UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA, Plaintiff, v. THE MATHWORKS, INC. and WIND RIVER SYSTEMS, INC., Defendants.	Civil Action No. 02-888-A Chief Judge Hilton

FINAL JUDGMENT

WHEREAS, Plaintiff United States of America filed its Complaint on June 21, 2002, alleging that The MathWorks, Inc. ("The MathWorks") and Wind River Systems, Inc. ("Wind River") entered into a series of agreements related to Wind River's MATRIXx product line that violate Section 1 of the Sherman Act;

AND WHEREAS the United States and Wind River on June 21, 2002, consented to entry of a Final Judgment that would require Wind River to use its reasonable best efforts to divest its interests in the MATRIXx assets in the event a Final Judgment is entered against The MathWorks;

AND WHEREAS the United States and The MathWorks, 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 any admission by, any party regarding any issue of fact or law;

AND WHEREAS The MathWorks agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the United States believes that entry of this Final Judgment is in the public interest;

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 The MathWorks under Section 1 of the Sherman Act (15 U.S.C. § 1).

II. DEFINITIONS

As used in this Final Judgment:

(A) "MATRIXx Agreements" means the February 16, 2001, Distribution Agreement and other related and contemporaneous agreements between Wind River and The MathWorks.

(B) "MATRIXx assets" means all rights and tangible and intangible assets, including but not limited to, all contracts, software code, copyrights, patents, licenses, sublicenses, trademarks and other intellectual property, within the scope of the MATRIXx Agreements (excluding Retained Rights and U.S. Patents Nos. 4,796,179, 5,133,045, and 5,612,866 assigned to The MathWorks in the February 16, 2001, Patent Assignment between ISI and The MathWorks).

(C) "The MathWorks" means The MathWorks, Inc., a Delaware corporation with its headquarters in Natick, Massachusetts, its parents, successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, and any other person acting for, on behalf of, or under the control of them.

(D) "Wind River" means Wind River Systems, Inc., a Delaware corporation with its headquarters in Alameda, California, its parents, successors and assigns, and its subsidiaries (including Integrated Systems, Inc. ("ISI")), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, and any other person acting for, on behalf of, or under the control of them.

(E) "Retained Contracts" mean all Wind River and ISI contracts regarding the MATRIXx products that remain in effect as of the date this Final Judgment becomes effective and were identified and retained by Wind River in the MATRIXx Agreements.

(F) "Retained Rights" mean (a) a worldwide, royalty-free, non-exclusive right under the MATRIXx assets to use, modify, improve, copy, display, perform, create derivative works of and enhance the MATRIXx products and distribute the same solely in connection with Wind River's provision of support services (including, without limitation, the right to provide source code to the extent contractually obligated) related to Retained Contracts; (b) a worldwide, royalty-free, non-exclusive license under the patents included within the MATRIXx assets to make, have made, use, sell, offer for sale, or import (I) articles that may be covered by one or more claims of such patents provided such acts are in connection with the provision of support services related to Retained Contracts or (ii) any Wind River products available for purchase as of February 16, 2001 (except the MATRIXx products), including all modifications, derivatives, new versions and new releases of the same.

III. APPLICABILITY

This Final Judgment applies to The MathWorks and all other persons in active concert or participation with The MathWorks who receive actual notice of this Final Judgment by personal service or otherwise.

IV. ASSET SALE

The United States and The MathWorks agree as follows:

(A) As soon as possible, but no later than 30 days from the date of filing of this proposed Final Judgment with the Court, the United States shall nominate an independent agent to serve as Trustee to accomplish the sale of the MATRIXx assets to a purchaser approved by the United States pursuant to the terms of this Final Judgment and any subsequent order of the Court.

(B) The Trustee shall serve at the cost and expense of defendants, on such customary and commercially reasonable terms and conditions as the United States, in its sole discretion, proposes, subject to approval by the Court. The Trustee shall receive compensation that is customary and commercially reasonable for asset sales of the size and complexity as those included herein, including a substantial success incentive and any reasonable and necessary legal expenses relating to its role as Trustee. The Trustee shall account to the Court and defendants for all monies derived from the sale of the MATRIXx assets and all costs and expenses so incurred.

(C) Upon application of the United States, the Court shall appoint the Trustee nominated by the United States and approve the engagement letter, provided that the engagement letter's terms and conditions are customary and commercially reasonable and consistent with this Final Judgment.

(D) The Trustee shall have the duty to attempt to sell the MATRIXx assets and negotiate a definitive sales and licensing agreement with a purchaser pursuant to the terms of this Final Judgment, the terms of the engagement letter and any subsequent order of the Court. The Trustee shall promptly make known, by usual and customary means, the availability of the MATRIXx assets, and shall attempt to sell the assets in a manner consistent with its typical commercial practices, including protection of the defendants' confidential information. Defendants shall have no authority or responsibility with respect to the attempt to sell the MATRIXx assets or negotiate the definitive sales and licensing agreement, except to promptly provide any information relating to the MATRIXx assets requested by the Trustee in writing or as otherwise provided herein.

(E) Defendants shall promptly provide to the Trustee all information and documents requested in order to prepare offering materials and provide customary due diligence information to prospective purchasers with respect to the MATRIXx assets. Defendants shall comply fully with all such requests within three business days, unless the Trustee, in its sole discretion, waives or extends the time period, or excuses defendants from providing certain specified information.

(F) The Trustee shall commence offering the MATRIXx assets for sale immediately after certification to the Court that it has received adequate information from the defendants to offer the MATRIXx assets for sale. The certification shall be made within five business days of receipt of the adequate information. After the sales offering has commenced, the Trustee may make such additional written requests for information as may be reasonably necessary to perform its duties, and the defendants shall comply fully with such requests within 3 business days,

unless the Trustee, in its sole discretion, waives or extends the time period, or excuses defendants from providing certain specified information.

(G) The Trustee shall have 90 days from the date of such certification in which to offer the MATRIXx assets for sale and consummate a definitive sales and licensing agreement with a purchaser. There shall be no extensions of this 90-day period, except, however, the running of the 90-day period shall toll for any undue delay the Court finds is caused by defendants.

(H) The Trustee shall negotiate a definitive sales and licensing agreement on customary and commercially reasonable terms, substantially equivalent, except for the payment terms, to the terms and conditions in the MATRIXx Agreements to the extent possible, and that provides to the purchaser representations, warranties and covenants equivalent to those in the MATRIXx Agreements. The defendants may allocate primary responsibility for and indemnification under such warranties among themselves as customary and appropriate to their respective rights and obligations concerning the MATRIXx assets on the date of such sale. The definitive sales and licensing agreement will provide for transitional support to the purchaser, equivalent to that offered under the MATRIXx Agreements.

(I) The Trustee shall make written reports of its activities to the Court, the United States and defendants 30 days, 45 days, 60 days, 75 days, and 90 days after initiation of its attempts to sell the MATRIXx assets. Such reports shall include the name, address, and telephone number of each person who made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the MATRIXx assets, and shall describe in detail each contact with such person, including the terms of any offers made or received. 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 maintain full records of all efforts made to divest the MATRIXx assets. The Trustee may discuss its progress with the United States and defendants as it deems reasonable under the circumstances.

(J) The MATRIXx assets to be conveyed shall include substantially all assets, rights and property interests of both The MathWorks and Wind River as currently exist pursuant to the MATRIXx Agreements, except, however, that The MathWorks may retain ownership of the three patents referenced in paragraph II(B), in which case the definitive sales and license agreement shall include a patent license to the purchaser. Any such patent license must:

(1) cover as many of the three patents as the purchaser wishes to license;

(2) be perpetual, fully paid-up, and without continuing royalties to either defendant;

(3) not contain any field-of-use restrictions whatsoever;

(4) permit the purchaser to sublicense the intellectual property so licensed (the "IP") in order to:

(a) adequately convey rights to exploit the technology to end user customers of any product or service that includes the IP;

(b) enter into development or support outsourcing or co-development agreements with third parties in conjunction with the purchaser's products or services, or joint venture agreements with third parties in which the purchaser and the third party both retain an interest in the resulting product, service, research or IP;

(c) effectuate transfer of the license either upon change of control of the purchaser, or upon sale of all or a substantial portion of the MATRIXx assets; and

(d) permit use of the IP in third-party products or services designed and intended for use with the purchaser's products, e.g., complementary software tools;

(5) permit, without any restriction, grantback, or royalties, the ability to innovate based on the IP and to use such innovations in the purchaser's products or under any circumstance set forth above without restriction;

(6) permit enforcement of infringement that damages the purchaser, except that The MathWorks may have a first right to enforce the patents, provided that if it does so the purchaser has appropriate intervention rights to protect its license or IP rights, and may have the right to join the purchaser as a party to any such infringement suit as may be necessary to protect fully the rights of The MathWorks; and

(7) contain an appropriate covenant not to sue the purchaser with respect to the patents covered by the license.

(K) Wind River shall be entitled to Retained Rights as provided in the proposed Final Judgment stipulated by the United States and Wind River and filed June 21, 2002.

(L) The minimum price for the MATRIXx Assets shall be $2 million cash, plus the cost and expenses of the Trustee. The defendants may, with the approval of the United States, waive this minimum reserve price requirement. The MathWorks shall not finance the purchase or

retain a contingent monetary or other interest in the MATRIXx assets being sold, other than ownership of certain patents to the extent described herein. All other costs (including the compensation of the Trustee in the event a sale of the MATRIXx assets is not consummated) will be borne by the defendants, allocated between themselves as they may agree.

(M) The United States shall have, in its sole discretion, the right to approve any prospective purchaser and the terms of any sales and license agreement negotiated with a prospective purchaser as follows:

(1) The United States shall have sole discretion to determine whether the MATRIXx assets could be competitively viable if owned by a prospective purchaser identified by the Trustee. If the United States determines that a prospective purchaser is competitively viable, the Trustee shall negotiate a definitive sales and license agreement with such purchaser. In the event of multiple bids, the United States, in its sole discretion, shall decide which prospective purchaser(s) the Trustee should pursue for purposes of negotiating a definitive sales and license agreement and shall so direct the Trustee. The MathWorks shall not challenge any such determinations by the United States.

(2) The United States and defendants shall have the right to request modifications, consistent with the terms of this Final Judgment, to any of the terms of any sales and license agreement with a prospective purchaser. The Trustee shall have discretion to approve or disapprove any such modifications, subject to the right of final approval of the definitive sales and license agreement by the United States. When considering any such request for modifications, the Trustee will

take into account whether the terms and conditions in the proposed sales and license agreement are customary and reasonable for such sales and license of assets.

(3) Should the United States disapprove any purchaser or any term of the definitive sales and license agreement, the United States shall direct the Trustee to attempt to identify an alternative purchaser, or negotiate an acceptable agreement, consistent with this Final Judgment.

(N) The Trustee may seek to enforce the obligations of The MathWorks pursuant to this Final Judgment or the engagement agreement by filing a contempt motion with the Court.

(O) If the Trustee is unable to negotiate a definitive agreement within the period set forth in paragraph IV(G) at or above the price set forth in paragraph IV(L), the case shall be dismissed upon motion by any party.

V. UNITED STATES' ACCESS AND INSPECTION

(A) For the purpose 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, 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 The MathWorks be permitted:

(1) access during The MathWorks' office hours to inspect and copy or, at the United States' option, to require The MathWorks to provide copies of all books,

ledgers, accounts, records, and documents in its possession custody or control relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record at the United States' discretion, The MathWorks's directors, officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by The MathWorks.

(B) Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, The MathWorks 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 The MathWorks to the United States, The MathWorks represents and identifies 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 The MathWorks marks 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 ten (10) calendar days' notice prior to divulging

such material in any legal proceeding (other than a grand jury proceeding) to which the MathWorks is not a party.

VI. RETENTION OF JURISDICTION

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

VII. EXPIRATION OF FINAL JUDGMENT

This Final Judgment shall expire upon the earlier of (1) the date on which The MathWorks no longer has any right, title or interest in any of the MATRIXx assets except with regard to ownership of patent rights as specified herein, or (2) the date of dismissal of this action as a result of the failure of the Trustee to accomplish the sale of the MATRIXx assets pursuant to the terms of this order. If the MATRIXx assets are sold pursuant to the terms of this Final Judgment, The MathWorks shall not purchase, license or otherwise acquire substantially all of the MATRIXx assets before September 1, 2007, without the prior written consent of the United States.

VIII. COSTS

Each party shall bear its own costs of this action.

IX. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

DATED: _____

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

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Chief United States District Judge