UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ALLIED CHEMICAL & DYE CORPORATION, *et al.*, Defendants.	Civil Action No. 41-320

MEMORANDUM OF THE UNITED STATES IN RESPONSE TO DEFENDANT HONEYWELL INTERNATIONAL'S MOTION FOR ORDER TERMINATING THE FINAL JUDGMENT

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I. INTRODUCTION

Honeywell International, Inc. ("Honeywell"), successor in interest to defendant Allied Chemical and Dye Corporation ("Allied"), has moved to terminate the Final Judgment entered by the Court in this matter on May 29, 1941 ("Final Judgment"). A copy of the Final Judgment is attached as Appendix 1. After conducting an investigation as to the likely effects of the proposed termination that included soliciting public comments on the proposed termination, the United States has concluded that the Final Judgment is no longer necessary to protect competition and that its continued existence does not otherwise provide any public benefit. Moreover, the continued existence of the Final Judgment may be deterring Honeywell from offering new products and services, which could potentially benefit consumers in the marketplace. Accordingly, the United States consents to Honeywell's motion to terminate the Final Judgment, subject to further notice and comment, if any, as may be deemed necessary by the Court.[1]

The marketplace has changed dramatically since the Final Judgment was entered over sixty-five years ago: many of the products described in the Complaint, a copy of which is attached as Appendix 2, are no longer manufactured in any significant quantities; one of the two named defendants charged in the alleged conspiracy is no longer in the relevant business; and numerous new firms and products now exist. In essence, the industry has evolved such that the competitive problems alleged in the Complaint are no longer a cause for concern.

Honeywell has provided public notice of its request to terminate the Final Judgment and the United States solicited comments regarding the proposed termination. No comments were received. As discussed in Section V below, while we do not believe that further notice or

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[1] The United States reserves its right to withdraw its consent to the motion at any time prior to entry of an order terminating the Final Judgment.

comment is needed, the United States defers to the Court as to whether any additional public notice and comment period is necessary prior to terminating this judgment.

II. BACKGROUND OF THE 1941 CAUSE OF ACTION

A. The Products at Issue

The original case concerned anticompetitive acts in the United States during the 1930s and early 1940s relating to sales of "fertilizer nitrogen." Nitrogen is used as a nutrient in fertilizer chiefly to enhance crop growth. At the time of the Complaint, the nitrogen-based fertilizer industry was comprised of (and the Complaint focused on) the following fertilizer nitrogen products: synthetic ammonia solutions, nitrate of soda, ammonium sulfate, cal-nitro, anhydrous ammonia, and uramon. These products, which differed in terms of their respective nitrogen content and other properties, were mostly used as ingredients in the preparation of mixed fertilizers sold to farmers.

During this time period, the defendants – Allied and E.I. DuPont de Nemours & Company ("DuPont") – were responsible for production and marketing of most fertilizer nitrogen products. All nitrate of soda produced in the United States was produced by the Solvay Process Company (a subsidiary of Allied). Numerous steel plants, coke oven facilities, and gas plants throughout the United States produced ammonium sulfate but, as described below, the Barrett Company (also a subsidiary of Allied) was responsible for a significant portion of domestic sales pursuant to exclusive agency sales contracts with numerous producers. DuPont and Solvay manufactured anhydrous ammonia and DuPont manufactured uramon. Cal-Nitro was produced by manufacturers located in Europe but its domestic sales were made pursuant to the world-wide conspiracy described in the Complaint.

B. The Allegations in the Complaint

On May 29, 1941, the United States filed a Complaint against Allied, its subsidiaries and affiliates, DuPont, and 17 individuals who were agents, officers, and directors of the defendant corporations. The Complaint charged two distinct offenses:

First, the Complaint alleged that the corporate defendants, Allied and DuPont, acting by and through the individual defendants, violated Sections 1-3 of the Sherman Act, 15 U.S.C. §§ 1-3, by conspiring to restrain trade and commerce in the sale of fertilizer nitrogen, and by conspiring to monopolize and monopolizing such trade and commerce. Complaint, ¶ 40. The defendants effectuated this conspiracy through several means, including engaging in acts to control the importation and exportation of fertilizer nitrogen into and out of the United States, ¶¶ 41-44 & 51-55; restricting competition in sales of fertilizer nitrogen to purchasers in United States territories, ¶¶ 45-50; selling various fertilizer nitrogen products at uniform prices and agreeing on uniform freight terms relating to such sales, ¶¶ 56-59; and discouraging entry or expansion by competitors, ¶ 60.

Second, the Complaint alleged that the Barrett Company ("Barrett"), a wholly-owned subsidiary of Allied, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by entering into contracts in restraint of trade in ammonium sulfate. Complaint, ¶ 61. Barrett allegedly sought to control substantially all of the sales of ammonium sulfate produced in the United States in order to "dominate the market" and fix non-competitive prices. *Id.* To accomplish this goal, Barrett obtained contracts from numerous ammonium sulfate producers appointing Barrett as their sole and exclusive agent for the sale of all their ammonium sulfate. At the time of the Complaint, Barrett had secured approximately thirty-seven exclusive agency sales contracts with producers

accounting for more than 55% of the nation's ammonium sulfate production. ¶¶ 63-68. In addition, Barrett purchased substantial quantities of ammonium sulfate from other producers in order to keep that product off the market. ¶¶ 69-71. Barrett, through its exclusive contracts and purchases, controlled approximately 77% of all ammonium sulfate for the 1938-1939 "fertilizer year," thereby giving it the ability to fix prices and monopolize trade in ammonium sulfate. ¶¶ 72-75.

C. The Final Judgment

Simultaneously with the filing of the Complaint, the Court, with the consent of the parties, entered the Final Judgment. It sought to remedy the harm from the two offenses outlined in the Complaint. With respect to the conspiracy claims, it enjoined Allied and DuPont from conspiring with each other (or, in certain instances, with other producers) to fix the prices or other competitive terms of sale of certain fertilizer nitrogen products. Final Judgment, § VI.[2] It also enjoined Allied and its subsidiaries from conspiring with certain foreign nitrate companies or any other producers or distributors of fertilizer nitrogen products with regard to fixing prices or other terms of sales relating to nitrate of soda. *Id.* § III.

With respect to the claims based on Barrett's efforts to secure agency contracts for sales of ammonium sulfate, Section V of the Final Judgment enjoined Barrett from:

(1) entering into exclusive agency sales contracts with producers of ammonium sulfate;

(2) selling, as agent or reseller, for consumption in the United States more than 35 percent

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[2] The Final Judgment also enjoined Allied and DuPont from individually refusing to allow customers to purchase synthetic ammonia solutions at the point of production, a practice that could be used to facilitate conspiratorial conduct. Final Judgment § VI.D; *see also id.* § IV (similar prohibition on Allied with respect to sales of nitrate of soda).

of the net total domestic production of ammonium sulfate;[3]

(3) conspiring with any producer of a fertilizer nitrogen to fix ammonium sulfate prices or restrain importation of ammonium sulfate;

(4) purchasing ammonium sulfate from any producer under a contract or arrangement for the sole purpose of keeping ammonium sulfate off the market;

(5) reducing the price of ammonium sulfate sold on behalf of a producer in order to discourage the production of ammonium sulfate by the producer; and

(6) discriminating against bona fide cooperatives in the sale of ammonium sulfate.

Id. § V. Honeywell asserts that it has complied with all the terms of the Final Judgment.

III. LEGAL STANDARDS APPLICABLE TO THE TERMINATION OF AN ANTITRUST FINAL JUDGMENT WITH THE CONSENT OF THE UNITED STATES

This Court has jurisdiction to terminate the Final Judgment pursuant to Section VIII of the Final Judgment and "principles inherent in the jurisdiction of the chancery." *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932); *In re Grand Jury Proceedings*, 827 F.2d 868, 873 (2d Cir. 1987). Pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure, "[o]n motion and upon terms as are just, the court may relieve a party . . . from a final judgment . . . [when] it is no longer equitable that the judgment should have prospective application."

Where, as here, the United States consents to termination of an antitrust judgment, the issue before the court is whether such termination is in the public interest. *United States v. IBM*

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[3] Section V.3 of the Final Judgment describes this amount as United States production plus imports minus exports, a quantity that is now usually referred to in the marketplace as "apparent consumption." It represents the amount of ammonium sulfate that remains in the United States and is presumably used here.

Corp., 163 F.3d 737, 740 (2d Cir. 1998) (affirming grant of joint motion by United States and defendant to terminate antitrust consent decree); *United States v. Am. Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983); *United States v. Loew's, Inc.*, 783 F. Supp. 211, 213 (S.D.N.Y. 1992). The applicable "public interest" standard is derived from the purpose of the antitrust laws, *IBM*, 163 F.3d at 740, which is to protect competition. *E.g.*, *United States v. Penn-Olin Chem. Co.*, 378 U.S. 158, 170 (1964). The relevant question before the Court, therefore, is whether termination would serve the public interest in preserving "free and unfettered competition as the rule of trade." *Loew's*, 783 F. Supp. at 214 (quoting *N. Pac. Ry. v. United States*, 356 U.S. 1, 4 (1958)).

The United States' assessment of this issue is entitled to substantial deference, similar to the broad deference it is accorded in settling antitrust litigation on terms that will best serve the public interest in competition. *E.g.*, *Sam Fox Publ'g Co. v. United States*, 366 U.S. 683, 689 (1961).[4] The court should approve a consensual judgment termination where the United States has provided a reasonable explanation to support the conclusion that termination is consistent with the public interest. *Loew's*, 783 F. Supp. at 214; *see also United States v. W. Elec. Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990) (holding that the district court should approve an uncontested termination under the public interest test "so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today").

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[4] A district court applies the same public interest standard in terminating a consent decree as it does in reviewing the entry of an initial consent decree in a government antitrust case pursuant to the Tunney Act, 15 U.S.C. § 16(e). *See IBM*, 163 F.3d at 740 (noting that while Tunney Act does not apply to judgment terminations, court should consider same public interest test); *Loew's*, 783 F.Supp. at 213.

IV. TERMINATION IS APPROPRIATE BECAUSE THE FINAL JUDGMENT IS NO LONGER NEEDED TO PROTECT COMPETITION

The purpose of the Final Judgment was to end the alleged conspiracy, prevent its likely recurrence, and prevent the defendants from monopolizing or attempting to monopolize the nitrogen fertilizer industry. The Final Judgment should be terminated as market conditions and participants have changed in such ways that its continued existence is no longer needed to protect competition.

The Division's extensive experience with the enforcement of the antitrust laws has shown that, as a general matter, industries evolve and change over time in response to competitive and technological forces. In most situations, the passage of many decades results in significant industry change that renders the rigid prohibitions placed years before in consent decrees either irrelevant to the parties' ongoing compliance with the antitrust laws, or an affirmative impediment to the kind of adaptation to change that is a hallmark of the competitive process.

These considerations, among others, led the Division in 1979 to establish a policy of including in every consent decree a so-called "sunset provision" that, except in exceptional cases, would result in the decree's automatic termination after no more than ten years.[5] As a result of the Division's consistent adherence to this policy, the only antitrust consent decrees to which the

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[5] *Antitrust Division Manual*, § IV.E.d.2. (1998 ed.). This change in policy followed Congress' 1974 amendment of the Sherman Act to make violations a felony, punishable by substantial fines and jail sentences. With these enhanced penalties for *per se* violations of the antitrust laws, the Division concluded that antitrust recidivists could be deterred more effectively by a successful criminal prosecution under the Sherman Act than by a criminal contempt proceeding under provisions of an old consent decree aimed at preventing a recurrence of price-fixing and other hard-core antitrust violations. *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 867 (S.D.N.Y. 1987).

United States is a party that remain in effect are those entered within the past ten years, or before 1979 when the "sunset" policy was adopted. The Division encourages parties to old decrees to seek the Division's consent to their termination, especially where they contain provisions that may be restricting competition. *See* U.S. Department of Justice, Antitrust Division, DOJ Bull. No. 1984-04, *Statement of Policy by the Antitrust Division Regarding Enforcement of Permanent Injunctions Entered in Government Antitrust Cases*; and U.S. Department of Justice Press Release, *New Protocol to Expedite Review Process for Terminating or Modifying Older Antitrust Decrees* (Apr. 13, 1999).[6] In the United States' view, decrees entered prior to 1979 should be terminated unless there are affirmative reasons for continuing them, which we would expect to exist only in limited circumstances.[7]

Termination of the Final Judgment in this case adheres to the principles underlying this

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[6]In addition, in the early 1980s, the Division conducted its own review of over 1,200 old consent decrees then in effect to ensure that none "hinder[ed] . . . competition" or "reflect[ed] erroneous economic analysis and thus produce[d] continuing anticompetitive effects." The Honorable William French Smith, Attorney General of the United States, *Remarks at the Annual Meeting of the District of Columbia Bar* (June 24, 1981), at 11. Although that effort was necessarily constrained by the Division's limited resources and other enforcement priorities, it did lead to the termination of several decrees that at the time appeared most problematic. *See also* Jeffrey I. Zuckerman, *Removing the Judicial Fetters: The Antitrust Division's Judgment Review Project* (1982) at 2-3, *available at* http://www.usdoj.gov/atr/cases/f222000/222052c.htm; *see Department of Justice Authorization for Fiscal Year 1984 Before the Subcommittee on Monopolies & Commercial Law, Committee on the Judiciary*, 98th Cong. 16 (1983) (statement of William F. Baxter, Assistant Attorney General, Antitrust Division). Until the court has terminated a decree, of course, the parties thereto must scrupulously comply with the decree's terms.

[7]Among the circumstances where continuation of a decree entered more than ten years ago may be in the public interest are: a pattern of noncompliance by the parties with significant provisions of the decree; a continuing need for the decree's restrictions to preserve a competitive industry structure; and longstanding reliance by industry participants on the decree as an essential substitute for other forms of industry-specific regulation where market failure cannot be remedied through structural relief. None of these circumstances is present in this case.

long-standing effort to end decrees that are no longer needed to protect competition. First, the fertilizer nitrogen industry has evolved over time to become significantly more competitive. Second, the Final Judgment's broad conspiracy-related prohibitions are no longer relevant because DuPont has left the market and Honeywell has a significantly reduced presence than it had at the time of the Complaint. (The defendants, of course, remain subject to the antitrust laws, which, with enhanced penalties for *per se* violations, are a significantly greater deterrent to anticompetitive activity than a civil decree.) Third, the terms of the Final Judgment may be chilling Honeywell from engaging in the potentially procompetitive act of introducing a new product.

A. Industry Changes Since the Filing of the Final Judgment

The nitrogen fertilizer market[8] has changed dramatically since the Final Judgment was entered in 1941. At that time, the defendant corporations controlled, by means of production, contract, or purchase, substantially all of the market for nitrogen fertilizer products. Today, there are at least eleven major domestic producers of nitrogen fertilizer products such as ammonium sulfate, ammonium nitrate, and urea. *See, e.g.*, "North American Fertilizer Capacity," *Market Information Unit, Market Development Division*, IFDC, September, 2006. There are also numerous domestic producers of ammonia, which, in various forms, can be used to produce nitrogen fertilizer. Moreover, one of the two alleged conspirators, DuPont, no longer produces nitrogen fertilizer products, and the other, Honeywell, manufactures and distributes only one

[8] Nitrogen based fertilizers were referred to as "fertilizer nitrogen" in the Complaint and Final Judgment. The current industry term, however, is "nitrogen fertilizer" and this is the term that will be used in referring to the contemporary market.

such product, ammonium sulfate. In addition to domestic production, foreign imports are firmly established in the United States, with net imports accounting for 50% of nitrogen fertilizer consumption in the United States.

At the time the Final Judgment was entered, ammonium sulfate was the most widely used nitrogen fertilizer. Today, it comprises only about 5% of the approximately 12 million tons of nitrogen consumed as a nutrient in the fertilizer market. Several other nitrogen fertilizer products subject to the Final Judgment – nitrate of soda, cal-nitro, and uramon – are competitively insignificant with respect to the overall nitrogen fertilizer market, while certain nitrogen products prevalent in the market today – urea ammonium nitrate, urea, anhydrous ammonia, and ammonium nitrate – were not subject to the terms of the Final Judgment.

When the Final Judgment was entered, Barrett purchased ammonium sulfate from producers and effectively controlled nearly 80% of domestic ammonium sulfate sales. Today, Barrett's successor, Honeywell, accounts for approximately 31% of domestic ammonium sulfate sales. It produces ammonium sulfate as a byproduct of its production of the chemical caprolactum (which means that, should Honeywell attempt to anticompetitively restrict output of ammonium sulfate in order to increase its price, Honeywell would incur significant storage and disposal costs for the excess ammonium sulfate withheld from the market, thereby making such a strategy highly unlikely to be profitable). There are also five significant producers of ammonium sulfate who have their own established distribution networks: DSM NV, BASF AG, The J.R. Simplot Company, Agrium, Inc., and the Dakota Gasification Co.

B. The Prohibitions on Conspiratorial Conduct Are Not Relevant Because DuPont Has Left the Market and Honeywell Has a Significantly Reduced Presence

Sections III, IV, V.A.3, and VI of the Final Judgment enjoin agreements between DuPont and Allied (as well as between Allied and others) to restrain trade with respect to certain fertilizer nitrogen products. These broad conspiracy-related prohibitions are no longer needed. First, DuPont no longer produces or sells fertilizer nitrogen products. The only fertilizer nitrogen product that Honeywell (as successor to Allied) produces is ammonium sulfate. The general conspiracy-related judgment provisions, however, enjoin agreements and practices relating to fertilizer nitrogen products in addition to ammonium sulfate. Accordingly, the principal harm alleged in the Complaint – DuPont and Allied effectuating a conspiracy between themselves that would exert significant control over the fertilizer nitrogen industry – is no longer a concern. While it is possible that an actionable conspiracy may occur should Honeywell conspire with others, the continued existence of the Final Judgment is not needed to police such a possibility. *Cf. IBM*, 163 F.3d at 742 ("[T]he purpose of an antitrust decree is to remedy and prevent the recurrence of the violation alleged in the complaint. Where the government has consented to termination, the focus is on whether there is a *likelihood* of potential future violation, rather than the mere *possibility* of a violation." (emphasis added)).

Second, many of the conspiracy-related provisions simply duplicate existing antitrust laws. After the passage of decades, judgment provisions that in substance require defendants to abide by the antitrust laws add little, if anything, to antitrust compliance. The remedies available under current antitrust statutes for criminal antitrust violations such as hard-core price-fixing and market allocation are generally more severe than those for contempt of an outstanding judgment

and therefore serve as a greater deterrent to resumption of the challenged anticompetitive conduct than the threat of contempt proceedings. *Cf. Loew's*, 783 F.Supp. at 214 (holding that termination of an antitrust decree leaves the parties "fully subject to the antitrust laws of general application").

C. The Agency Sales Contract Restrictions Are Not Needed to Deter Anticompetitive Conduct and May Chill Potentially Procompetitive Behavior

Section V restricts Honeywell's (as successor to Barrett) practices with respect to acting as an agent or reseller of ammonium sulfate. This relief sought to prevent the recurrence of Barrett's efforts to fix prices through its control of the marketing of a significant portion of the ammonium sulfate domestic production capacity. The restrictions, however, are no longer needed as it is unlikely that Honeywell could engage in such conduct. First, Honeywell does not possess market power over nitrogen fertilizers. Since the Final Judgment was entered, the nitrogen fertilizer industry has changed dramatically and become significantly more competitive. There are nearly a dozen major producers of nitrogen fertilizers and ammonium sulfate is produced by five competitors in addition to Honeywell. Honeywell has not entered agency sales contracts with these five competitors – each of whom has its own established distribution network – and has stated that it has no intention to do so. If Honeywell should attempt to monopolize the industry through anticompetitive contracts in the future, it would be subject to the antitrust laws.

Moreover, the restrictions on Honeywell may chill potentially procompetitive conduct. Honeywell states that it plans to market a new nitrogen fertilizer product that would combine ammonium sulfate with another product to create a new type of fertilizer with unique qualities.

To do so, it would need to purchase ammonium sulfate as its own production capacity is limited. Honeywell also seeks to expand its ammonium sulfate sales in the Western United States by purchasing ammonium sulfate produced as a by-product in power plants and other industrial factories and reselling it to fertilizer customers. The viability of these proposed projects, which could increase competition, may be affected by the Final Judgment's restrictions on purchasing and reselling ammonium sulfate.[9]

V. PROPOSED PROCEDURES FOR PROVIDING ADDITIONAL PUBLIC NOTICE OF THE PENDING MOTION AND INVITING ADDITIONAL COMMENT, SHOULD THE COURT DETERMINE IT IS NECESSARY

In *United States v. Swift & Co.*, the court noted its responsibility to implement procedures that will provide non-parties adequate notice of, and an opportunity to comment upon, antitrust judgment modifications proposed by consent of the parties:

> Cognizant . . . of the public interest in competitive economic activity, established chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to ensure that the public, and all interested parties, have received adequate notice of the proposed modification . . . .

1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,703 (N.D. Ill. 1975) (footnote omitted). There has been sufficient notice and opportunity for comment in this case.

Early in the course of its investigation of Honeywell's proposal to terminate the Final Judgment, the United States asked Honeywell – and it agreed – to publish notice of its proposal and provide the public an opportunity to submit comments to the United States. The notice was published in two widely read industry publications: *Ferticon Nitrogen Report* (October 19,

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[9] *See, e.g., United States v. IBM*, 1997 WL 217588 (S.D.N.Y. 1997) (terminating decree that had resulted in "artificial restraints [on the defendant's practices] which do not further the cause of healthy competition"), *aff'd*, 163 F.3d 737 (2d Cir. 1998).

2006) and *Fertilizer Week* (October 20, 2006). *See* Appendix 3. Moreover, the United States conducted interviews with numerous market participants during the course of its investigation, further raising awareness of Honeywell's proposal. The United States did not receive any comments relating to the proposed motion to terminate the Final Judgment. The United States believes that these advance publications of Honeywell's pending proposal provided sufficient public notice and opportunity to comment on the pending motion for termination of the Final Judgment.[10]

Antitrust Division policies that were in place when Honeywell published its notice in October 2006 called for additional notice and comment procedures after the filing of a motion to terminate. In cases such as this, however, where notice was published informing interested parties that the Division was considering the potential termination of the Final Judgment, and where interested parties had the opportunity to submit comments to the Division to be taken into account in the Division's analysis, the Division no longer believes that further notice automatically should be required.

If the Court agrees that no further notice is necessary, the United States requests that the Court enter an order terminating the Final Judgment. *See* Attachment A to the Stipulation. If the Court, however, concludes that further notice and comment are appropriate in this matter, the United States requests that the Court promptly enter the stipulated order providing for the following procedures (*see* Attachment C to the Stipulation), which are consistent with those used

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[10] Notwithstanding the adequacy of that prior notice, the parties have agreed to certain procedures that may be followed in bringing this matter to a conclusion, as reflected in the Stipulation filed simultaneously with this memorandum.

in previous judgment termination motions:

1. The United States will publish in *The Federal Register* a notice announcing the motion to terminate the Final Judgment and the United States' consent to it (subject to its right to withdraw its consent), summarizing the Complaint and Final Judgment, describing the procedures for inspecting and obtaining copies of relevant papers, and inviting the submission of comments. *See* Attachment D to the Stipulation.

2. Honeywell will publish, at its own expense, notice of its motion in two consecutive issues of *The New York Times* and *The Wall Street Journal*. The published notices will provide for public comment during the sixty (60) days following publication of the last notice. *See* Attachment B to the Stipulation.

3. Within a reasonable period of time after the conclusion of the sixty-day period, the United States will file with the Court copies of any written comments that it receives and its response to those comments.

4. The parties request that the Court not rule upon the Motion to Terminate for at least seventy (70) days after the last publication of the notices described above, *i.e.*, for at least ten (10) days after the close of the period for public comment, and the United States reserves the right to withdraw its consent to the motion at any time prior to entry of an order terminating the Final Judgment.

This procedure is designed to provide additional notice to all potentially interested persons, informing them that the motion to terminate the Final Judgment is pending and providing them a further opportunity to comment thereon. Honeywell has agreed to follow this procedure,

including publication of the appropriate notices, should the Court find it necessary.

The parties therefore submit to the Court three separate proposed orders: one that can be used to terminate the Final Judgment immediately (*see* Attachment A to the Stipulation), the second that establishes the additional notice and comment procedure outlined above (*see* Attachment C to the Stipulation), and the third that can be used to terminate the Final Judgment after any additional notice and comment period (*see* Attachment E to the Stipulation).

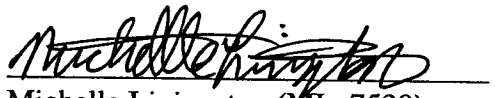
VI. CONCLUSION

For the foregoing reasons, the United States consents to the termination of the Final Judgment, subject to its right to withdraw its consent to the motion at any time prior to entry of an order terminating the Final Judgment.

Dated: August 8, 2007

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of the United States in Response to Defendant Honeywell International's Motion to Terminate Final Judgment has been served upon counsel identified below via Federal Express on this 8th day of August 2007:

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