

**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:**

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Dated: September 16, 2003.

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ORDER

It is SO ORDERED this ____ day of September 2003.

United States District Judge