

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYTHEON COMPANY, and
TEXAS INSTRUMENTS, INC.,

Defendants.

Civil No:

97 1515

Filed:

Entered: November 5, 1997

FILED

NOV 06 1997

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

FILED

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, and defendants Raytheon Company ("Raytheon") and Texas Instruments, Inc. ("TI"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

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

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of the gallium arsenide foundry and MMIC business of TI to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the development, production and sale of X-band high power amplifier MMICs;

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

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

- A. "DoD" means the Department of Defense.
- B. "DOJ" means the Antitrust Division of the Department of Justice.
- C. "GaAs" means gallium arsenide.
- D. "MMIC" means a Monolithic Microwave Integrated Circuit.
- E. "MMIC Business" means the GaAs foundry and MMIC business of the R/F

Microwave Business Unit of TI purchased by Raytheon, including the GaAs Operations Group, Microwave GaAs Products Business Unit, the MMIC component of the Microwave Integrated Circuits Center of Excellence, the MMIC research and development component of the System Components Laboratory and associated contracting, quality assurance and control personnel

located in the North Building and East Building of TI's Expressway site, all employees listed in attachment A, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the MMIC Business including but not limited to: all real property (owned or leased), including interests in the North Building and East Building, used in the operation of that MMIC Business, including research and development activities, as identified pursuant to the Court's Hold Separate and Partition Plan Stipulation and Order; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the MMIC Business; all licenses, permits and authorizations issued by any governmental organization relating to that MMIC Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the MMIC Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the MMIC Business;
2. all intangible assets purchased by Raytheon relating to the MMIC Business, including but not limited to all patents, licenses and sublicenses, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, cell libraries, specifications for materials, specifications for parts and devices, safety

procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information TI provides to its own employees, customers, suppliers, agents or licensees; and

3. all research data concerning historic and current research and development efforts relating to the MMIC Business, including designs of experiments, and the results of unsuccessful designs and experiments.

F. "Module Business" means the transmit and receive module business of the R/F Microwave Business Unit of TI purchased by Raytheon, including the R/F Microwave Manufacturing Group, Microwave Module & Subsystems Center for Excellence, Microwave Packaging Center for Excellence, Microwave Laboratories and Support Systems Center for Excellence, Technology Programs Customer Product Team, module component of the Microwave Integrated Circuits Center for Excellence, and associated contracting, quality assurance and control personnel located in the North Building of TI's Expressway site, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the Module Business including but not limited to: all real property (owned or leased), including interests in the North Building, used in the operation of that Module Business, including research and development activities; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the

Module Business; all licenses, permits and authorizations issued by any governmental organization relating to that Module Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the Module Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the Module Business;

2. all intangible assets purchased by Raytheon relating to the Module Business, excluding information relating to TI's MMIC Business, and otherwise including but not limited to all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of material and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information TI provides to its own employees, customers, suppliers, agents or licensees; and
3. all research data concerning historic and current research and development efforts relating to the Module Business, including design of experiments, and the results of unsuccessful designs and experiments.

G. "Raytheon" means Raytheon Company, a Delaware corporation with its headquarters and principal place of business in Lexington, Massachusetts, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors,

officers, managers, agents, and employees.

H. "TI" means defendant Texas Instruments, Inc., a Delaware corporation with its headquarters and principal place of business in Dallas, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents and employees.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to Raytheon, its successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Raytheon shall require, as a condition of the sale or other disposition of all or substantially all of its assets or of a lesser business unit that includes Raytheon's business of developing and producing MMICs, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. DIVESTITURE

A. Raytheon is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the MMIC Business to an acquirer acceptable to DOJ and DoD in their sole discretion.

B. Raytheon shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. DOJ in its sole determination, in consultation with DoD, may extend the

time period for any divestiture an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Raytheon promptly shall make known, by usual and customary means, the availability of the MMIC Business described in this Final Judgment. Raytheon shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Raytheon shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the MMIC Business customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Raytheon shall make available such information to the DOJ at the same time that such information is made available to any other person.

D. Raytheon shall permit prospective purchasers of the MMIC Business to have reasonable access to personnel and to make such inspection of the physical facilities of the MMIC Business and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Raytheon shall not take any action that will impede in any way the operation of the MMIC Business.

F. Unless both DOJ and DoD otherwise consent in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire MMIC Business, operated in place pursuant to the Hold Separate and Partition Plan Stipulation and Order, and be accomplished by selling or otherwise conveying the MMIC

Business to a purchaser in such a way as to satisfy DOJ and DoD, in their sole discretion, that the MMIC Business can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the development, production and sale of MMICs. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to DOJ's and DoD's sole satisfaction: (1) has the capability and intent of competing effectively in the development, production and sale of MMICs for advanced DoD radar systems; (2) has the managerial, operational, and financial capability to compete effectively in the development, production and sale of MMICs for advanced DoD radar systems; (3) is eligible to receive applicable DoD security clearances; and (4) that none of the terms of any agreement between the purchaser and Raytheon give Raytheon the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively. Subject to these provisions, nothing in this Final Judgment shall prohibit TI from seeking to re-acquire the MMIC Business from Raytheon.

G. Nothing in this Final Judgment shall prevent Raytheon and the purchaser of the MMIC Business from entering into a contract under which the purchaser would produce product for Raytheon using any capacity of the MMIC Business not required to support DoD programs. In addition, nothing in this Final Judgment shall prevent Raytheon from licensing technology or know-how from the purchaser.

H. For a period of two years from the filing of the Complaint in this matter, defendants shall not solicit to hire any individual who, on the date of the filing of the Complaint in this matter, was an employee of the MMIC Business. For a period of two years from the filing of the Complaint in this matter, defendants shall not hire any individual who, on the date of the

filing of the Complaint in this matter, was an employee of the MMIC business unless such individual has a written offer of employment from a third party for a like position.

I. Raytheon shall comply with all agreements with DoD regarding the protection of information related to classified programs.

J. Raytheon shall not charge to DoD any costs directly or indirectly incurred in complying with this Final Judgment.

V. APPOINTMENT OF TRUSTEE

A. In the event that Raytheon has not divested the MMIC Business within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DOJ, in consultation with DoD, to effect the divestiture of the MMIC Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the MMIC Business described in Section II(E) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested the Module Business; in such event, all of the obligations of Raytheon under Section IV of this Final Judgment shall apply to the Module Business as well. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Raytheon any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be

accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the DOJ and DoD, and shall have such other powers as this Court shall deem appropriate. Raytheon shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Raytheon must be conveyed in writing to DOJ and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

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

D. Raytheon shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Raytheon shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Raytheon shall permit bona fide prospective

acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

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

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

a period requested by DOJ.

VI. NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Raytheon or the trustee, whichever is then responsible for effecting the divestiture, shall notify DOJ and DoD of the proposed divestiture. If the trustee is responsible, it shall similarly notify Raytheon. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DOJ and DoD of such notice, DOJ, in consultation with DoD, may request from Raytheon, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Raytheon and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the DOJ has been provided the additional information requested from Raytheon, the proposed purchaser, and any third party, whichever is later, DOJ and DoD shall each provide written notice to Raytheon and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If DOJ and DoD provide written notice to Raytheon and the trustee that they do not object, then the divestiture may be consummated, subject only to Raytheon's limited right to object to the sale under Section

V(B) of this Final Judgment. Absent written notice that DOJ and DoD do not object to the proposed purchaser or upon objection by DOJ or DoD, a divestiture proposed under Section IV or Section V may be consummated. Upon objection by Raytheon under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Raytheon shall deliver to DOJ and DoD an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Raytheon has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by DOJ to information provided by Raytheon, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Raytheon shall deliver to DOJ and DoD an affidavit which describes in detail all actions

Raytheon has taken and all steps Raytheon has implemented on an on-going basis to preserve the MMIC Business pursuant to Section VIII of this Final Judgment and the Hold Separate and Partition Order entered by the Court. The affidavit also shall describe, but not be limited to, Raytheon's efforts to maintain and operate the MMIC Business as an active competitor, maintain the management, staffing, research and development activities, sales, marketing and pricing of the MMIC Business, and maintain the MMIC Business in operable condition at current capacity configurations. Raytheon shall deliver to DOJ and DoD an affidavit describing any changes to the efforts and actions outlined in Raytheon's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Raytheon shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII. HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, Raytheon shall take all steps necessary to comply with the Hold Separate and Partition Plan Stipulation and Order entered by this Court and to preserve the assets of the Module Business. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. FINANCING

Raytheon is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of DOJ.

X. COMPLIANCE INSPECTION

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Raytheon made to its principal offices, shall be permitted:

1. Access during office hours of Raytheon to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Raytheon, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and
2. Subject to the reasonable convenience of Raytheon and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Raytheon's principal offices, Raytheon shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate and Partition Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other

than a duly 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 Raytheon to DOJ or DoD, Raytheon 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 Raytheon 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 ten (10) calendar days notice shall be given by DOJ or DoD to Raytheon prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Raytheon is not a party.

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated November 5, 1997.



United States District Judge

Parties Entitled to Notice of Entry of Order:

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