IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil Action No.: 03-1923
GENERAL ELECTRIC COMPANY,	)	Filed:
and	)	
INSTRUMENTARIUM OYJ,	)	
Defendants.	)	

FILED
FEB 23 2004
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on September 16, 2003, plaintiff and defendants, General Electric Company ("GE") and Instrumentarium OYJ ("Instrumentarium"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II.

DEFINITIONS

As used in this Final Judgment:

A. "GE" means defendant General Electric Company, a New York corporation with its headquarters in Fairfield, Connecticut, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Instrumentarium" means defendant Instrumentarium OYJ, a public limited-

liability company existing under the laws of Finland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Patient monitors" means multiparameter medical devices that provide continuous, real-time evaluations of patient vital signs.

D. "C-arms" means full-size, mobile fluoroscopic x-ray machines that are used to provide continuous, real-time viewing of patients during various medical procedures.

E. "Spacelabs" means the Spacelabs business as described in Schedule 1, including Annexes 1-4, of the Commitments that GE has entered into with the European Commission regarding the divestiture of Spacelabs, approved on September 2, 2003, and attached as Exhibit 1 (~~motion pending to~~ file under seal). A non-confidential version of Schedule 1 is attached as Exhibit 2. Provided, however, that the Acquirer of Spacelabs shall grant GE a license to technology embodied in the Instrumentarium Medical Connector, the terms and duration of such license to be negotiated between GE and the Acquirer, limited to the field of use of nine-pin connectors for patient monitoring equipment, including, but not limited to, any patent issuing on the patent application currently entitled "Latching Medical Patient Parameter Safety Connector and Method" submitted in the name of Datex-Ohmeda, Inc. to the U.S. Patent and Trademark Office on August 19, 2003, and any continuations, continuations in part, or reissue applications based on such application.

F. "Ziehm" means Instrumentarium's C-arm business and its line of C-arm products, currently conducted through Instrumentarium Imaging Ziehm, Inc. and Instrumentarium Imaging Ziehm GmbH, and including, but not limited to, the facility located at 4181 Latham Street,

Riverside, California 92501 and the facility located at Isarstrasse 40, D-90451 Nuremberg, Germany, and also including:

1. All tangible assets that comprise Instrumentarium's C-arm business, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used in connection with the Ziehm business; all licenses, permits, and authorizations issued by any governmental organization relating to the Ziehm business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and undertakings relating to the Ziehm business, including supply and distribution agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Ziehm business. Provided, however, that the Ziehm C-arm assets to be divested shall not include Instrumentarium facilities that are primarily used in connection with the Instrumentarium activities other than the C-arm business, which consist of Instrumentarium facilities where: (1) administrative functions are performed; (2) Instrumentarium's 3D-imaging research and development project ("Instrumentarium's 3D Project") is conducted; and (3) sales and distribution activities are managed.

2. All intangible assets used in the development, production, servicing, and sale of Instrumentarium's C-arm products, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names of Instrumentarium, Instrumentarium Imaging, or any variation thereof), technical information, computer software and related documentation, know-how, trade

secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development related to the Ziehm business, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Ziehm business, including but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, however, that Instrumentarium's 3D Project shall not be included within the definition of the Ziehm C-arm business to be divested, but defendants shall: (1) maintain and continue this project at 2002 or previously approved 2003 levels, whichever are higher; (2) enter into a joint research and development agreement with the Acquirer of Ziehm, at no cost to the Acquirer of Ziehm and for a period of time not to exceed one year, in connection with and to continue Instrumentarium's 3D Project ("the 3D Development Agreement"); and grant the Acquirer of Ziehm a perpetual, assignable, royalty-free nonexclusive license, limited to the field of use of C-arms, to all Instrumentarium rights to know how, technology, and patents relating to 3D imaging developed in the 3D Project that exist at the end of the term of the 3D Development Agreement ("Licensed Technology"). GE will further covenant not to sue the Acquirer of Ziehm with respect to claims based on such patent rights relating to the Licensed Technology.

G. "Acquirer" means the entity to which defendants divest Spacelabs or the entity to which defendants divest Ziehm; except that, in Sections IV and V, Acquirer shall only mean the entity to which defendants divest Spacelabs, and in Sections VI and VII, Acquirer shall only

mean the entity to which defendants divest Ziehm.

H. "Divestiture Assets" means Spacelabs and/or Ziehm.

III.

APPLICABILITY

A. This Final Judgment applies to GE and Instrumentarium, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Should the defendants, not in connection with making either of the divestitures required by this Final Judgment, sell or dispose of all or substantially all of their assets used in the C-arm or patient monitor business, they shall require, as a condition of such sale or disposition, that the purchaser agrees to be bound by the provisions of this Final Judgment; provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. DIVESTITURE OF SPACELABS

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Spacelabs in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest Spacelabs as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants

promptly shall make known, by usual and customary means, the availability of Spacelabs. Defendants shall inform any person making inquiry regarding a possible purchase of Spacelabs that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Spacelabs customarily provided in a due-diligence process, except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide each prospective Acquirer and the United States information relating to the personnel involved in the production, operation, development, and sale of Spacelabs's patient monitoring products to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development, or sale of Spacelabs's patient monitors. For a period of eighteen (18) months from the date of the divestiture of the Spacelabs business, defendants shall not solicit to hire, or hire, any such defendant employee that receives a substantially equivalent offer of employment from the approved Acquirer of the Spacelabs business, unless such employee is terminated or laid off by the Acquirer, or the Acquirer agrees that defendants may solicit and hire that employee.

D. Defendants shall permit prospective Acquirers of Spacelabs to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and

information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due-diligence process.

E. Defendants shall warrant to the Acquirer of Spacelabs that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Spacelabs.

G. Defendants shall warrant to the Acquirer of Spacelabs that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of Spacelabs, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Spacelabs.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Spacelabs business as defined in Section II.E, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Spacelabs can and will be used by the Acquirer as part of a viable, ongoing business in the manufacture and sale of patient monitors in the United States. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

1. shall be made to the Acquirer that, in the sole discretion of the United States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the manufacture and sale of patient monitors in the United States; and

2. shall be accomplished so as to satisfy the United States, in its sole

discretion, that none of the terms of any agreement between the Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V.

APPOINTMENT OF TRUSTEE TO DIVEST SPACELABS

A. If defendants have not divested Spacelabs within the time period specified in Section IV.A, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States in good-faith consultation with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission and approved by the Court to effect the divestiture of Spacelabs.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Spacelabs. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VIII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.D. of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance or that the Acquirer has not been approved by the European Commission.

Any objection by defendants on the ground of trustee malfeasance must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VIII.A; any objection by defendants based on lack of approval from the European Commission must be conveyed in writing to the United States and the trustee within two (2) days after the United States provides defendants with written notice, pursuant to Section VIII.C, stating that it does not object to the proposed divestiture of Spacelabs.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Spacelabs and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's

accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Spacelabs, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Spacelabs.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI.

DIVESTITURE OF ZIEHM

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Ziehm in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest Ziehm as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of Ziehm. Defendants shall inform any person making inquiry regarding a possible purchase of Ziehm that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Ziehm customarily provided in a due-diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide each prospective Acquirer and the United States information relating to the personnel involved in the production, operation, development, and sale of Ziehm's C-arm products to enable the Acquirer to make offers of employment. Defendants will

not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development, or sale of Ziehm's C-arms. For a period of eighteen (18) months from the date of the divestiture of the Ziehm business, defendants shall not solicit to hire, or hire, any such defendant employee that receives a substantially equivalent offer of employment from the approved Acquirer of the Ziehm business, unless such employee is terminated or laid off by the Acquirer, or the Acquirer agrees that defendants may solicit and hire that employee.

D. Defendants shall permit prospective Acquirers of Ziehm to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due-diligence process.

E. Defendants shall warrant to the Acquirer of Ziehm that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Ziehm.

G. Defendants shall warrant to the Acquirer of Ziehm that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of Ziehm, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Ziehm.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section VI, or by trustee appointed pursuant to Section VII, of this Final Judgment, shall include

the entire Ziehm business as defined in Section II.F, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Ziehm can and will be used by the Acquirer as part of a viable, ongoing business in the manufacture and sale of C-arms in the United States. The divestiture, whether pursuant to Section VI or Section VII of this Final Judgment,

1. shall be made to the Acquirer that, in the sole discretion of the United States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the manufacture and sale of C-arms in the United States; and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

VII.

APPOINTMENT OF TRUSTEE TO DIVEST ZIEHM

A. If defendants have not divested Ziehm within the time period specified in Section VI.A, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of Ziehm.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Ziehm. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then

obtainable upon reasonable efforts by the trustee, subject to the provisions of Sections VI, VII, and VIII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VII.D of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VIII.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Ziehm and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and

facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Ziehm, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Ziehm.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to

carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VIII.

NOTICE OF PROPOSED DIVESTITURES

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting any divestiture required herein, shall notify the United States of any proposed divestiture required by Sections IV, V, VI, or VII of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating

whether it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Sections V.C or VII.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Sections IV, V, VI, or VII shall not be consummated. Upon objection by defendants under Sections V.C or VII.C, a divestiture proposed under Sections V or VII shall not be consummated unless approved by the Court.

IX.

FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV, V, VI, or VII of this Final Judgment.

X.

HOLD SEPARATE

Until all of the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize any divestiture order by this Court.

XI.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until each divestiture has been completed under Sections IV, V, VI, or VII, defendants shall deliver to the United States an affidavit as to the fact and

manner of its compliance with Sections IV, V, VI, or VII of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section X of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall individually keep all records of each of their individual efforts made to preserve and divest the Divestiture Assets until one year after all such divestitures have been completed.

XII.

COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the

executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII.

NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIV.

RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV.

EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI.

PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated: 2/23/04.

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

Royce C. Lamberth
United States District Judge

Final Judgment, Exhibit 2
C.A. No. 03-1923

Non-Confidential

FILED
FEB 23 2004
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

SCHEDULE 1

Spacelabs Divested Business

1. Legal and Functional Structure of the Spacelabs Divested Business

The Spacelabs Divested Business currently is conducted through Datex-Ohmeda, Inc., a fully owned subsidiary of Instrumentarium. The Spacelabs Divested Business comprises Datex-Ohmeda's Spacelabs Medical manufacturing, distribution and research and development operations and sales channel operations for multiparameter patient monitoring and associated equipment and services. The business also includes the Spacelabs ambulatory blood pressure business, which supplies blood pressure monitoring equipment to a variety of care settings; and Spacelabs clinical information system business, which includes the design, production, distribution, research and development operations for clinical information systems for perioperative, critical care, neonatal critical care and perinatal care areas. See Annex 1 to this Schedule for details of the Spacelabs products and services.

Spacelabs has subsidiaries in Austria, Australia, China, Guam, France, Hong Kong, India, Italy, Mexico, Singapore, Spain, Sweden, UK, USA and Taiwan [confidential].

2. Assets to be divested

Subject to a transfer being required by a Purchaser and GE being permitted to do so, the Spacelabs Divested Business includes, but is not limited to:

(a) Main tangible assets:

(i) Plant, equipment and other tangible assets related to manufacturing, distribution and research and development for the Spacelabs Divested Business located at

(1) 5150 220th Ave SE, Issaquah, WA, 98029, USA

(2) 925 Sherman Ave, Hamden, CT, 06514, USA[1]

(3) 1200 East Campbell Road, Suite 104, Richardson, TX, 75081, USA

(b) Main intangible assets:

(i) Intellectual property rights

Provided that it is entitled to do so, GE shall transfer the Spacelabs intellectual property rights to the Purchaser. [Confidential Annex]

(ii) Licences, permits & authorisations

[1] [Confidential]

All necessary licences, permits and authorisations of the Spacelabs Divestment Business required by governmental authorities, including CE markings, which shall be transferred to the Purchaser provided that GE is entitled to do so. These include:

(1) Permits required by the City of Issaquah for the operation of certain equipment used in the development, manufacturing and repair of the products of the Spacelabs Divestment Business, including:

(A) Mechanical Permit: BLD02-00253MEC03-00008 – Manufacturing and Factory Repair Gas Systems (building A)

(B) Mechanical Permit: MEC02-00107 – R&D Lab Gas Systems (building B)

(C) Permits to operate compressed-air vessels for use in the manufacturing process.

(2) Active business licence #BUS03-01777 from the City of Issaquah.

(3) Certification #Q1Z 02 10 12238 002 from TUV Product Service certifying that the company meets the requirements of EN 46001: 1996, ISO 13485 : 1996 and ISO 9001: 1994

(4) Certification # G1 02 10 12238 001 from TUV Product Service certifying that the company maintains a quality system which ensures that the products conform with the essential requirements of the Directive 93/42EEC.

(5) Certificate No 1140-12-2002 - Certificate to Foreign Government from the U.S. Department of Health and Human Services – the Food and Drug Administration to certify that the specified products manufactured and distributed by the company may be marketed in, and legally exported from, the United States of America.

(6) FDA approval for Birthnet perinatal clinical information system.

(iii) <u>Contracts, agreements, leases etc.</u>

(1) <u>Building lease contracts:</u>

(A) Real property leases for Buildings A and B at 5150 220th Ave SE, Issaquah, WA, 98029, USA [confidential].

(B) Real property lease for 925 Sherman Ave, Hamden CT 06514, USA [confidential].

(C) Real property lease for Spring Creek Business Park, 1200 Campbell Ste 104, Richardson, TX, 75081, USA [confidential].

(2) Equipment Lease Contracts:

(A) Leases of various operating and administrative equipment with terms over 36 months from Archive Group, 1800 112th Ave NE, Suite 250W, Bellevue, WA 98004, USA and from NCF Financial, Inc., 12911 NE 126th Place, Kirkland, WA 98034, USA

(B) Leases of fleet vehicles on terms up to 50 months from Automotive Rentals, Inc., P O Box 5039, Mt. Laurel, NJ 08054, USA

(3) Distribution and Licence Agreements:

(A) Distribution and Licence Agreement, dated July 24, 1996, by and between Spacelabs Medical, Inc. and [confidential] with respect to [confidential] module.

(B) Licence and Development Agreement, dated May 23, 1995, by and between Spacelabs Medical, Inc. and [confidential] with respect to ECG interpretive algorithms.

(C) Licence Agreement, dated March 26, 1990, by and between [confidential] and Spacelabs, Inc. for a licence under [confidential] pulse oximetry sensor coding patents.

(D) Licence Agreement, dated May 30, 2001 between Spacelabs Medical, Inc. and [confidential] with respect to RF printed circuit boards used in telemetry transmitters.

(E) Licence Agreement, dated August 27, 1991, between Spacelabs Medical, Inc. and [confidential] for a source code licence to the [confidential] operating system.

(F) Distribution Agreement, dated December 31, 2002, by and between Spacelabs Medical, Inc. and [confidential] for [confidential] to act as a distributor of specified ABP products and accessories on a private-label basis.

(G) Licence Agreement, dated April 1, 1999, by and between Spacelabs, Inc. and [confidential] for [confidential]to grant a licence to Spacelabs to incorporate an infrared locator system into patient monitoring and clinical information system products.

(4) OEM and Manufacturing Agreements:

(A) OEM Agreement, dated January 23, 1997, by and between Spacelabs Medical, Inc. and [confidential] with respect to sensor cable connectors.

(B) Amended and Restated OEM Development, Purchase and Sale Agreement, dated April 19, 2002, by and between Spacelabs Medical, Inc. and [confidential] with respect to development and licence of capnography products

(C) Manufacturing Agreement, dated July 31, 2001, by and between Spacelabs Medical, Inc. and [confidential] with respect to development and licence of portable antennas and access points

(D) OEM Agreement, dated June 30, 2000, by and between [confidential] and Spacelabs Medical, Inc. for the licence of development kits and right to imbed [confidential] products into Spacelabs products

(E) OEM Agreement, dated May 18, 1995, by and between [confidential] and Spacelabs Medical, Inc. with respect to purchase and sale of [confidential] gas boards.

(F) Software Licence and OEM Purchase Agreement dated as of March 30, 1995 between Spacelabs Medical, Inc. and [confidential] with respect to wireless LAN software and products.

(G) ABPM Private Label Distribution Agreement dated as of December 31, 2002 between Spacelabs Medical, Inc. and [confidential] with respect to the manufacture and distribution of ABPM equipment and related products.

(H) Technology Cross-Licence Agreement, dated December 31, 2002, by and between Spacelabs Medical, Inc. and [confidential]. Under this agreement, Spacelabs grants [confidential] perpetual, royalty-free, non-exclusive licences to use certain ECG-related technology.

(I) Licence Agreement, dated April 12, 2000, by and between Spacelabs, Inc. and [confidential] for certain development/consulting work in connection with network connectivity.

(J) Licence Agreement, undated (but with attached letter dated September 25, 1987), by and between Spacelabs, Inc. and [confidential] for the use of certain software to use for research and development of customer software.

(K) Licence Agreement, dated September 14, 1995, by and between Spacelabs, Inc. and [confidential] for a non-

exclusive reseller licence to use certain [confidential] clinical information and management system software for development and marketing purposes.

(L) Development Agreement, dated September 8, 1984 and amended on August 12, 1985, by and between Spacelabs, Inc. and [confidential] for [confidential] to design and develop a network communication service software package utilizing the [confidential] Ethernet hardware and supporting the [confidential] application requirements for Spacelabs.

(M) Licence Agreement, dated September 14, 2000, by and between Spacelabs, Inc. and [confidential] for [confidential] to provide certain software on a non-exclusive basis.

(N) Licence Agreement, dated March 18, 1999, by and between Spacelabs, Inc. and [confidential] for [confidential] to provide a worldwide, exclusive, transferable perpetual licence to use its [confidential] technology in Spacelabs products.

(O) Licence Agreement, dated January 20, 1984, by and between Spacelabs, Inc. and [confidential] for [confidential] to provide a non-exclusive, worldwide, perpetual and transferable licence for Spacelabs to use its computer software programme for the accumulation, display and storage of data.

(P) Licence Agreement, dated September 4, 1999, by and between Spacelabs, Inc., [confidential] and [confidential] whereby [confidential] provide Spacelabs with certain [confidential] technology to develop and licence the [confidential] to allow for the connectivity of [confidential] cardiology carts.

(Q) Licence Agreeement, dated April 10, 2001, by and between Spacelabs, Inc. and [confidential] for the assignment of royalties to [confidential] charting software to be developed for Spacelabs.

(S) Licence Agreement, dated June 24, 1999, by and between Spacelabs, Inc. and [confidential] whereby [confidential] grants Spacelabs a non-exclusive, worldwide licence to install [confidential] cardiology software in Spacelabs products.

(5) Distribution Arrangements:

Distribution arrangements with independent distributors. [Confidential Annex]

(6) Principal Purchase Agreements:

List of Spacelabs Committed Volume Agreements with certain customers. [Confidential Annex]

(7) Principal Supply Agreements:

(A) [confidential] (printed circuit board assemblies)

(B) [Confidential] (printed circuit board assemblies)

(C) [Confidential] (paper)

(D) [Confidential] (printers and recorders)

(E) [Confidential] (computer hardware)

(F) [Confidential] (displays)

(G) [Confidential] (cables)

(H) [Confidential] (cables)

(I) [Confidential] (cuffs)

(J) [Confidential] (cuffs)

(K) [Confidential] (displays)

(L) [Confidential] (displays)

(M) [Confidential] (cables)

(N) [Confidential] (software development/R&D)

(O) [Confidential] (injection moulding and metal fabrication)

(P) [Confidential] (power supplies)

(Q) [Confidential] (monitors for UCW and UV 1500)

(R) [Confidential]

(S) [Confidential]

(c) Existing Customer Records and Record-keeping Systems

All existing customer records of the Divested Business, in both hard copy and electronic formats, and computer systems used to access this information, including:

Current Systems

(i) For transactions after January 1, 2003, data from the MFGPRO computer system maintained by the Datex Ohmeda, Inc.

(ii) For transactions after October 1, 2002, data from the international subsidiaries of Datex Ohmeda concerning Spacelabs customers.

Legacy Archiving Systems

(iii) The MAXCIM computer system containing customer master record data, detailed booking, shipment, invoicing and returns history records, customer payment history and account balance status data.

(iv) The ORACLE Applications database containing customer master record data, detailed booking, shipment, and invoicing history records, customer payment history and account balance data for customers of the Spacelabs Medical International subsidiaries.

(v) The ORACLE marketing database containing sales history data on net bookings and shipments, together with any internally developed systems containing customer data.

(vi) The CLARIFY computer system containing customer data on installed base and service call history for both field service and technical support.

(vii) The GET PAID computer system containing customer collection correspondence data.

(viii) Any hard copy records, including quote and sales order customer files, field service call reports, equipment depot repair records and customer invoicing.

(d) The Personnel and Key Personnel

Personnel and Key Personnel who are to be transferred to the Purchaser either automatically by law or by virtue of contractual agreements with the Spacelabs Divested Business.

(e) Transitional Arrangements

The Spacelabs Divested Business shall be entitled to benefit from service or supply arrangements, which were previously provided by Instrumentarium or Affiliated Undertakings, for a transitional period after Closing, including:

(i) Certain Financial Services – including accounts payable, tax and treasury services and financial reporting.

(ii) HR, payroll, benefits, employee training

(iii) Corporate IT systems & support – e.g. Mfg Pro ERP, Lotus Notes email, telephones.

(iv) Field Service, Customer Support, Product Support, Technical Support and Training, Order Fulfilment, International Distribution

(v) International Distributor Management and Support

(vi) Corporate Accounts

(vii) Regulatory Support – in particular for transitioning registrations, complaint management (SONAR) and other regulatory requirements.