

The Burger Court Opinion Writing Database

Zenith Radio Corp. v. Hazeltine Research
401 U.S. 321 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 8, 1971

No. 80 - Zenith Radio Corp. v. Hazeltine Research

Dear Byron:

Please join me in the above.

Regards,

Webb
WEB

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 21, 1971

Dear Byron: Re: No. 60- Zenith v. Hazeltine

I agree.

Sincerely,
H. L. B.
H. L. B.

Mr. Justice White

cc: Members of the Conference

January 21, 1971

Dear Byron:

In No. 80 - Zenith Radio v.
Hazeltine Research, please join me in
your opinion.

W. O. D.

Mr. Justice White

Wm Adm
#1477

January 22, 1971

Re: No. 80 - Zenith v. Haseltine

Dear Byron:

I regret to find myself unable to join your opinion. Having reexamined the record, I find it very clear that the trial court held both the defenses of the statute of limitations and release waived, and that the Court of Appeals erred in reversing this holding and reaching the merits. Accordingly, I plan to deliberate, as soon as I can, a separate opinion concerning the result of your opinion on this ground.

Sincerely,

J. M. H.

Mr. Justice White

CC: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

Circulated: JAN 26 1971

No. 80.—OCTOBER TERM, 1970

Recirculated: _____

Zenith Radio Corporation, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Seventh
Hazeltine Research, Inc. } Circuit.

[February —, 1971]

MR. JUSTICE HARLAN, concurring in the result.

My review of the record in this case has left me with the firm conviction that the trial judge rejected Hazeltine's proffered defenses of release and the statute of limitations on the ground that they were too belatedly raised. I agree with the Court that such a course was within the trial judge's sound discretion. I therefore find it unnecessary to express any view on the remaining, difficult issues which the Court discusses.

A consideration of the posture of the case at the time of the trial judge's ruling facilitates an understanding of the record. Two years after the filing of Zenith's counterclaim, one year after the close of evidence, nine months after the filing of Hazeltine's post-trial brief, and two months after the trial judge had made preliminary findings of fact and conclusions of law, Hazeltine, represented by new counsel, raised for the first time its defenses of release and the statute of limitations. It also sought to dispute the quality and the sufficiency of the proof of damages with respect to the Canadian market, and it raised the issue of governmental embargoes in the English and Australian markets.

The District Judge heard two days of argument, covering nearly 200 pages of the Appendix, on both the merits of the contentions and the equity of allowing Hazeltine to raise them so belatedly. Hazeltine argued that it

1,2

3rd DRAFT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 80.—OCTOBER TERM, 1970

Circulated:

Recirculated:

FEB 10 1971

Zenith Radio Corporation, Petitioner,
v.
Hazeltine Research, Inc.

On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[February —, 1971]

MR. JUSTICE HARLAN, with whom MR. JUSTICE STEWART joins, concurring in the result.

My review of the record in this case has left me with the firm conviction that the trial judge rejected Hazeltine's proffered defenses of release and the statute of limitations on the ground that they were too belatedly raised. I agree with the Court that such a course was within the trial judge's sound discretion. I therefore find it unnecessary to express any view on the remaining, difficult issues which the Court discusses.

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2,4

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

4th DRAFT

From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 80.—OCTOBER TERM, 1970

Recirculated: FEB 20 1971

Zenith Radio Corporation, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Seventh
Hazeltine Research, Inc. } Circuit.

[February —, 1971]

MR. JUSTICE HARLAN, with whom MR. JUSTICE STEWART joins, concurring in the result.

My review of the record in this case has left me with the firm conviction that the trial judge rejected Hazeltine's proffered defenses of release and the statute of limitations on the ground that they were too belatedly raised. I agree with the Court that such a course was within the trial judge's sound discretion. I therefore find it unnecessary to express any view on the remaining, difficult issues which the Court discusses.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 22, 1971

RE: No. 80 - Zenith Radio Corporation v.
Hazeltine Research, Inc.

Dear Byron:

Please join me in the opinion you have
prepared in the above case.

Sincerely,


W. J. B. Jr.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
GE POTTER STEWART

January 28, 1971

No. 80 - Zenith Radio Corp. v. Hazeltine Research

Dear John,

I should appreciate your adding my name to your concurring opinion in this case. I understand that if a majority of us believe that the case should be decided on the basis of waiver, Byron would be willing to amend his opinion to reflect that view, and that you would then withdraw your concurring opinion.

Sincerely yours,

(P.S.)

Mr. Justice Harlan

Copies to the Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
~~Mr. Justice~~ Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 1-20-71

No. 80.—OCTOBER TERM, 1970

Recirculated: _____

Zenith Radio Corporation, | On Writ of Certiorari to the
Petitioner, | United States Court of
v. | Appeals for the Seventh
Hazeltine Research, Inc. | Circuit.

[January —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This is the second time this marathon litigation has been before this Court. It began in 1959 as a suit for patent infringement brought by HRI against Zenith. In 1963, Zenith filed a counterclaim against HRI alleging violations of the Sherman and Clayton Acts, 15 U. S. C. §§ 1-7, 12-27, by reason of HRI's participation in patent pools in Canada, Great Britain, and Australia. These pools, it was claimed, operated to exclude Zenith from those foreign markets by refusing the grant patent licenses to American manufacturers seeking to export American made radio and television sets. Trial was had without a jury. Zenith submitted telling evidence as to the existence and operation of the conspiracy and HRI's participation in each of the markets. Zenith demonstrated the fact and extent of its business injury by estimating the percentage of the foreign market it would have enjoyed absent the conspiracy during the four years prior to 1963 and showing the portion it actually enjoyed during those years. The difference between the profits it actually made and the profits it would have made in a free market during the four years was the measure of the damages demanded. *to*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 21, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 80 - Zenith Radio Corp. v. Hazeltine Research, Inc.

I neglected to accompany yesterday's circulation in this case with the following comments:

There was some sentiment in the Conference to reverse solely on the ground of waiver. I did not vote that way, preferring to reach the merits of the issues, especially since the Court of Appeals interpreted the trial court's action as rejecting the limitations and release defenses on their merits and not as a rejection based on waiver.

The current draft takes both approaches. With relatively minor changes, reversal could be rested on either ground alone. I prefer the present form or a revision reversing only on the merits. But I shall await your pleasure.


B.R.W.

Opp 9-12, 18, 22, 25

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: White, J.

Circulated:

Recirculated: 1-21-71

SUPREME COURT OF THE UNITED STATES

No. 80.—OCTOBER TERM, 1970

Zenith Radio Corporation, Petitioner,
v.
Hazeltine Research, Inc. } On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[January —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This is the second time this marathon litigation has been before this Court. It began in 1959 as a suit for patent infringement brought by HRI against Zenith. In 1963, Zenith filed a counterclaim against HRI alleging violations of the Sherman and Clayton Acts, 15 U. S. C. §§ 1-7, 12-27, by reason of HRI's participation in patent pools in Canada, Great Britain, and Australia. These pools, it was claimed, operated to exclude Zenith from those foreign markets by refusing to grant patent licenses to American manufacturers seeking to export American made radio and television sets. Trial was had without a jury. Zenith submitted telling evidence as to the existence and operation of the conspiracy and HRI's participation in each of the markets. Zenith demonstrated the fact and extent of its business injury by estimating the percentage of the foreign market it would have enjoyed absent the conspiracy during the four years prior to 1963 and showing the portion it actually enjoyed during those years. The difference between the profits it actually made and the profits it would have made in a free market during the four years was the measure of the damages demanded.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 4-6, 8-14, 18-19, 22, 25

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 80.—OCTOBER TERM, 1970

Recirculated: 2-4-71

Zenith Radio Corporation, | On Writ of Certiorari to the
Petitioner, | United States Court of
v. | Appeals for the Seventh
Hazeltine Research, Inc. | Circuit.

[February —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This is the second time this marathon litigation has been before us. It began in 1959 as a suit for patent infringement brought by Hazeltine Research, Inc. (hereafter HRI), against Zenith. In 1963, Zenith filed a counterclaim against HRI alleging violations of the Sherman and Clayton Acts, 15 U. S. C. §§ 1-7, 12-27, by reason of HRI's participation in patent pools in Canada, Great Britain, and Australia. These pools, it was claimed, operated to exclude Zenith from those foreign markets by refusing to grant patent licenses to American manufacturers seeking to export American made radio and television sets. Trial was had without a jury. Zenith submitted telling evidence as to the existence and operation of the conspiracy and HRI's participation in each of the markets. Zenith demonstrated the fact and extent of its business injury by estimating the percentage of the foreign market it would have enjoyed absent the conspiracy during the four years prior to 1963 and showing the portion it actually enjoyed during those years. The difference between the profits it actually made and the profits it would have made in a free market during the four years was the measure of the damages demanded.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1971

Re: No. 80 - Zenith Radio Corp. v. Hazeltine

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

January 25, 1971

Re: No. 80 - Zenith Radio Corp. v. Hazeltine Research, Inc.

Dear Byron:

Please join me in the opinion you propose for this case.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference