IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil Action No.: 1:03CV01923
GENERAL ELECTRIC COMPANY,	)	Filed: September 16, 2003
and	)	
INSTRUMENTARIUM OYJ,	)	
Defendants.	)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and between the undersigned parties, subject to approval and entry by this Court, that:

I.

DEFINITIONS

As used in this Hold Separate and Stipulation Order:

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 business" 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, attached as Exhibit 1 (motion pending to file under seal) to the proposed Final Judgment filed in this action, and attached herein as Exhibit A, Part 2 (motion pending to file under seal). A non-confidential version of Schedule 1 is attached as Exhibit 2 to the proposed Final Judgment and attached herein as Exhibit A (Part 3). 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 by 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 ("Medical Connector technology"). Provided, also, that GE may use the Medical Connector technology during the term of this Hold Separate Stipulation and Order, until it accomplishes the divestiture of Spacelabs pursuant to the Final Judgment.

F. "Ziehm business" 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.

II.

OBJECTIVES

The Final Judgment filed in this civil action is meant to ensure defendants' prompt divestitures of the Spacelabs and Ziehm businesses for the purpose of establishing viable competitors in the manufacture and sale of patient monitors and mobile C-arms in order to remedy the effects that the United States alleges would otherwise result from GE's acquisition of Instrumentarium. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Spacelabs and Ziehm businesses remain independent, economically viable and ongoing business concerns that will remain independent and uninfluenced by GE, and that competition is maintained and not diminished during the pendency of the ordered divestitures.

III.

JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form hereto attached as Exhibit A, Part 1 may be filed with and entered by this Court, upon the motion of any party or upon this Court's own motion, at any time after compliance with the requirements of the Antitrust

Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with this Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the entry of the Final Judgment by this Court, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment. From the date of the signing of this Hold Separate Stipulation and Order by the parties, defendants shall comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of this Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to this Court.

E. In the event that (1) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and this Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, or (2) the United States has withdrawn its consent, as provided in Section IV.A above, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this

or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking this Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

Until each divestiture required by the Final Judgment has been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Spacelabs and Ziehm businesses as independent, ongoing, economically viable competitive businesses with management, research, design, development, promotions, distribution, sales, services, and operations held entirely separate, distinct, and apart from those of GE's other operations. GE shall not coordinate its production, marketing, or terms of sale of any products with those produced by or sold under the Spacelabs and Ziehm businesses with its other operations. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps taken to comply with the Hold Separate Stipulation and Order.

B. Except as is necessary to carry out its obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment, or to comply with other legal obligations, defendants shall take all steps necessary to ensure that (1) the Spacelabs and Ziehm businesses will be maintained and operated as independent, ongoing, economically viable and active competitors in the patient monitor and C-arms businesses; (2) the management of the Spacelabs and Ziehm businesses will not be influenced by GE; and (3) the books, records, competitively sensitive sales,

marketing, and pricing information, and decision making associated with the Spacelabs and Ziehm businesses will be kept separate and apart from GE's other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the research development, sales, and revenue of the Spacelabs and Ziehm businesses, and shall maintain research, design, development, product improvement, promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Spacelabs and Ziehm businesses at 2002 or previously approved 2003 levels, whichever are higher.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Spacelabs and Ziehm businesses as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V.A and V.B.

E. Defendants shall take all steps necessary to ensure that the Spacelabs and Ziehm businesses are fully maintained in operable condition at no less than current capacity, and shall maintain and adhere to normal product improvement, upgrade, repair, and maintenance schedules for the assets included in the Spacelabs and Ziehm businesses.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Spacelabs and Ziehm businesses.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Spacelabs and Ziehm businesses.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of

the Spacelabs and Ziehm businesses.

I. Defendants shall not hire, transfer, terminate, or reduce the salary agreements of any employee whose primary responsibilities relate to the Spacelabs or Ziehm businesses, except for transfer bids initiated by employees pursuant to defendants' regular, established job-posting policy or as is otherwise consistent with this Hold Separate Stipulation and Order. Defendants shall provide the United States with ten (10) calendar days notice of any such transfer.

J. Within ten (10) days of the entry of this Hold Separate Stipulation and Order, defendants shall appoint, subject to the approval of the United States, a person or persons to oversee the Spacelabs and Ziehm businesses, respectively, who will also be responsible for defendants' compliance with this section. This person or persons shall have complete managerial responsibility for the Spacelabs and Ziehm businesses, respectively, subject to the provisions of the Final Judgment. In the event that any such person is unable to perform his or her duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures required by the Final Judgment to Acquirers acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/

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Dated: September 16, 2003.

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/s/

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ORDER

It is SO ORDERED this ___ day of September 2003.

United States District Judge

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) <u>Distribution Arrangements:</u>

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.