

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

**COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz**

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

**Docket No. C-4119
DECISION AND ORDER**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent General Electric Company (“GE”), hereinafter referred to as “Respondent,” of InVision Technologies, Inc. (“InVision”), 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 if it consummated the acquisition, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate Order” attached to this Order as Appendix I), and having

- H. “Confidential Business Information” means all information owned by, or in the possession or control of, InVision that is not in the public domain related to X-Ray NDT Products.
- I. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondent and an Acquirer (or between a trustee appointed pursuant to Paragraph III of this Order and an Acquirer) related to the X-Ray NDT Business required to be divested pursuant to Paragraph II or III of this Order.
- J. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph III of this Order.
- K. “Effective Date of Divestiture” means the date on which Respondent (or a Divestiture Trustee) divests to the Acquirer the X-Ray NDT Business completely and as required by Paragraph II or III of this Order.
- L. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or

reports relating to the research and development of X-Ray NDT Products or of any materials used in the research, development, manufacture, marketing or sale of X-Ray NDT Products; all market research data and market intelligence reports; customer information; all records relating to employees that accept employment with the 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 X-Ray NDT Products; all diagrams and schematics relating to X-Ray NDT Products; all analytical and quality control data; and all correspondence with governmental agencies relating to X-Ray NDT Products, but excluding (i) all tax returns, financial statements, and working papers of InVision relating to Non-NDT Products; and (ii) documents and other information subject to attorney-client privilege relating to Non-NDT Products; *PROVIDED, HOWEVER*, that, if a document required to be produced pursuant to this Paragraph also contains information that is not related to the X-Ray NDT Products, 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 Acquirer shall be allowed access to redacted copies of such documents otherwise excluded by this Paragraph to the extent they relate to X-Ray NDT Products.

- T. “X-Ray NDT Employees” means all of those individuals employed by YXLON or InVision (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 X-Ray NDT Products worldwide within the eighteen (18) month period immediately prior to the Effective Date of Divestiture.
- U. “X-Ray NDT Intellectual Property” means all of the following possessed or owned by InVision related to X-Ray NDT:
1. X-Ray NDT Patents;
 2. X-Ray NDT Trademarks;
 3. X-Ray NDT Trade Dress;
 4. X-Ray NDT Manufacturing Technology;
 5. X-Ray NDT Scientific and Regulatory Material; and
 6. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.
- V. “X-Ray NDT Manufacturing Equipment” means all of YXLON’s and InVision’s 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 X-Ray NDT.

- W. “X-Ray 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 X-Ray NDT Products owned or used by InVision, including, but not limited to, manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.
- X. “X-Ray NDT Patents” means all patents, patent applications and statutory invention registrations, in each case possessed or owned by InVision relating to X-Ray NDT Products, 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 X-Ray NDT Products.
- Y. “X-Ray NDT Scientific and Regulatory Material” means all technological, scientific, chemical, and electrical materials and information related to X-Ray NDT owned or used by InVision and all rights thereto, in any and all jurisdictions.
- Z. “X-Ray 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, all documentation, including user manuals and training materials, related to any X-Ray NDT Products distributed, marketed, manufactured, or sold by or on behalf of InVision; *PROVIDED, HOWEVER*, that “X-Ray NDT Software” does not include software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- AA. “X-Ray NDT Trade Dress” means all trade dress of X-Ray NDT Products distributed, marketed, or sold by or on behalf of InVision, including, but not limited to, domain names and internet sites, product packaging associated with the sale of X-Ray NDT Products worldwide and the lettering of such X-Ray NDT trade names or brand names.
- BB. “X-Ray NDT Trademarks” means all trademarks, trade names and brand names including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for

continuation of all employee benefits, including regularly scheduled raises and bonuses and a vesting of all pension benefits

all such 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:

1. 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 Acquisition Date.
 2. This Paragraph II.H. shall not apply to any Confidential Business Information related to X-Ray NDT Products that Respondent can demonstrate to the Commission that Respondent obtained without the assistance of InVision prior to the Effective Date of Divestiture.
- I. The purpose of the divestiture of the X-Ray NDT Business is to ensure the continued operation of the X-Ray NDT Business in the same manner in which it was engaged from the date the Consent Agreement is signed until the date Respondent divests the X-Ray NDT Business to an 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. If Respondent has not fully complied with the obligations to divest the X-Ray NDT Business as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the X-Ray NDT Business in a manner that satisfies the requirements of Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the X-Ray NDT Business. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph III shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture

Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph III, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the X-Ray NDT Business.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission 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; *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 III in an amount equal to the delay, as determined by the Commission.
 - 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 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.
6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;

acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of the order, including but not limited to assignment and the creation or dissolution of subsidiaries.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, 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 related to compliance with this Order; 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.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: _____, 2004

Appendix I

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS