

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
) Civil No: 1:97CV01515
 v.)
) Filed: July 2, 1997
 RAYTHEON COMPANY and)
 TEXAS INSTRUMENTS 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. “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; 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 government organization relating to that MMIC Business; all contracts, teaming arrangements, agreements, leases, commitments and understanding 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. “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.

G. “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.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Raytheon’s prompt divestiture of the MMIC Business for the purposes of creating a viable competitor in development, production and sale of MMICs used in advanced military radars and to remedy the effects that the United States alleges would otherwise result from Raytheon’s proposed acquisition of the MMIC Business of TI. This Hold Separate and Partition Plan Stipulation and Order ensures the timely

and complete transfer of the MMIC Business and maintains the MMIC Business as an independent, viable competitor until divestiture is complete.

III. HOLD SEPARATE PROVISIONS

A. Raytheon and MMIC Business shall expressly undertake to compete in the MMIC 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 MMIC Business purchased by Raytheon from TI as an independent competitor 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 gallium arsenide products with that of the MMIC Business, except to the limited extent provided in III(D) below. Within fifteen (15) days of the entering of this Order, Raytheon will inform the DOJ and DoD of the steps taken to comply with this provision.

C. Raytheon shall take all steps necessary to ensure that the MMIC Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the development, production and sale of gallium arsenide products, including MMICs, that the management of the MMIC 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 MMIC 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 MMIC Business shall be limited to that necessary to carry out Raytheon's obligations under this Order and the Final Judgment.

Nothing in this provision, however, shall prevent Raytheon from obtaining information customarily provided in due diligence to allow Raytheon to determine what technology, intellectual property, and know-how it may desire to license from the purchaser of the MMIC Business and to determine whether to contract with the purchaser of the MMIC Business to produce product for Raytheon.

D. Raytheon shall provide and maintain sufficient working capital to maintain the MMIC Business as a viable, ongoing business, consistent with current business plans.

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

F. Raytheon shall maintain on behalf of the business of the MMIC Business in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the business on a monthly and quarterly basis.

G. Raytheon shall use all reasonable efforts to maintain and increase sales of the MMIC Business, and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, internal research and development funding, sales, marketing, and support for MMIC and module products produced by the MMIC Business.

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

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

J. Nothing in this Order shall prohibit Raytheon from contracting with the MMIC Business, pursuant to arm's length negotiations, to have the MMIC Business produce product for Raytheon from any excess capacity at the foundry of the MMIC Business.

K. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any MMIC Business employee who, on the date of entry of this Order, works for the MMIC Business. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of the MMIC Business. Defendants shall not hire any individual who, on the date of entry of this Order, was an employee of the MMIC Business, unless such individual has a written offer of employment from a third party for a like position.

L. Until such time as this Order is terminated, the MMIC Business shall be managed by Thomas Cordner. Mr. Cordner shall have complete managerial responsibility for the MMIC Business, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Cordner is unable to perform his duties, Raytheon shall appoint from the current management of the MMIC Business, subject to the DOJ's approval, a replacement within ten (10) working days. Should Raytheon fail to appoint a replacement acceptable to the DOJ within ten (10) working days, the DOJ, after consultation with DoD, shall appoint a replacement.

M. 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.

N. This Order shall remain in effect until the divestiture required by the Final Judgment is complete, 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 MMIC Business from the facilities of Raytheon and TI to the DoD and DOJ, within twenty-eight (28) days of the entry of this Order. In the event the parties are unable to agree on a partition plan within twenty-eight (28) days of the entry of this Order, 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, TI and the MMIC 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 MMIC Business, including its support of DoD programs, not be disrupted.

Dated: July 2, 1997

FOR PLAINTIFF UNITED STATES
OF AMERICA:

FOR DEFENDANT RAYTHEON COMPANY:

_____/s/_____
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FOR DEFENDANT TEXAS INSTRUMENTS
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_____/s/_____
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IT IS SO ORDERED by the Court, this _____ day of July, 1997.

United States District Judge

Parties Entitled to Notice of Entry of Order:

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