

FILED

FEB 5 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

COOKSON GROUP PLC,
ELECTROVERT LTD., and
ELECTROVERT U.S.A. CORP.,

Defendants.

92 2206

Civil Action No. 92 2206

Entered: February 5, 1993

FINAL JUDGMENT

WHEREAS plaintiff, United States of America, having filed its Complaint herein on September 29 , 1992, and plaintiff and defendants, 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 such issue;

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 prompt licensing of certain wave soldering technology to ensure that competition in the sale of wave soldering machines is not substantially lessened;

AND WHEREAS defendants have represented to plaintiff that the remedial action required below can be undertaken and that defendants will later raise no claim of financial hardship arising out of this Final Judgment or the license agreements required by this Final Judgment as grounds for asking the Court to modify any of the 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.

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

II.

As used in this Final Judgment:

A. "Cookson" means defendant Cookson Group plc, each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

B. "Electrovert Ltd." means defendant Electrovert Ltd., each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

C. "Electrovert" means defendant Electrovert U.S.A. Corp., each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

D. "Hollis" means the Hollis Automation Co. whose assets were acquired by Electrovert on or about March 30, 1992.

E. "Wave soldering technology" means all intellectual property currently owned by Hollis relating to any wave soldering machine, equipment, parts, or processes produced, sold, utilized, or under development by Hollis, including all rights under any patents, patent applications, and patent improvements; all know-how, design specifications, drawings, and parts specifications; and a current list of all approved parts suppliers. Wave soldering technology includes, but is not limited to, Hollis' hot air knife, nitrogen, oil intermix, and horizontal conveyor technologies.

III.

A. The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, and to 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. No portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. Cookson, Electrovert Ltd., and Electrovert shall require, as a condition of the sale or other disposition of all or substantially all of their assets or capital stock, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV.

A. Electrovert is hereby ordered and directed, by no later than 90 days following the stipulation by the parties as to this Final Judgment, to license in perpetuity all North American rights to the wave soldering technology to two of the following four firms: Technical Devices Company, Sensbey Incorporated, Soltec International B.V., and Seitz & Hohnerlein. As to each proposed licensee it must be demonstrated to plaintiff's satisfaction and in plaintiff's sole discretion that, in view of the terms of the proposed technology license, the proposed licensee has the capability and incentive to produce wave soldering machines incorporating a "hot air knife" and to compete effectively in the sale of such wave soldering machines in North America within one year from the date of the license. If plaintiff objects to any proposed licensee, any grant by Electrovert of a license to that proposed licensee shall not satisfy the requirements of this paragraph.

B. If within 90 days Electrovert has not secured the two licenses as required by Paragraph IV.A., the Court shall, upon application of plaintiff, appoint a trustee selected by

plaintiff to secure the required licenses. The trustee shall have the full power and authority to secure the licenses, including the power to grant worldwide rights to the wave soldering technology on such terms as are then obtainable upon a reasonable effort by the trustee and shall have such other powers as the Court deems appropriate to secure such licenses. Defendants shall, as requested, use all reasonable efforts to assist the trustee in accomplishing the required licensing. Defendants shall not object to any license by the trustee on any grounds other than malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within 10 days after the trustee has notified Electrovert of the proposed license.

C. The trustee shall serve at the cost and expense of Electrovert, pursuant to a fee agreement between them that provides for a fixed fee plus an incremental fee for each license secured. The trustee shall account for all monies derived from the licenses and all costs and expenses incurred. After the accounting is completed to the parties' and the trustee's satisfaction, or upon Court approval if the parties and the trustee cannot agree, all monies derived from the licensing shall be paid to Electrovert and the trust shall be terminated. The trustee shall have six months from the time it receives the right to license the wave soldering technology to secure the necessary licenses.

D. The trustee shall have full and complete access to such personnel, books, and records of Electrovert that the trustee believes is necessary to enable the performance of the trustee's duties. Subject to appropriate confidentiality agreements, the trustee may disclose to prospective licensees such relevant information regarding wave soldering technology that the trustee believes is necessary to secure the aforementioned licenses.

E. The trustee shall file monthly reports with plaintiff, Electrovert, and the Court setting forth the trustee's efforts to accomplish the licenses ordered by this Final Judgment. If the trustee has not accomplished such licenses within six months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required licenses and (2) the reasons, in the trustee's judgment, why the required licenses have not been accomplished. To the extent such report contains information the trustee deems confidential, that portion of the report containing the confidential information shall not be filed in the public docket of the Court. Upon application by plaintiff, the Court may, in order to carry out the purpose of the trust, extend the term of the trust and the term of the trustee's appointment by no more than 90 days.

F. Defendants shall give 60 days notice to the Department of Justice prior to:

(1) acquiring any interest in any assets of any person that, at any time during the 12 months immediately preceding the acquisition, used such assets to produce or sell wave soldering machines in the United States;

(2) acquiring any capital stock, or any other securities with voting rights, of any supplier of wave soldering machines, that at any time during the twelve (12) months immediately preceding the acquisition had produced wave soldering machines for sale in the United States;

(3) selling or transferring to any firm engaged in the production or sale of wave soldering machines in the United States any of defendants' assets that at any time during the 12 months immediately preceding the sale or transfer were used in the production or sale of wave soldering machines in the United States;

(4) selling or transferring to any firm engaged in the production or sale of wave soldering machines in the United States any defendant's equity securities or any other securities with voting rights.

V.

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

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

- (1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or other persons acting for or on behalf of the defendant, 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 any defendant's principal office, the

defendant shall submit such written reports, under oath if requested, with respect 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 any representatives of the Department of Justice 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 any defendant to plaintiff, the defendant 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 defendant marks each pertinent page of such material, "Subject to claim of privilege under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than grand jury proceedings) to which the defendant is not a party.

VI.

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

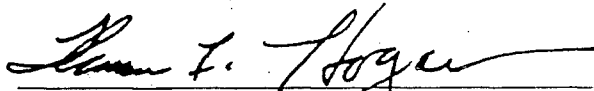
VII.

This Final Judgment will expire on the fifth anniversary of its date of entry.

VIII.

Entry of this Final Judgment is in the public interest.

Dated: 2/5/93


UNITED STATES DISTRICT JUDGE