

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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

C. The term "Summit" 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, employees, agents, representatives, successors, and assigns of each.

D. The term "Commission" means the Federal Trade Commission.

E. The term "person" means any natural person, corporate entity, partnership, association, joint ventu

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, cross-license or other combination with Summit:

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 Per-Procedure Fee;

B. (1) To restrict the right or ability of Respondent or Summit 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 Summit the right or ability to prevent the sale or license by Respondent or Summit 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.

PROVIDED, HOWEVER, that nothing in this Order shall prevent Respondent from entering into or maintaining any contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination with Summit with respect to patents other than PPP Patents, if Respondent notifies the Commission in writing at least forty-five (45) days prior to entering into, forming or participating in such contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination. Such notification shall include (1) a description of the patent or patents subject to or affected by the contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination, including a copy of each such patent, and (2) a copy of the document or documents that memorialize all of the terms and conditions of the contract, agreement, understanding, joint venture, pool, partnership, cross-license or other combination, unless such document or documents do not exist at the time of the notification, in which case Respondent shall include a summary of the terms and conditions.

III

IT IS FURTHER ORDERED that Respondent shall, no later than twenty (20) days from

the date this Order becomes final, license to Summit the patents that Respondent contributed to, or agreed to contribute to, PPP, including but not limited to all patents listed in Schedule B of this Order, and any divisions, reissues, re-examinations, continuations, continuations in part, renewals, extensions and additions thereof. Such license(s) shall be royalty-free and non-exclusive 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 Per-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 99creo Rewte(o R)-3-t2(nc)4(1)-2(udi)-2(ng)10(a)4(n)-20(y

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:

VISX and Summit 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 VISX from agreeing with Summit on a Per-Procedure Fee.

You have entered into an agreement with VISX to license one or more of the Pillar Point Partners Patents (the "Agreement Containing License"). Under the Order with the FTC, VISX is obliged to give you the opportunity to stop u(, V)-8(I)13-2(or)-7(e-4(a)4(r)32-of)3(t

and at such other times as the Commission may require, a verified written report setting forth in detail the manner and form in which it has complied and is complying with the Order.

C. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its structure, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

D. For a period of ten (10) years after the date this Order becomes final, Respondent shall notify the Commission in writing forty-five (45) days prior to forming or participating in the formation of, or joining or participating in, any exclusive patent licensing arrangements, patent pool arrangements, partnerships or joint ventures if the arrangement, partnership or joint venture (1) involves United States patents that relate to the use, manufacture, marketing or sale of PRK equipment; and (2) includes any person engaged in the research, development, marketing or sale of PRK equipment. Such notification shall include a copy of the document or documents that memorialize all of the terms and conditions of the licensing arrangements, patent pool arrangements, partnerships or joint ventures, unless such document or documents do not exist at the time of the notification, in which case Respondent shall include a summary of the terms and conditions.

E. For the purpose of determining or securing compliance with this Order, Respondent shall

Bureau of Competition
Counsel for Federal Trade Commission

APPROVED:

Willard K. Tom
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