

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle

In the Matter of

Summit Technology, Inc., a Corporation, and  
VISX, Inc., a Corporation.

DOCKET NO. 9286

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Complaint, or that the facts as alleged in the Complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may, without further notice to the Respondent, (1) issue its decision containing the following order to cease desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed order to Respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the Complaint and order contemplated hereby. Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for violation of the order after it becomes final.

## ORDER

I

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. The term "PPP" means Pillar Point Partners, the partnership formed between Summit Partner, Inc., and VISX Partner, Inc., on or about June 13, 1992.

B. The term "Summit" or "Respondent" means Summit Technology, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, partnerships (including but not limited to Summit Partner, Inc.) and affiliates controlled by Summit Technology, Inc., and the respective directors, officers,



## II

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any person or other device, in or in connection with activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, cease and desist, except as provided in Paragraph III of this Order or in the Settlement and Dissolution Agreement, from entering into, adhering to, participating in, enforcing or maintaining any contract, agreement, understanding, joint venture, pool, partnership, crosslicense or other combination with VISX:

A. (1) To fix, construct, stabilize, standardize, raise, maintain, or otherwise affect or control any price, royalty or fee for, any aspect of any price, royalty or fee for, or the terms or conditions associated with, the purchase, license or use of any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery; or

(2) To establish, require, charge, collect or pay any Procedure Fee;

B. (1) To restrict the right or ability of Respondent or VISX to sell or license any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery; or

(2) To grant Respondent or VISX the right or ability to prevent the sale or license by Respondent or VISX of any product, device, method, patent, intellectual property, or technology that uses or is used in conjunction with, or claims, covers, embodies or incorporates in whole or in part the use of, a laser to perform any medical procedure, including but not limited to ophthalmic surgery.

PR

IT IS FURTHER ORDERED that Respondent shall, no later than twenty (20) days after the date this Order becomes final, license to VISX the patents that Respondent contributed to, or agreed to contribute to, PPP, including but not limited to all patents listed in Schedule A of this Order, and any divisions, reissues, examinations, continuations, continuations in part, renewals, extensions and additions thereof. Such license(s) shall be royalty-free and nonexclusive as set forth in the Settlement and Dissolution Agreement.

#### IV

IT IS FURTHER ORDERED that Respondent shall take no action inconsistent with the dissolution of PPP or the disposition of the PPP Patents as set forth in the Settlement and Dissolution Agreement. Consistent with the Settlement and Dissolution Agreement, PPP may wind up its affairs, defend or settle litigation in which it is or becomes a defendant and complete the defense of any such litigation.

#### V

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date this Order becomes final, Respondent shall distribute by first class mail a copy of this Order (not including Appendix I) and the Complaint to any person that requested a license to use any of the PPP Patents in the manufacture, assembly or sale of PRK equipment since June 3, 1992.

B. (1) Respondent shall allow any person ("Customer") with which Respondent entered into any agreement that includes an obligation to pay a Procedure Fee to license any of the PPP Patents ("Agreement Containing License") between June 3, 1992 and June 5, 1998, to stop using the laser system covered by the Agreement Containing License, without any penalty or continuing obligation to Respondent under the Agreement Containing License or any other agreement with Respondent, other than obligations already incurred for goods, assets or services previously provided by Respondent, including any installment purchase or lease payments under any existing agreement for the purchase or lease of a laser system sold or leased by Respondent.

(2) Provided, however, that any further use or disposition of the laser system shall continue to be governed by the Agreement Containing License and any other agreements relating to the use of the laser system, unless the Agreement Containing License or any other agreements are modified by mutual agreement of the Customer and Respondent.

(3) Provided further that nothing in this Paragraph V.B. shall be interpreted to prevent Respondent from seeking any remedy against a Customer that continues to use any intellectual property, good, asset or service that was the subject of the Agreement Containing License or any other agreements relating to the use of the laser system while complying with such agreement.

(4) Within twenty (20) days after the date this Order becomes final, Respondent shall

distribute by firstclass mail a copy of this Order (not including Appendix A, the Complaint, and a letter containing the following statement to any person to which Respondent then licenses any of the PPP Patents under an Agreement Containing License that was entered between June 3, 1992 and June 5, 1998:

Summit and VISX have agreed to dissolve the Pillar Point Partners arrangement and have agreed with the FTC to an Order concerning Pillar Point Partners. The Order, among other things, prohibits Summit from agreeing with VISX on-a Per Procedure Fee.

You have entered into an agreement with Summit to license one or more of the Pillar Point Partners Patents (the "Agreement Containing License"). Under the Order with the FTC, Summit is obliged to give you the opportunity to stop using the laser system covered by the Agreement Containing License, without any penalty or continuing obligation to Summit under the Agreement Containing License or any other agreement with Summit, except as provided below.

Please note that the Order does not affect obligations you have already incurred for goods, assets or services previously provided by Summit, including any installment purchase or lease payments under any existing agreement for the purchase or lease of a laser system sold or leased to you by Summit.

Please note further that any further use or disposition of the laser system by you shall continue to be governed by the Agreement Containing License and any other agreements relating to the use of the laser system, unless the Agreement Containing License or any other agreements are modified by a mutual agreement between you and Summit.

(5) Respondent shall refrain from taking any action to prevent or impede:

(a) any person covered by Paragraph V.B.(1) of this Order from entering or attempting to enter into an agreement for the purchase, lease, use, lease, option, or other disposition of any product manufactured or assembled for use in PRK; or



By:  
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APPROVED:

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Schedule A  
Summit PPP Patents

Patent Number  
4, 856, 513  
4, 941, 093  
4,973,330  
4. 994, 058  
5, 019, 074  
5, 423, 801  
5, 324, 281

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Schedule B  
VISX PPP Patents

Patent Number  
4, 665, 913  
4, 669, 466  
4, 718, 418  
4, 721, 379  
4, 729, 372  
4, 732, 148  
4, 770, 172  
4, 773, 414  
4, 798, 204  
4, 903, 695  
4, 911, 711



5,108, 388  
5, 163, 934  
5, 188, 631  
5, 207, 668  
5, 219, 343  
5, 219, 344  
5, 312, 320  
5,711,762