

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68 A. PRICE CUTS ON PERIPHERALS

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72 B. DESIGN CHANGES

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74 As noted above, when IBM introduced its System 370 Model 145 in September, 1970, it
... announced the 2319A as the standard disk product for use with the 145. The control
... function for the 2319A disk drive was integrated into the Model 145 CPU, and thus the
... interface between the disk drive and its control function was different from earlier
... models.[28] CalComp claimed that it was competitively disadvantaged as a result of these
... design changes, because it could not legally begin to copy the 2319A until IBM shipped the
... first of these disk drives, thereby disclosing the design requirements. {743}

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76 In February, 1971, IBM introduced its optional Integrated Storage Controller for use with
... its System 370 Models 158 and 168 which integrated the disk control function into the CPU.
... CalComp claimed it was injured by the introduction of ISC and the similar IFA, described
... above, because it was thereby precluded from replacing the control functions on CPUs with
... these options.[29]

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78 CalComp characterized these design changes as "technological manipulation" which did not
... improve performance. It also complained of the fact that the newly integrated functions
... were priced below their non-integrated counterparts. But as we have stated, price and
... performance are inseparable parts of any competitive offering; and equivalent function at
... lower cost certainly represents a superior product from the buyer's point of view. The
... evidence at trial was uncontroverted that integration was a cost-saving step, consistent
... with industry trends, which enabled IBM effectively to reduce prices for equivalent
... functions. Moreover, there was substantial evidence as well that in the case of Models
... 145, 158 and 168 the integration of control and memory functions also represented a
... performance improvement. {743}

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80 One of CalComp's witnesses stated: "I think in general the manufacturer will try and
... minimize his costs and where he integrates the control unit the assumption must be that he
... is achieving a lower cost solution." [30] Other of CalComp's evidence showed that among the
... reasons a separate control unit is more expensive than integrated control circuitry are
... that the former requires its own cabinet, frames, power supply, additional cabling and
... electronics. According to an IBM witness, the monolithic systems technology that preceded

80... the 145-2319A system required a large standalone controller, whereas the new generation
... technology represented by the 145-2319A system produced a comparable control function
... "which was in the area of ten times smaller [Y]ou could now put that into the 145
... system, utilizing its frames and its covers and then passing on the advantages of that to
... the customer in a price reduction." CalComp's Chairman stated that as a result of
... integration, the customer uses less floor space which "tends to be relatively expensive in
... a computer room." [31] {743}

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82 IBM, assuming it was a monopolist, had the right to redesign its products to make them
... more attractive to buyers – whether by reason of lower manufacturing cost and price or
... improved performance. It was under no duty to help CalComp or other peripheral equipment
... manufacturers survive or expand. IBM need not have provided its rivals with disk products
... to examine and copy ... nor have constricted its product development so as to facilitate
... sales of rival products. The reasonableness of IBM's conduct in this regard did not
... present a jury issue. {743}

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84 C. INCREASES IN CPU PRICES

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88 IV. CONCLUSION

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92 [T]he judgment of the district court entered on its directed verdict is

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94 AFFIRMED.