

0310097

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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

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 makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent GE is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut 06431.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “GE” or “Respondent” means General Electric Company, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Electric Company (including, but not limited to, the GE Power Systems business of General Electric Company, General Electric Inspection Services, Inc., and Panametrics, Inc.), and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. “Agfa” means Agfa-Gevaert N.V., a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its offices and principal place of business located at Septestraat 27, B-2640 Morstel, Belgium; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Agfa.
- C. “R/D Tech” means R/D Tech, Inc., a corporation organized and existing under the laws of the Province of Quebec, with its offices and principal place of business located at 505, boul. du Pare-technologie, Quebec, Quebec, Canada G1P 4S9.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquisition” means the proposed Acquisition by Respondent of certain assets of Agfa by means of a Stock and Asset Purchase Agreement dated as of January 17, 2003, and the amendment to the Stock and Asset Purchase Agreement dated September 19, 2003, by and between Agfa and Respondent.
- F. “R/D Tech Asset Purchase Agreement” means the Asset Purchase Agreement by and

between Panametrics as Seller, GE as the parent of Seller, and R/D Tech as Purchaser, dated

- P. “Flaw Detector” means an Ultrasonic NDT Product used to detect and characterize internal defects and anomalies in materials.
- Q. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental Agency or governmental commission or any judicial or regulatory authority of any government.
- R. “Indirect Sales Representatives and Distributors” means the individuals directly or indirectly employed by or under contract with Respondent who sell or distribute Panametrics Ultrasonic NDT Products (irrespective of the portion of working time involved) listed in this Order at Schedule 3.12 (a) of non-public Appendix II.
- S. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the Order to Maintain Assets.
- T. “NDT” or “NDT Product” means any nondestructive testing equipment or system, excluding GE medical and process control products, used for the examination of materials

1. all the product lines and related brands identified in Appendix IV;
2. all Ultrasonic NDT Intellectual Property;

Products and Non-Ultrasonic NDT Products; and (ii) documents and other information subject to attorney-client privilege relating to Non-NDT Products and Non-Ultrasonic NDT Products;

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 the extent it is contained within a discrete segment of the document that otherwise must be produced.

Provided further, that the Commission-approved Acquirer shall be allowed access to redacted copies of such documents otherwise excluded by Paragraph I.Y.10(i and ii) of this Order to the extent they relate to Ultrasonic NDT.

- Z. “Panametrics Ultrasonic NDT Business” means Panametrics’ entire business relating to Ultrasonic NDT.
- AA. “Panametrics Ultrasonic NDT Employees” means:
1. if R/D Tech is the Commission-approved Acquirer of the Panametrics Ultrasonic NDT Assets, all of those individuals listed in this Order at Schedule 3.12 (a) of non-public Appendix II; or
 2. if R/D Tech is not the Commission-approved Acquirer of the Panametrics Ultrasonic NDT Assets, all of those individuals employed by Respondent (irrespective of the portion of working time involved) with any responsibility for the research, design, development, engineering, manufacturing, distributing, marketing, sales, or after-sales service and support of Panametrics Ultrasonic NDT Products worldwide within the eighteen (18) month period immediately prior to the Closing Date.
- BB. “Patents” means all Patents, patent applications and statutory invention registrations, in each case possessed or owned by Panametrics prior to the Effective Date, including all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for Patents and registrations thereto in the world, related to the manufacture, use, sale, service research or development of Ultrasonic NDT.
- CC. “Phased Array NDT” means Ultrasonic NDT technology that uses an array of transducers combined on a single probe to emit sound waves at different angles and intervals capable of creating a three-dimensional image of scanned material to inspect the structure and tolerance of materials without damaging or deforming them.
- DD. “Stationary Scanning System” means an Ultrasonic NDT Product that is a large mechanical

device for the inspection of industrial parts and is capable of automated or manual use as a Thickness Gage and/or a Flaw Detector.

EE. "Thickness Gage" means an Ultrasonic NDT Product used to measure the thickness of a

3. Ultrasonic NDT Scientific and Regulatory Material;
4. Ultrasonic NDT Research, Design and Development; and
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 this Order;
2. Ultrasonic NDT Trademarks, including the goodwill of the business symbolized thereby and associated therewith that are identified in Appendix VI of this 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,

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.

- NN. “Ultrasonic NDT Scientific and Regulatory Material” means all technological, scientific, chemical, and electrical materials and information related to Ultrasonic NDT owned or used by Panametrics before the Effective Date, and all rights thereto, in any and all jurisdictions.
- OO. “Ultrasonic NDT Software” means computer programs, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data,

Respondent under such agreement), and such agreement is incorporated by reference into this Order and made part hereof as non-public Appendix II.

Provided, however, that:

1. to the extent Respondent is required by this Order to assign Ultrasonic NDT Assumed Contracts to the Commission-approved Acquirer, where any such Ultrasonic NDT Assumed Contract also relates to Non-NDT Product(s) or Non-Ultrasonic NDT Product(s), Respondent shall assign the Commission-approved Acquirer all such rights under the contract or agreement as are related to Ultrasonic NDT, but concurrently may retain similar rights as are related to the Non-NDT Product(s) and Non-Ultrasonic NDT Product(s);
 2. in cases in which documents or other materials included in the Panametrics Ultrasonic NDT Assets contain information that (i) relates both to Ultrasonic NDT and to Non-NDT Products or Non-Ultrasonic NDT Product(s), and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to Ultrasonic NDT, Respondent shall be required only to provide copies of the documents and materials containing this information; *provided, however*, that Respondent shall, (a) wherever possible, redact the information contained in such documents or other materials retained pursuant to Paragraph II.A.2 of this Order and relating to Ultrasonic NDT Products; and (b) notify its employees that may have copies of documents described in Paragraph II.A.2 of this Order of the redactions Respondent has made to such documents; *provided further*, that Respondent may also redact information contained in the copies of documents or other materials relating to Non-NDT Products or Non-Ultrasonic NDT Products that it is required to provide to the Commission-approved Acquirer. In instances where such copies are provided to the Commission-approved Acquirer, and within thirty (30) days of giving notice to Respondent, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient, for example, for evidentiary or regulatory purposes; and
 3. if Respondent has divested the Panametrics Ultrasonic NDT Assets to R/D Tech prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that R/D Tech is not an acceptable acquirer of the Panametrics Ultrasonic NDT Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondent shall immediately rescind the transaction with R/D Tech and shall divest the Panametrics Ultrasonic NDT Assets, absolutely and in good faith, within ninety (90) days of rescission to a Commission-approved Acquirer in a manner that satisfies the requirements of Paragraph II of this Order.
- B. Any failure to comply with the terms of the Divestiture Agreement shall constitute a failure to comply with this Order. Any Divestiture Agreement shall be deemed incorporated by

reference into this Order, and any failure by Respondent to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.

- C. Respondent shall include in any Divestiture Agreement related to the Panametrics Ultrasonic NDT Assets the following provisions, and Respondent shall commit that, within ten (10) days of receiving a request from the Commission-approved Acquirer, the Respondent shall:
1. provide assistance and advice to enable the Commission-approved Acquirer to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell Ultrasonic NDT;
 2. provide such personnel, assistance, and training at a facility chosen by the Commission-approved Acquirer to manufacture Ultrasonic NDT, including, but not limited to, technical assistance relating to process technology, quality assurance, and quality control, and shall continue providing such assistance and training until the Commission-approved Acquirer is reasonably satisfied that it can manufacture Ultrasonic NDT in substantially the same manner and quality employed or achieved by or on behalf of Respondent, but no longer than eighteen (18) months following the Closing Date; and
 3. divest any additional, incidental assets of Respondent and make any further arrangements for transitional services to the Commission-approved Acquirer within the first eighteen (18) months after divestiture that may be reasonably necessary to assure the viability and competitiveness of the Panametrics Ultrasonic NDT Assets.

Provided, however, that for the services listed in Paragraph II.C.1-3 of this Order, Respondent shall charge the Commission-approved Acquirer a rate no greater than the Costs incurred by Respondent in rendering such services. Moreover, to the extent Respondent outsources any of the services listed in Paragraph II.C.1-3 of this Order to a third party, Respondent shall charge the Commission-approved Acquirer a rate no greater than the cost incurred by Respondent for the outsourced services, but in no case shall such charge exceed the Costs Respondent would have incurred had Respondent provided such services directly.

Provided further, that Paragraph II.C.1-3 of this Order shall not apply if R/D Tech is the Commission-approved Acquirer, if R/D Tech acquires the Panametrics Ultrasonic NDT Assets pursuant to the R/D Tech Asset Purchase Agreement, and if Respondent does not retain any Panametrics Ultrasonic NDT Employees qualified to provide such assistance and advice.

- D. Respondent shall:
1. for a period of six (6) months from the date Respondent and the Commission-approved Acquirer execute the Divestiture Agreement (“the access period”), provide the Commission-approved Acquirer with the opportunity to enter into employment contracts

with the Panametrics Ultrasonic NDT Employees, provided that such contracts are contingent upon the Commission's approval of the Divestiture Agreement;

2. provide the Commission-approved Acquirer an opportunity to inspect the personnel files and other documentation related to the Panametrics Ultrasonic NDT Employees to the

Provided, however, that Respondent may:

- 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.I 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.
- J. 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, manufacturing, sale, service, marketing or distribution of Ultrasonic NDT Products, and/or (ii) may have Confidential Business Information related to the Panametrics Ultrasonic NDT Assets, including Panametrics Shared Intellectual Property. Such notification shall be in substantially the form set forth in the Employee Notification. Respondent shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondent shall provide a copy of such notification to the Commission-approved Acquirer. Respondent shall maintain complete records of all such agreements at Respondent's corporate headquarters and shall provide an officer's certification to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondent shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.
- K. Pending divestiture of the Panametrics Ultrasonic NDT Assets, Respondent shall take such actions as are necessary to maintain the viability and marketability of the Panametrics Ultrasonic NDT Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Panametrics Ultrasonic NDT Assets except for ordinary wear and tear.
- L. Counsel for Respondent (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to:
 - 1. comply with any Divestiture Agreement, this Order, any law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or

2. defend against, respond to, or otherwise participate in any pending litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or licensing of any other aspect of the Panametrics Ultrasonic NDT Assets or Panametrics Ultrasonic NDT Business;

Provided, however, that Respondent may disclose such information only as necessary for the purposes set forth in Paragraph II of this Order pursuant to an appropriate confidentiality order, agreement or arrangement.

Provided further that:

- a. Respondent shall require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer; *provided, however,* that Respondent shall not be deemed to have violated Paragraph II.H of this Order if the Commission-approved Acquirer withholds such agreement unreasonably; and
 - b. Respondent shall use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- M. The purpose of the divestiture of the Panametrics Ultrasonic NDT Assets is to ensure the continued use of the Panametrics Ultrasonic NDT Assets in the same business in which the Panametrics Ultrasonic NDT Assets were engaged from the date the Consent Agreement is signed until the date Respondent divests the Panametrics Ultrasonic NDT Assets to a Commission-approved Acquirer, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s Complaint.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint one or more Interim Monitors to assure that Respondent expeditiously complies with all of its obligations and perform all of its responsibilities as required by this Order and the Order to Maintain Assets (“Orders”) and the Divestiture Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in wrecUolondenl.e after Respon tl(ntl one or arndenl.)m.7(ent.5 d5(e)-0.ftJ1.8ipoau -1.94.3 u Tw{tlu -1.94.3

- C. Not later than ten (10) days after the appointment of the 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

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 this Order and 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. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent 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 Paragraph III of this Order or the relevant provisions of the Order to Maintain Assets 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 Paragraph III of this Order or the relevant

2. The Divestiture Trustee shall have one (1) year after the date the Commission, or a court, approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order;

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission;

Provided further, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining

monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

Appendix I
TO THE DECISION AND ORDER

[Order to Maintain Assets]

**APPENDIX II
TO THE DECISION AND ORDER**

[Redacted From Public Record Version]