

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of)
)
)
GENERAL ELECTRIC COMPANY,)
a corporation.)
)
)
_____)

Docket No. C-4103
ORDER TO MAINTAIN ASSETS

The Federal Trade Commission having initiated an investigation of the proposed Acquisition by Respondent General Electric Company (“GE”), hereinafter referred to as “Respondent,” of certain assets of Agfa-Gevaert N.V. (“Agfa”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent GE is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Yor

schedules thereto, related to the Panametrics Ultrasonic NDT Assets to be divested to accomplish the requirements of this Order. The R/D Tech Asset Purchase Agreement is attached to the Decision and Order as non-public Appendix II.

- G. “Agency(ies)” means any governmental regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s) or permit(s) for any aspect of the research, development, manufacture, marketing, distribution or sale of Ultrasonic NDT equipment.
- H. “Closing Date” means the date on which Respondent (or a Divestiture Trustee) divests to the Commission-approved Acquirer the Panametrics Ultrasonic NDT Assets completely and as required by Paragraph II of the Decision and Order.
- I. “Commission-approved Acquirer” means either R/D Tech or any other entity that receives the prior approval of the Commission to acquire the Panametrics Ultrasonic NDT Assets, pursuant to Paragraph II of the Decision and Order.
- J. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondent that is not in the public domain related to the research, development, engineering, manufacture, use, distribution, cost, pricing, supply, marketing, sale, or after-sale servicing of Ultrasonic NDT.
- K. “Divestiture Agreement” means either the R/D Tech Asset Purchase Agreement or any other agreement that receives the prior approval of the Commission between Respondent and a Commission-approved Acquirer (or between a trustee appointed pursuant to Paragraph IV of the Decision and Order and a Commission-approved Acquirer) related to the Panametrics Ultrasonic NDT Assets required to be divested pursuant to Paragraph II of the Decision and Order.
- L. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph IV of the Decision and Order.
- M. “Effective Date” means the date the Acquisition is consummated.
- N. “Employee Notification” means the “Notice of Divestiture and Requirement for Confidentiality” attached to the Decision and Order as Appendix III and to this Order to Maintain Assets as Appendix B.
- O. “Flaw Detector” means an Ultrasonic NDT Product used to detect and characterize internal defects and anomalies in materials.
- P. “Governmental Entity” means any Federal, state, local or non-U.S. government or any

Q. “Indirect Sales Representatives and Distributors” means the individuals directly or indirectly employed by or under contract with Respondent who sell or distribute

3. an exclusive royalty free worldwide license to make, use, sell, practice any process or method, import, export, or otherwise dispose of the Ultrasonic NDT Licensed Intellectual Property; *provided, however*, that, if R/D Tech is the Commission-approved acquirer, then the required term of the license shall be that provided for in the R/D Tech Asset Purchase Agreement;
4. all Ultrasonic NDT Manufacturing Equipment;
5. all Ultrasonic NDT Software;
6. the identity of all customers of Ultrasonic NDT during the period from January 1, 1998, to the Effective Date and detailed information as to the pricing, product mix, and other terms (including, but not limited to, supply or rebate agreements) of Ultrasonic NDT for such customers;
7. at the Commission-approved Acquirer's option, each of the Ultrasonic NDT Assumed Contracts;
8. all unfilled customer orders for Ultrasonic NDT existing before the Effective Date (Respondent shall provide a list of such orders to the Commission-approved Acquirer within two (2) days after the Closing Date);
9. at the Commission-approved Acquirer's option, all inventories of Ultrasonic NDT in existence before the Effective Date, including, but not limited to, raw materials, work in process, and finished goods; and
10. all documents (including, but not limited to, computer files, electronic mail, and written, recorded, and graphic materials) related to the Panametrics Ultrasonic NDT Assets, including, but not limited to, the following specified documents: reports relating to the research and development of Ultrasonic NDT or of any materials used in the research, development, manufacture, marketing or sale of Ultrasonic NDT; all market research data and market intelligence reports; customer information; all records relating to employees that accept employment with the Commission-approved Acquirer (excluding any personnel records the transfer of which is prohibited by applicable law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to Ultrasonic NDT; all diagrams and schematics relating to Ultrasonic NDT; all analytical and quality control data; and all correspondence with Agencies relating to Ultrasonic NDT, but excluding (i) all tax returns, financial statements, and working papers of Panametrics relating to Non-NDT

Provided, however, that, if a document required to be produced pursuant to Paragraph I.Y.10 of this Order also contains information that is not related to the Panametrics Ultrasonic NDT Assets, Respondent need not produce that information to

material or structure.

FF. “Transducer” means an Ultrasonic NDT Product that imparts sound energy to the test material and receives sound energy reflected from the test material.

GG. “Ultrasonic NDT” or “Ultrasonic NDT Product” means NDT that uses ultrasound as the inspection modality, including, but not limited to, Flaw Detectors, Thickness Gages, Transducers, Phased Array NDT and Stationary Scanning Systems.

HH. “Ultrasonic NDT Assumed Contracts” means all contracts or agreements to which Respondent is a party to the extent related to Ultrasonic NDT and that existed before the Effective Date, as follows:

1. if R/D Tech is the Commission-approved Acquirer, Ultrasonic NDT Assumed Contracts include, but are not limited to, contracts listed in the Decision and Order at Schedule

5. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.

Provided, however, that “Ultrasonic NDT Intellectual Property” does not include the Ultrasonic NDT Licensed Intellectual Property.

JJ. “Ultrasonic NDT Licensed Intellectual Property” means rights within the field of use of Ultrasonic NDT to:

1. the fourteen (14) patents or patent applications used by Respondents for Non-NDT Products or Non-Ultrasonic NDT Products that are identified in Appendix V of the Decision and Order;
2. Ultrasonic NDT Trademarks, including the goodwill of the business symbolized thereby and associated therewith that are identified in Appendix VI of the Decision and Order;
3. Ultrasonic NDT Trade Dress; and
4. the know-how related to Ultrasonic NDT Manufacturing Technology and Ultrasonic NDT Research, Design, and Development that is Panametrics Shared Intellectual Property.

Provided however, that “Ultrasonic NDT Licensed Intellectual Property” does not include the “General Electric” or “GE” names or logos in any form.

KK. “Ultrasonic NDT Manufacturing Equipment” means all of Panametrics’ rights and ownership in equipment, machines, and computers, and all parts, information, files, diagrams, schematics, instructions, software, and hardware related thereto, used in the manufacture, quality assurance and quality control, and packaging of Ultrasonic NDT.

LL. “Ultrasonic NDT Manufacturing Technology” means all technology, trade secrets, know-how, diagrams, schematics, software, calibrations, inventions, practices, proprietary algorithms, testing techniques, methods and other confidential or proprietary information related to the manufacture, quality assurance and quality control, and packaging of Ultrasonic NDT owned or used by Panametrics before the Effective Date, including, but not limited to, manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.

MM. “Ultrasonic NDT Research, Design and Development” means intellectual property, materials and documents related to the research, design and development of Ultrasonic NDT, owned or used by Panametrics before the Effective Date, including, but not limited to, research materials, technical information, inventions, and other confidential or proprietary information related to research, design and development.

Agencies, employees, and others having business relations with the Panametrics Ultrasonic NDT Business. Respondent's responsibilities shall include, but are not limited to:

1. providing the Panametrics Ultrasonic NDT Business with sufficient working capital to operate the Panametrics Ultrasonic NDT Business at least at current rates of operation, to meet all capital calls with respect to the Panametrics Ultrasonic NDT Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Panametrics Ultrasonic NDT Business;
2. continuing, at least at their scheduled pace, any additional expenditures for the Panametrics Ultrasonic NDT Business authorized prior to the date the Consent Agreement was signed by Respondent;
3. making available for use by the Panametrics Ultrasonic NDT Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary, and all replacements as may be necessary;
4. providing the Panametrics Ultrasonic NDT Business with such funds as are necessary to maintain the viability, marketability and competitiveness of the Panametrics Ultrasonic NDT Business;
5. providing such support services to the Panametrics Ultrasonic NDT Business as were being provided to this business by Respondent as of the date the Consent Agreement was signed by Respondent;
6. maintaining a work force equivalent in size, training, and expertise to what has been associated with the Panametrics Ultrasonic NDT Business;
7. cooperating with the Interim Monitor in the performance of the Interim Monitor's obligations pursuant to the Orders;
8. providing all employees of the Panametrics Ultrasonic NDT Business with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondent until the Closing Date for the divestiture of the Panametrics Ultrasonic NDT Business has occurred, including regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law).

Provided, however, Paragraph II.B.8 of this Order shall not be construed to require the Respondent to terminate the employment of any employee.

- C. Prior to the Closing Date, and consistent with the provisions of the Decision and Order, Respondent shall not interfere with the hiring or employing of any employees by any Commission-approved Acquirer of any of the Panametrics Ultrasonic NDT Business, shall

not offer any incentive to such employees to decline employment with the Commission-approved Acquirer or to accept other employment with Respondent in lieu of accepting employment with the Commission-approved Acquirer, and shall remove any other impediments within the control of Respondent that may deter these employees from accepting employment related to the Panametrics Ultrasonic NDT Business with the Commission-approved Acquirer, including, but not limited to, any confidentiality provisions relating to the Panametrics Ultrasonic NDT Business or any non-compete provisions of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondent shall not make any counteroffer to an employee of the Panametrics Ultrasonic NDT Business who receives a written offer of employment from the Commission-approved Acquirer.

Provided, however, that Paragraph II.C of this Order does not prohibit the Respondent from making offers to any employee where the Commission-approved Acquirer has notified the Respondent in writing that it does not intend to make an offer of employment to that employee.

- D. Respondent shall to the extent permissible under applicable laws require, as a condition of continued employment post-divestiture, that each employee with access to any Confidential Business Information related to the Panametrics Ultrasonic NDT Assets, including the Panametrics Shared Intellectual Property, sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondent (other than as necessary to comply with the requirements of this Order).

Provided, however, that:

- i. Respondent may use such information only to the extent necessary to defend or prosecute claims relating to assets or liabilities that are retained by Respondent after the Effective Date.
 - ii. Paragraph II.D of this Order shall not apply to any Confidential Business Information related to Ultrasonic NDT that Respondent can demonstrate to the Commission that Agfa obtained without the assistance of GE prior to the Effective Date, or to Panametrics Shared Intellectual Property, which Respondent shall be permitted to use after the Effective Date only in connection with Non-NDT Products.
- E. Respondent shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Panametrics Ultrasonic NDT Assets, including Panametrics Shared Intellectual Property, by Respondent's personnel to all of Respondent's employees who (i) were involved in the research, development,

- C. Not later than ten (10) days after the appointment of an Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the relevant provisions of the Decision and Order in this matter, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondent of the divestiture of all relevant assets required to be divested pursuant to the Decision and Order in a manner that fully satisfies the requirements of the Orders and notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of producing the Ultrasonic NDT Product(s) acquired pursuant to a Divestiture Agreement independently of Respondent; or
 - b. the completion by Respondent of the last obligation under the Orders pertaining to the Interim Monitor's service; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
 4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the Panametrics Ultrasonic NDT Assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Orders.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
 6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
 7. Respondent shall report to the Interim Monitor in accordance with the requirements of the Decision and Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondent's obligations under the Orders or the Divestiture Agreement(s). Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning Respondent's performance of its obligations under the Orders.
 8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require each Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
 - F. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Decision and Order in this matter.
 - G. The Commission may on its own initiative, or at the request of an Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

- H. An Interim Monitor appointed pursuant to this Order to Maintain Assets or the relevant provisions of the Decision and Order in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that, for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, Respondent shall permit any duly authorized representative of the Commission:

- A. access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order to Maintain Assets; and
- B. upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the divestiture of all relevant assets required to be divested pursuant to the Decision and Order in a manner that fully satisfies the requirements of the Orders and notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of producing the Ultrasonic NDT Product(s) acquired pursuant to a Divestiture

**APPENDIX B
TO THE ORDER TO MAINTAIN ASSETS**

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

On December __, 2003, General Electric Company (“GE”), hereinafter referred to as “Respondent,” entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission (“FTC”) relating to the divestiture of certain assets. That Consent Agreement includes two orders: The Decision and Order and the Order to Maintain Assets.

The Decision and Order requires the divestiture of assets relating to the Panametrics Ultrasonic NDT Business. These assets are hereinafter referred to as the “Panametrics Divested Assets.” Both the Decision and Order and the Order to Maintain Assets require Respondent to commit that no Confidential Business Information relating to the Panametrics Divested Assets will be disclosed to or used by any employee of the entity formed by the merger of GE and of certain assets of Agfa-Gevaert N.V. (“Agfa”) (“Combined Entity”). In particular, this is to protect such information from being used in any way by the Combined Entity for the research, development, sale or manufacture of any product that competes, or may compete, with any product that is marketed by the acquirer of the Panametrics Divested Assets after the proposed acquisition. The Decision and Order also requires the complete divestiture of ALL documents (including electronically stored material) that contain Confidential Business Information related to the Panametrics Divested Assets. Accordingly, no employee of the Combined Entity may maintain copies of documents containing such information.

Under the Decision and Order, the Respondent is required to divest the Panametrics Divested Assets to an acquirer that must be approved by the FTC. R/D Tech, Inc. has been proposed to the FTC as the acquirer for these assets. Until aOn December ents (indsec

the Panametrics Divested Assets). In addition, any person who possesses such Confidential Business Information related to the Panametrics Divested Assets and who becomes involved in the Combined Entity's business related to any product that competes or may compete with the Panametrics Divested Assets must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment relates to such businesses. Finally, any GE or former GE or Agfa employee with documents that contain information that he or she believes might be considered Confidential Business Information related to the Panametrics Divested Assets and who has not received specific instructions as to how the documents in his or her possession should be disposed of should contact the contact person identified at the end of this notice.

No employee for GE or the Combined Entity who has work responsibilities in any way related to products that compete or may compete with the Panametrics Divested Assets shall have access to any facility containing Panametrics Divested Assets;

TO THE ORDER TO MAINTAIN ASSETS