

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No:
)	
v.)	Filed:
)	
RAYTHEON COMPANY, GENERAL)	
MOTORS CORP. and H E HOLDINGS,)	
INC.,)	
Defendants.)	
_____)	

HOLD SEPARATE AND PARTITION PLAN STIPULATION AND ORDER

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

I.

DEFINITIONS

As used in this Hold Separate and Partition Plan Stipulation and Order:

A. "A-Kit" means all components necessary to fit a B-Kit into a particular ground vehicle, including the optics, electronics, software, visual display, stabilization, and fire control as required.

B. "B-Kit" means the common components for second generation ("2nd Gen.")

Forward Looking Infrared Systems ("FLIRs") designed under the HTI program, including SADA II integrated cooler/dewar detector assemblies, afocal assemblies, and associated electronics.

- C. "DoD" means the Department of Defense.
- D. "DoJ" means the Antitrust Division of the Department of Justice.
- E. "EO Business" means the 2nd Gen. ground EO business of Hughes operated out of the El Segundo, California and La Grange, Georgia facilities that produces A-Kits and B-Kits for ground vehicles and other applications, including the IBAS, M-1 TIS, LRASSS, and HTI programs, and all employees listed in confidential Attachment A, including:
 - a. all tangible assets used to produce A-Kits and B-Kits; all real property (owned or leased), including interests in the El Segundo, California and La Grange, Georgia facilities used to produce A-Kits and B-Kits, 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 production of A-Kits and B-Kits; all licenses, permits and authorizations issued by any governmental organization relating to A-Kits and B-Kits; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to A-Kits and B-Kits; supply agreements; all customer lists and credit records; and other records maintained by Hughes in connection with the production of

A-Kits and B-Kits;

- b. all intangible assets relating to the research, development and production of A-Kits and B-Kits, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents utilized by Hughes in the EO Business, 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 materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Hughes provides to its own employees, customers, suppliers, agents or licensees;
- c. all research data concerning historic and current research and development efforts relating to the production of A-Kits and B-Kits, including designs of experiments, and the results of unsuccessful designs and experiments;
- d. at the option of the purchasers, a supply contract for computer support services and information and communications services sufficient to support the EO Business over a period of one year; and
- e. at the option of the purchaser, at the time of purchase, an option to purchase or lease an additional 10,000 square feet of manufacturing space for the EO Business in addition to the space set aside for the EO Business in the Final Judgment.

- F. "FPA" means a matrix of detectors or pixels made of material that is sensitive to infrared ("IR") radiation, which is mated to a silicon processor and used to detect and analyze IR radiation.
- G. "FPA Business" means the 2nd Gen. and third generation ("3rd Gen.") scanning and staring IR detector businesses of RTIS operated out of the Semiconductor Building and the Research West Building located at the Expressway site in Dallas, Texas, including all dewar and cryogenic cooler manufacturing and dewar and cryogenic cooler assembly (except for RTIS' uncooled FPA Business), and including all employees listed in confidential Attachment B, including:
- a. all tangible assets used to produce scanning IR detectors, including SADA detectors, staring detectors, dewars, and cryogenic coolers, including, but not limited to, all real property (owned or leased), including interests in the Dallas facilities, used in the operation of the RTIS FPA 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 RTIS FPA Business; all licenses, permits and authorizations issued by any governmental organization relating to the RTIS FPA Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the RTIS FPA Business and its operations; supply agreements; all customer lists and credit records; and other records

maintained by Raytheon in connection with the RTIS FPA Business;

- b. all intangible assets relating to the RTIS FPA 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 Raytheon provides to its own employees, customers, suppliers, agents or licensees; except that the purchaser shall agree to grant to the seller a non-exclusive, transferable, royalty-free license for any invention disclosed in U.S. Patent No. 5,274,578; and any inventions disclosed in U.S. Patent Applications Nos. 08/474,229, 08/097,522, 08/478,570 and 08/487,820 and Provisional Patent Application No. 60/014, 812; and
- c. all research data concerning historic and current research and development efforts relating to the RTIS FPA Business, including designs of experiments, and the results of unsuccessful designs and experiments.

H. "HTI" means the Horizontal Technology Integration program to develop a

common B-Kit to be used on different ground vehicle platforms.

- I. "Hughes" means Hughes Aircraft Company, an indirect subsidiary of General Motors Corp., with its headquarters in Arlington, Virginia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnership and joint ventures, and directors, officers, managers, agents, and employees.
- J. "IBAS" means the Integrated Bradley Acquisition System, a program to upgrade the sights on a Bradley Fighting Vehicle.
- K. "LRASSS" means the Long-Range Advanced Scout Surveillance System, a future surveillance system to be mounted on light ground vehicles.
- L. "M1-TIS" means the Thermal Imaging System for the M1 Abrams tank.
- M. "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.
- N. "RTIS" means Raytheon Texas Instruments Systems Inc.
- O. "SADA" means the Standardized Advanced Dewar Assembly and consists of a scanning FPA mounted in an evacuated dewar. The SADA program is an effort by the United States Army to develop a family of IR detectors that can be used in a variety of battlefield systems.
- P. "Uncooled FPA Business" means the technology, production equipment, and all tangible and intangible assets use by RTIS solely in the production of uncooled FPAs.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure Raytheon's prompt divestiture of the FPA Business and the EO Business for the purpose of creating viable competitors in the focal plane array business and the 2nd Gen. ground electro-optical business and to remedy the effects that the United States alleges would otherwise result from Raytheon's proposed acquisition of Hughes. This Hold Separate and Partition Plan Stipulation and Order ensures, prior to such divestiture, that the FPA Business and the EO Business be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestitures.

III.

HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Raytheon and the FPA Business and the EO Business shall expressly undertake to compete in the FPA markets and the 2nd Gen. ground EO market in the exercise of their best judgments and without regard to the merger agreement, as if they were in all respects separate and independent business entities.

B. Raytheon shall preserve, maintain, and operate the FPA Business and the EO Business as independent competitors with management, research, development, production, sales, and operations held entirely separate, distinct, and apart from those of Raytheon. Raytheon shall not coordinate its production, marketing or sale of its 2nd Gen. and 3rd Gen. focal plane array business and ground electro-optical business with the businesses of the FPA Business and

the EO Business except to the limited extent provided in III (E) below or as required pursuant to preexisting teams or associate contractor arrangements. Within fifteen (15) days of the entering of this Order, Raytheon will inform DoJ and DoD of the steps taken to comply with this provision.

C. Raytheon shall take all steps necessary to ensure that the FPA Business and the EO Business will be maintained and operated as independent, ongoing, economically viable, and active competitors in the development, production, and sale of 2nd Gen. and 3rd Gen. focal plane array products and 2nd Gen. ground electro-optical products; that the management of the FPA Business and the management of the EO Business will not be influenced by Raytheon and that the books, records, competitively sensitive sales, marketing and pricing information and decision-making associated with the FPA Business and the EO Business, including the performance and decision-making functions regarding internal research and development, sales and pricing, will be kept separate and apart from the business of Raytheon. Raytheon's influence over the FPA Business and the EO Business shall be limited to that necessary to carry out Raytheon's obligations under this Order and the Final Judgment.

D. Raytheon shall use all reasonable efforts to maintain and increase sales at the FPA Business and the EO Business, and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, internal research, and development funding, technical assistance, sales, marketing and other support for the FPA Business and the EO Business.

E. Raytheon shall provide and maintain sufficient working capital to maintain the FPA Business and the EO Business as economically viable, ongoing businesses.

F. Raytheon shall provide and maintain sufficient lines and sources of credit to maintain the FPA Business and EO Business as a viable, ongoing business.

G. Raytheon shall take all steps necessary to ensure that the FPA Business and the EO Business are fully maintained in operable condition at no lower than their current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the FPA Business and the EO Business.

H. Raytheon shall not sell, lease, assign, transfer, or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to this Final Judgment.

I. Raytheon 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 FPA Business and the EO Business.

J. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate and Partition Plan Stipulation and Order, defendants shall not hire and defendants shall not transfer or terminate, or alter to the detriment of any employee, any current employment or salary agreements for any Raytheon or Hughes employees who (i) on the date of the signing of this Agreement, work in the FPA Business or the EO Business or (ii) are members of management referenced in Section III(L) and (M) of this Order.

K. Raytheon shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of a repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

L. Until such time as it is divested, the FPA Business shall be managed by James M. Baird. Mr. Baird shall have complete managerial responsibility for the FPA Business, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Baird is unable to perform his duties, Raytheon shall appoint, subject to approval of DoJ and DoD, a replacement within ten (10) working days. Should Raytheon fail to appoint a replacement acceptable to DoJ and DoD within ten (10) working days, DoJ and DoD shall appoint a replacement.

M. Until such time as it is divested, the EO Business shall be managed by Robert L. Duval, III. Mr. Duval shall have complete managerial responsibility for the EO Business, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Duval is unable to perform his duties, Raytheon shall appoint, subject to approval of DoJ and DoD, a replacement within ten (10) working days. Should Raytheon fail to appoint a replacement acceptable to DoJ and DoD within ten (10) working days, DoJ and DoD shall appoint a replacement.

N. Raytheon shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

O. This Hold Separate and Partition Plan Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the Final Judgment or until further Order of the Court.

IV.

PARTITION PLAN

A. Defendants are hereby ordered and directed to present a plan to partition the facilities of the FPA Business and the EO Business from the facilities of Raytheon and Hughes to the DoD and DoJ, within twenty-eight (28) calendar days of the entry of this Order. DoJ and

DoD shall have the sole discretion to approve defendants' partition plan and shall notify defendants within five (5) business days whether they approve of or reject defendants partition plan. In the event defendants partition plan is rejected, the reasons for the rejection shall be provided to defendants' by DoJ and defendants' shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection, a revised partition plan.

In the event the parties are unable to agree on a partition plan within an additional three (3) business days, DoJ, in consultation with DoD, may appoint an expert to devise such a partition plan. The expert shall have the right, in its sole discretion, to allocate space and equipment between Raytheon and the FPA Business, and Hughes and the EO Business. Defendants shall not object to the partitioning plan devised by the expert on any grounds other than the expert's malfeasance. The expert shall serve at the cost and expense of Raytheon. Raytheon shall take no action to interfere with or impede the expert's partition plan.

B. Raytheon shall ensure to the satisfaction of DoD that the operations of the FPA Business and the EO Business, including its support programs, not be disrupted.

Dated: October 16, 1997

FOR PLAINTIFF UNITED STATES:

_____/s/_____
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FOR DEFENDANTS GENERAL MOTORS
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O R D E R

It is SO ORDERED, this _____ day of _____, 1997.

United States District Judge