UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **AGILENT TECHNOLOGIES, INC., a corporation.**	**Docket No. C-4292**

APPLICATION FOR APPROVAL OF PROPOSED CROSS-LICENSE

Pursuant to Section 2.41(f) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 2.41(f), and Paragraph IX.A of the Commission's Decision and Order in the above-captioned matter, Agilent Technologies, Inc. ("Agilent") hereby requests that the Commission approve a proposed cross-license of certain intellectual property between Agilent and Analytik Jena AG ("Analytik").

I. INTRODUCTION

In 2010, Agilent acquired Varian, Inc. ("Varian"). Pursuant to that transaction, Agilent acquired Varian's life sciences, environmental, and energy materials businesses, which included, among other things, various atomic and molecular spectroscopy products. In connection with

¶¶ IV.A-B.)[1] The ICP-MS Shared Intellectual Property in the ICP-MS field of use consisted of roughly 75 patent families. One of the patents that was licensed to Bruker was United States Patent No. 7,852,471 (hereinafter, the "'471 Patent"), but that patent license was limited to the ICP-MS field of use. Agilent retained ownership of the '471 Patent and the right to practice it as to ICP-OES and any other uses. Paragraph IX.A of the Order prohibited Agilent, "without the prior approval of the Commission," from acquiring directly or indirectly any asset divested pursuant to the Order.

In 2014, Bruker entered into a commercial transaction by which it transferred to Analytik both its preexisting ICP-MS business and the ICP-MS intellectual property it had previously acquired from Agilent. Since that time, Analytik has manufactured and marketed both ICP-MS and ICP-OES products. Agilent also continues to manufacture and market both ICP-MS and ICP-OES products.

In 2016, Analytik approached Agilent expressing interest in obtaining a worldwide, non-exclusive license permitting it to practice the '471 Patent in the ICP-OES field of use. In preliminary commercial discussions, Agilent expressed interest in the possibility of also obtaining a license from Analytik that would permit Agilent to practice the '471 Patent in the ICP-MS field of use. Agilent and Analytik therefore have discussed entering into a proposed cross-license whereby Analytik would acquire non-exclusive and non-transferable rights to practice the '471 Patent (and foreign equivalents) in the ICP-OES field, and Agilent would acquire non-exclusive and non-transferable rights to practice the patent in the ICP-MS field. No money would be exchanged.

Unless

Through this cross-license, Agilent would be re-acquiring a component of the ICP-MS intellectual property that the Commission's Order required to be divested to Bruker—namely, the right to practice the '471 Patent for ICP-MS uses. Pursuant to Paragraph IX.A of the Order, Agilent hereby seeks approval from the Commission to consummate the cross-license. This

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[redacted].[2]

There are broadly two types of RF generators used for ICP-OES and ICP-MS spectrometers. In traditional spectrometer designs, vacuum tubes are used to convert a high DC voltage into RF, as part of an oscillator circuit fed by a high-voltage power supply. More contemporary spectrometer designs use transistors to power solid-state RF (SSRF) generators.

SSRF systems have several advantages over vacuum tube systems. To begin with, vacuum tubes have finite lives and in many instances need to be replaced on an annual basis. A tube costs about $1,000 and can take several hours to replace. SSRF systems, on the other hand, generally require no routine maintenance. SSRF systems also can be made significantly smaller than systems using vacuum tubes, enabling development of more compact spectrometers. In SSRF systems, the RF oscillator can be fed from a lower voltage, which is safer to deal with when manufacturing and servicing these products. The cost of goods associated with SSRF systems is also significantly lower than vacuum tube systems. For example, [redacted]

The ’471 Patent covers a “Hosemans Power Generator for Spectrometry,” which is a specialized type of SSRF system. The Hosemans Generator may be used in ICP-MS or ICP-OES spectrometers. Agilent has developed and uses a Hosemans Generator in its ICP-OES products. Analytik has developed and uses a Hosemans Generator in its ICP-MS products. Both companies developed their Hosemans Generators independently, and their proprietary

[2] Agilent has redacted certain confidential and proprietary business information from this application. In compliance with 16 C.F.R. § 4.9(c) and Section 6(f) of the Federal Trade Commission Act, Agilent will deliver to the Commission’s Office of the General Counsel a separate submission that will provide additional detail in support of Agilent’s request to protect this information from public disclosure.