

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of)	
)	
MAGNESIUM ELEKTRON NORTH AMERICA, INC.)	Docket No.
a corporation;)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition by Magnesium Elektron North America, Inc. (“Magnesium Elektron” or “Respondent”) of the assets of Revere Graphics Worldwide, Inc. (“Revere”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and having accepted the exec

accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or

2. a Person approved by the Commission to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

D. "Acquisition" means Respondent's acquisition of the assets of Revere Graphics Worldwide,

products; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Revere Photoengraving Product, “Contract Manufacture Product(s)” means:

1. the finished magnesium photoengraving products listed in the MENA Products Supply Agreement; and
 2. the uncoated semi-finished magnesium photoengraving products listed in the MENA Products Supply Agreement.
- K. “Development” means all research and development activities, including, without limitation, the following: test method development; formulation, including without limitation, customized formulation for a particular customer(s); mechanical properties testing; performance testing; safety testing; composition measurements; process development; manufacturing scale-up; development-stage manufacturing; quality assurance/quality control development; statistical analysis and report writing; and conducting experiments and other activities for the purpose of obtaining or achieving any and all Product Approvals and Specifications. “Develop” means to engage in Development.
- L. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. The term “Direct Cost” *excludes* any allocation or absorption of excess or idle capacity. “Direct Cost” to the Acquirer for its use of any of Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Revere Photoengraving Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Revere Photoengraving Product.
- M. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- N. “Employee Information” means a complete and accurate list containing the following, for each Revere Photoengraving Product Employee (as and to the extent permitted by the Law):
1. the name of each former employee of Revere;
 2. with respect to each such employee, the following information:
 - a. the last job title or position held;
 - b. the facility where the employee was last employed; and

- c. employment status (*i.e.*, active, no longer employed, or on leave or disability; full-time or part-time) with Respondent.
- O. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- P. “High Volume Account(s)” means any customer of Respondent or Revere within the United States whose annual gross purchase amounts (on a company-wide level), in units or in dollars, of magnesium photoengraving products from Respondent or Revere was among the top twenty (20) highest of such purchase amounts during the period from January 1, 2008 through the Closing Date.
- Q. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order.
- R. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- S. “Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) acquired by Respondent pursuant to the Acquisition to manufacture each Revere Photoengraving Product, including, but not limited to, the following:
 - 1. product specifications, including without limitation, the exact combination and proportion of metals, other agents, reactive diluents and other components that achieves a particular set of application and end-use characteristics necessary for photoengraving;
 - 2. processes, including without limitation, hot reversing mill rolling, warm mill rolling, shearing to weight flatten, weight flattening, back coat painting, grinding, final shearing after grinding, pretreatment, photoresist coating and protective film applications;
 - 3. processing equipment specifications;
 - 4. standard operating procedures;
 - 5. product designs and design protocols;
 - 6. plans, ideas, and concepts;
 - 7. operating manuals for photoresist magnesium coated magnesium photoengraving machines acquired by Respondent pursuant to the Acquisition;
 - 8. specifications for purchasing magnesium slabs suitable for use in the Revere Photoengraving Products;

9. safety procedures for handling of materials and substances;
 10. flow diagrams;
 11. quality assurance and control procedures, including, without limitation, goods inwards testing and polyethylene release testing;
 12. research records;
 13. annual product reviews;
 14. manuals and technical information provided to employees, customers, suppliers, agents or licensees including, without limitation, manufacturing, equipment, and engineering manuals and drawings;
 15. audits of manufacturing methods for Revere Photoengraving Products conducted by all of the following:
 - a. applicable United States' Agencies;
 - b. non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications related to the use of metals or metal alloys for applications in particular industries, including the engraving industry (*e.g.*, International Organization for Standardization); and
 - c. direct purchasers of Revere Photoengraving Products that use the Revere Photoengraving Products to manufacture products.
 16. control history;
 17. labeling;
 18. supplier lists;
 19. chemical descriptions and specifications of, all raw materials inputs, components, and ingredients related to the Revere Photoengraving Products; and
 20. all other information related to the manufacturing process.
- T. "Order Date" means the date on which this Decision and Order becomes final and effective.
- U. "Patents" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Closing Date (*except*

5. relating to the particularized marketing of any Revere Photoengraving Product or educational matters relating solely to any Revere Photoengraving Product;
6. pursuant to which a Third Party provides the Manufacturing Technology related to any Revere Photoengraving Product to Respondent;
7. pursuant to which a Third Party is licensed by Respondent to use the Manufacturing Technology;
8. constituting confidentiality agreements involving any Revere Photoengraving Product;
9. involving any royalty, licensing, or similar arrangement involving any Revere Photoengraving Product;
10. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Revere Photoengraving Products to Respondent including, but not limited to, consultation arrangements;
11. pursuant to which any Third Party collaborates with Respondent in the performance of research, Development, marketing, distribution or selling of any Revere Photoengraving Product or the business associated with the Revere Photoengraving Products; and/or

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent shall assign the Acquirer all such rights under the contract or agreement as are related to the Revere Photoengraving Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

Y. “Product Intellectual Property” means all of the following related to each Revere Photoengraving Product:

1. Patents;
2. Software;
3. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process and in final Revere Photoengraving Products, protocols, methods of production and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
4. rights to obtain and file for patents and copyrights and registrations thereof; and
5. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, Product Intellectual Property expressly includes all customer specific product formulations for Revere Photoengraving Products that were acquired by the Respondent pursuant to the Acquisition, licenses from customers related to the manufacture of products for that specific customer, and all proprietary and/or trade secret information related to a particular customer that were acquired by the Respondent pursuant to the Acquisition.

Z. “Proposed Acquirer” means an entity proposed by Respondent (or a Divestiture Trustee

1. inventory of research and development records, research history, research efforts, research notebooks, research reports, technical service reports, testing methods, invention disclosures, and know how related to the Revere Photoengraving Products;
2. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from or otherwise conducted with (i) Agencies and (ii) non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications (e.g., International Organization for Standardization) relating to Product Approval(s) and Specification(s) submitted by, on behalf of, or acquired by, Respondent or Revere related to the Revere Photoengraving Products;
3. designs of experiments, and the results of successful and unsuccessful designs and experiments;
4. annual and periodic reports (both internal and external) related to the above-described Product Approval(s) and Specification(s);
5. currently used product usage instructions related to the Revere Photoengraving Products;
6. reports relating to the protection of human safety and health related to the manufacture or use of the Revere Photoengraving Products;
7. reports relating to the protection of the environment related to the manufacture or use of the Revere Photoengraving Products;
8. summary of performance reports, safety reports, and product complaints from customers related to the Revere Photoengraving Products; and
9. product recall reports filed with any Agency related to the Revere Photoengraving Products.

CC. “Retained Product(s)” means any product(s) that is not a Revere Photoengraving Product.

DD. “Revere” means Revere Graphics Worldwide, Inc. as was in existence prior to the Acquisition.

EE. “Revere Photoengraving Product(s)” means photoresist magnesium photoengraving products Developed, in Development, researched, manufactured, marketed or sold prior to the Acquisition by Revere and that were acquired by the Respondent pursuant to the Acquisition and any photoresist magnesium photoengraving product Developed, in Development, researched, manufactured, marketed or sold by Respondent using the Product Intellectual Property or Manufacturing Technology acquired by the Respondent pursuant to the Acquisition.

FF. “Revere Photoengraving Product Assets” means all of Respondent’s rights, title and interest in and to: (i) all assets related to the Revere Photoengraving Products acquired by the Respondent pursuant to the Acquisition, and (ii) any and all improvements or changes made thereto, to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of each Revere Photoengraving Product, including, without limitation, the following:

1. all Product Intellectual Property related to the Revere Photoengraving Product(s);
2. all Product Approvals and Specifications related to the Revere Photoengraving Product(s);
3. all Manufacturing Technology related to the Revere Photoengraving Product(s); and
4. all Product Development Reports related to the Revere Photoengraving Product(s)
5. all Research and Development Records;
6. at the Acquirer’s option, all Product Assumed Contracts related to the Revere Photoengraving Product(s) (copies to be provided to the Acquirer on or before the Closing Date);
7. a list of all customers that have purchased any magnesium photoengraving product within the United States from Respondent or Revere from the period beginning January 1, 2008 through the Closing Date and High Volume Accounts including the name of the employee(s) of the customer for each High Volume Account that was responsible for the purchase of the Revere Photoengraving Products on behalf of the High Volume Account and his or her business contact information; and
8. all of the Respondent’s operating manuals, books and records, customer files, customer lists and records, vendor files, vendor lists and records, cost files and records, credit information, distribution records, business records and plans, studies, surveys, and files related to the foregoing or to the Revere Photoengraving Product(s);

provided however, “Revere Photoengraving Product Assets” excludes (1) documents relating to the Respondent’s general business strategies or practices relating to research, Development, manufacture, marketing or sales of photoengraving plates, where such documents do not discuss with particularity the Revere Photoengraving Products; (2) administrative, financial, and accounting records; (3) quality control records that are determined not to be material to the manufacture of the Revere Photoengraving Products by the Interim Monitor or the Acquirer of the Revere Photoengraving Products; (4) manufacturing equipment; and (5) any real estate and the buildings and other permanent structures located on such real estate.

GG. “Revere Photoengraving Product Divestiture Agreements” means the following agreements:

1. “Technology Purchase and Sale Agreement” by and between Magnesium Elektron North America, Inc. and Universal Engraving, Inc., dated as of August 17, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto;
2. “MENA Products Supply Agreement” by and between Universal Engraving, Inc. and Magnesium Elektron North America, Inc., dated as of August 17, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto; and
3. “PSI Product Supply Agreement” by and between Universal Engraving, Inc. and Magnesium Elektron North America, Inc., dated as of August 17, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto;

each related to the Revere Photoengraving Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Revere Photoengraving Product Divestiture Agreements are attached to this Order and contained in non-public Appendix A.

- HH. “Revere Photoengraving Product Employees” means all persons employed by Revere as of the day before the Acquisition Date who participated in the research, Development, manufacture, marketing or sales of the Revere Photoengraving Products, including such persons as are employed by the Respondent as of the Closing Date; *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Revere Photoengraving Products, “Revere Photoengraving Product Employees” means the specific individuals identified as “Revere Photoengraving Product Employees” in such Remedial Agreement.
- II. “Revere Photoengraving Product Releasee(s)” means the Acquirer or any entity controlled by or under common control with the Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of the Acquirer-affiliated entities.
- JJ. “Software” means computer programs related to the Revere Photoengraving Product(s), including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Website; *provided, however*, that the term “Software” *excludes* software that is readily purchasable or licensable from sources other than the Respondent and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- KK. “Supply Cost” means a cost not to exceed the manufacturer’s average direct per unit cost in United States dollars of manufacturing the Revere Photoengraving Product, or raw material or ingredients related to a Revere Photoengraving Product, for the twelve (12) month period immediately preceding the Acquisition Date. “Supply Cost” shall expressly exclude any

intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Revere Photoengraving Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Revere Photoengraving Product.

LL. “Third Party(ies)” means any non-governmental Person other than the following: the Respondent; or, the Acquirer of particular assets or rights pursuant to this Order.

MM. “Universal” means, Universal Engraving, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its headquarters address located at 9090 Nieman Road, Overland Park, Kansas 66214.

II.

IT IS FURTHER ORDERED that:

A. Not later than ten (10) days after the Order Date, Respondent shall divest the Revere Photoengraving Product Assets, absolutely and in good faith, to Universal pursuant to, and in accordance with, the Revere Photoengraving Product Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Universal or to reduce any obligations of Respondent under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Revere Photoengraving Product Assets, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondent has divested the Revere Photoengraving Product Assets prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent that Universal is not an acceptable purchaser of the Revere Photoengraving Product Assets then Respondent shall immediately rescind the transaction with Universal, in whole or in part, as directed by the Commission, and shall divest the Revere Photoengraving Product Assets within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

provided further, that if Respondent has divested the Revere Photoengraving Product Assets to Universal prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Revere Photoengraving Product Assets to Universal (including, but not limited to, entering into additional agreements or

arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Respondent s

the Contract Manufacture Products at Respondent's Supply Cost, for a period of time sufficient to allow the Acquirer to:

- a. manufacture and sell in commercial quantities, the Revere Photoengraving Products or equivalent photoresist magnesium photoengraving products independently of Respondent; and
 - b. secure sources of supply of the raw materials, inputs and components for the Contract Manufacture Products from entities other than Respondent;
2. make representations and warranties to the Acquirer that the Contract Manufacture Product(s) supplied through Contract Manufacture pursuant to a Remedial Agreement meet the specifications and quality for their intended use;
3. for the Contract Manufacture Products supplied by Respondent, Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Contract Manufacture Products supplied by Respondent to the Acquirer to meet relevant customer specifications. This obligation may be made contingent upon the Acquirer giving Respondent prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement to Contract Manufacture shall be consistent with the obligations assumed by Respondent under this Order; *provided, however*, that Respondent may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondent's responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further*, that this obligation shall not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer;
4. make representations and warranties to the Acquirer that Respondent shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondent to deliver the Contract Manufacture Products in a timely manner as required by the Remedial Agreement to Contract Manufacture unless Respondent can demonstrate that its failure was entirely beyond the control of Respondent and in no part the result of negligence or willful misconduct by Respondent;
5. during the term of the Remedial Agreement to Contract Manufacture, upon request of the Acquirer or Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture, storage, or transport of the Contract Manufacture Products that are generated or created after the Closing Date;

6. during the term of the Remedial Agreement to Contract Manufacture, maintain or cause to be maintained manufacturing facilities necessary to manufacture each of the Contract Manufacture Products; and
7. pursuant to a Remedial Agreement, provide consultation with knowledgeable employees of Respondent and training, at the request of the Acquirer and at a facility in the United States chosen by the Acquirer, for the purposes of enabling the Acquirer to manufacture Revere Photoengraving Products or equivalent photoresist magnesium photoengraving products in the same quality achieved by the Respondent and in commercial quantities, and in a manner consistent with the relevant customer specifications for photoengraving use, independently of Respondent, and sufficient to satisfy management of the Acquirer that its personnel are adequately trained in the manufacture of Revere Photoengraving Products.

E. Respondent shall:

1. submit to the Acquirer, at Respondent's expense, copies of all Confidential Business Information;
2. deliver copies of the Confidential Business Information as follows:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness; and
3. pending complete delivery of copies of all Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Revere Photoengraving Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order.

F. Respondent shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire the Manufacturing Technology, the Product Intellectual Property, or the raw materials, inputs, or components, related to the relevant Revere Photoengraving Product(s) from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Manufacturing Technology or Product Intellectual Property.

G. Not later than ten (10) days after the Closing Date, Respondent shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.F. that allows the Third Party to provide the relevant Manufacturing Technology, Product Intellectual Property, raw materials, inputs, or components to the Acquirer. Within five (5) days of the execution of each such release, Respondent shall provide a copy of the release to the Acquirer.

H. Respondent shall:

1. for a period of at least eighteen (18) months from the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the Revere Photoengraving Product Employees. Each of these periods is hereinafter referred to as the “Revere Photoengraving Product Employee Access Period(s)”;
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondent to provide the Employee Information; or (2) ten (10) days after the Closing Date, provide the Acquirer or the Proposed Acquirer with the Employee Information related to the Revere Photoengraving Product Employees. Failure by Respondent to provide the Employee Information for any Revere Photoengraving Product Employee within the time provided herein shall extend the Revere Photoengraving Product Employee Access Period(s) with respect to that employee in an amount equal to the delay; and
3. during the Revere Photoengraving Product Employee Access Period(s), not interfere with the hiring or employing by the Acquirer of the Revere Photoengraving Product Employees and remove any impediments within the control of Respondent that may deter these persons from accepting employment with the Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment or other contracts with Respondent that would affect the ability or incentive of those persons to be employed by the Acquirer. In addition, Respondent shall not make any counteroffer to such a Revere Photoengraving Product Employee who has received a written offer of employment from the Acquirer;

provided, however, that, this Paragraph II.H.3. shall not prohibit Respondent from continuing to employ any Revere Photoengraving Product Employee under the terms of such person’s employment with Respondent prior to the date of the written offer of employment from the Acquirer to such person.

I. Until Respondent completes delivery of all of the Revere Photoengraving Product Assets to the Acquirer and provides the Manufacturing Technology to the Acquirer,

1. Respondent shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the businesses associated with each Revere Photoengraving Product;

- b. minimize any risk of loss of competitive potential for such business;
- c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets relate(q a)Tj132.8400 0.0000

- K. For any patent infringement suit in which the Respondent is alleged to have infringed a Patent of a Third Party prior to the Closing Date or for such suit as the Respondent has prepared or is preparing as of the Closing Date to defend against such infringement claim(s), and where such a suit would have the potential to interfere with the relevant Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Revere Photoengraving Product(s); or (2) the use, import, export, supply, distribution, or sale of that Revere Photoengraving Product(s), Respondent shall:
1. cooperate with that Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondent in connection with obtaining resolution of any pending patent litigation involving that Revere Photoengraving Product;
 2. waive conflicts of interest, if any, to allow the Respondent's outside legal counsel to represent the relevant Acquirer in any ongoing patent litigation involving that Revere Photoengraving Product; and
 3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work-product in the possession of Respondent's outside counsel relating to that Revere Photoengraving Product.
- L. Upon reasonable written notice and request from an Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property related to any of the Revere Photoengraving Products, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Revere Photoengraving Products; or (2) the use within, import into, export from, or the supply, distribution, or sale within the United States.
- M. Within eighteen (18) months of the Closing Date, Respondent shall either license or assign any and all intellectual property to the Acquirer that constitutes Product Intellectual Property that the Acquirer, with the concurrence of the Interim Monitor, identifies as being necessary to the conduct of the business associated with the Revere Photoengraving Product (as such business had been conducted by Revere prior to the Acquisition Date) and that was not listed and/or included in the intellectual property that was divested to the Acquirer pursuant to the Remedial Agreements previously submitted by Respondent to the Commission.
- N. Respondent shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Revere Photoengraving Products a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.

- O. The purpose of the divestiture of the Revere Photoengraving Product Assets and the provision of the Manufacturing Technology and the related obligations imposed on the Respondent by this Order is:
1. to ensure the continued use of the Revere Photoengraving Product Assets in the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Revere Photoengraving Products;
 2. to provide for the future use of the Revere Photoengraving Product Assets for the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Revere Photoengraving Products;
 3. to create a viable and effective competitor, who is independent of the Respondent in the research, Development, manufacture, use, import, export, distribution, or sale of each of the respective Revere Photoengraving Products; and
 4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. If an I

G. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless

- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Revere Photoengraving Product Assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If the Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture require

of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor.
 8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order is issued, and every sixty (60) days thereafter until Respondent has fully complied with the following:
 1. Paragraphs II.A , II.B., II.C., II.D., II.E., and II.G.; and
 2. all of its responsibilities to render transitional services to the Acquirer as provided by this Order and the Remedial Agreement(s);

Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the Revere Photoengraving Product Assets and the identity of all Persons contacted, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- B. One (1) year after the date this Order is issued, annually for the next four (4) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, Respondent shall assure that Respondent's counsel (including in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

- A. To assure Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or the Revere Photoengraving Product Assets;

provided, however, that Respondent may disclose such information as necessary for the purposes set forth in this Paragraph VII pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, however, that pursuant to this Paragraph VII, Respondent shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if such Acquirer withholds such agreement unreasonably); and (2) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VIII.

IT IS FURTHER ORDERED that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondent shall include in each Remedial Agreement related to each of the Revere Photoengraving Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondent's obligations to the Acquirer pursuant to this Order.

- D. Respondent shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order is issued.

By the Commission.

Donald S. Clark
Secretary

**NON-PUBLIC APPENDIX A
REVERE PHOTOENGRAVING PRODUCT
DIVESTITURE AGREEMENTS**

[REDACTED]