

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

**COMMISSIONERS:**       **Jon Leibowitz, Chairman**  
                                  **William E. Kovacic**  
                                  **J. Thomas Rosch**  
                                  **Edit Ramirez**  
                                  **Julie Brill**

<p><b>In the Matter of</b> <b>AGILENT TECHNOLOGIES, INC.,</b> <b>a corporation</b></p>
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**Docket No. C-4292**  
**PUBLIC VERSION**

**APPLICATION FOR APPROVAL OF CHANGE IN DIVESTITURE DOCUMENT**

Pursuant to Section 2.41(f) of the Commission’s Rules of Practice, Agilent Technologies, Inc. (“Agilent”) hereby applies for Commission approval of a proposed change in one divestiture document relating to compliance with Paragraph IV of the Consent Order in the above-referenced matter, which became final on July 2, 2010.

Paragraph IV required Agilent to divest the defined “Varian ICP-MS Business” to Bruker Corporation (“Bruker”). Part D of that paragraph required in connection with this divestiture that Agilent, at Bruker’s option, “enter into one or more transition services agreements for the provision of services to” Bruker subject to the Commission’s approval. One such agreement, executed on June 10, 2010, is an “Amendment to Employee Transaction Services Agreement” (“Agreement”). The Agreement sets forth terms under which Agilent is committed to enable

specified Varian (now Agilent) employees to provide manufacturing and related services to Bruker in connection with the divested ICP-MS Business in the Varian (now Agilent) facility in Melbourne, Australia, until such time as Bruker is prepared to move the ICP-MS assets located there to Bruker's own location in the United States. That Agreement is attached hereto as Exhibit A. The proposed change for which Commission approval is now sought is a proposed amendment to that Agreement, as explained below.

Paragraph 7(a) of the Agreement specifies that employees "engaged in providing Transition Services shall be devoted exclusively to the provision of such Transition Services and shall not be assigned to any work relating to a business of [Agilent] throughout the term of this Agreement." Paragraph 12(e) of the Agreement specifies that Agilent will require employees engaged in the specified Transition Services "to execute a Confidentiality Commitment" in a form approved by the Consent Order Monitor committing them "not to disclose any Confidential Information to any [Agilent] employee who is not" engaged in the specified Transition Services. The form of Confidentiality Commitment that the Consent Order Monitor approved is attached hereto as Exhibit B. Consistent with the above-referenced provision in paragraph 7(a) of the Agreement, paragraph 5 of the Confidentiality Commitment commits the employee that he/she "WILL NOT WORK on any other [non-ICP-MS] products at the Melbourne Plant."

Employees have declined to execute the required Confidentiality Commitment because of their objection to the prohibition upon their work on non-ICP-MS products. They have, moreover, filed a grievance with the Fair Work Australia (FWA) Commissioner regarding that prohibition. In essence, they complain that the prohibition denies them equal access to work and, in particular, equal access to overtime opportunities vis-à-vis other Agilent employees at the Melbourne facility. The grievance is discussed in email exchanges between union

representatives and Agilent's HR Manager for the Melbourne facility attached hereto as Exhibit C.

The issue was the topic of discussion in an August 12, 2010 conference call that included the FWA Commissioner, the Consent Order Monitor, union representatives and Agilent representatives. The outcome was the FWA Commissioner's (a) expression of the view that there is a conflict between Australian employee law and the above-specified prohibition in paragraph 7(a) of the Agreement; and (b) request to the Consent Order Monitor to assist in bringing the parties together to resolve the conflict.

In the immediate aftermath of that conference, and with the Consent Order Monitor's encouragement, an Agilent representative sent the Consent Order Monitor a letter confirming Agilent's proposal that (a) the Confidentiality Commitment be amended to delete the referenced prohibition in paragraph 5; and (b) TSA employees be allowed "to work in other parts of" the Melbourne facility "when Bruker requirements are low." The amendment would also provide for Bruker "to receive a credit for labor transferred from Bruker work." See exhibit D. Following up on that proposal, Agilent and Bruker have now agreed upon specific language amending paragraph 7(a) of the Agreement. Their agreed language is shown on the document titled "Amendment #2 To Employee Transition Services Agreement" attached hereto as Exhibit E. The Consent Order Monitor has expressed his support for this resolution. The parties are thus now prepared to execute the amendment as set forth in Exhibit E, and to request that the employees in question thereupon execute a new Confidentiality Commitment form without the previous paragraph 5 (see Exhibit F), in the event the Commission approves this Application.

We respectfully submit that the proposed resolution as described above is consistent with all applicable Consent Order objectives. It will enable Agilent to resolve objections among TSA

employees that might otherwise interfere with the smooth and efficient rendition of the Transition Services to Bruker; and it will ensure protection of Confidential Information by removing the employees' objection to execution of the required Confidentiality Commitment.

We, therefore, ask that the Commission approve the proposed resolution.

Dated: September 10, 2010

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

By Robert A. Skitol

Robert A. Skitol

Joanne C. Lewers

Counsel for  
Agilent Technologies, Inc.

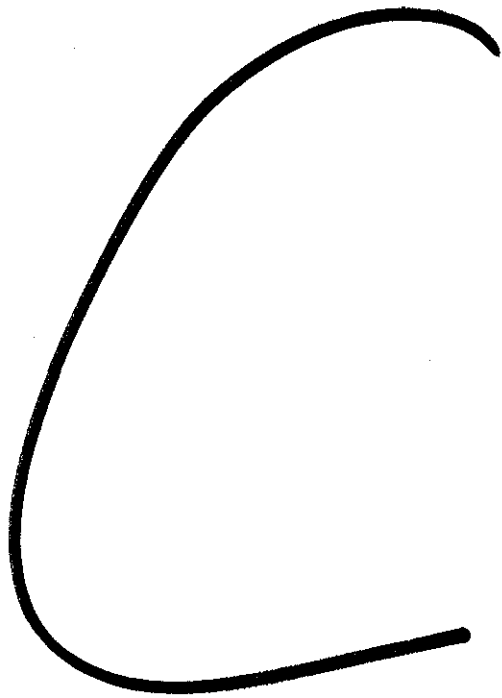
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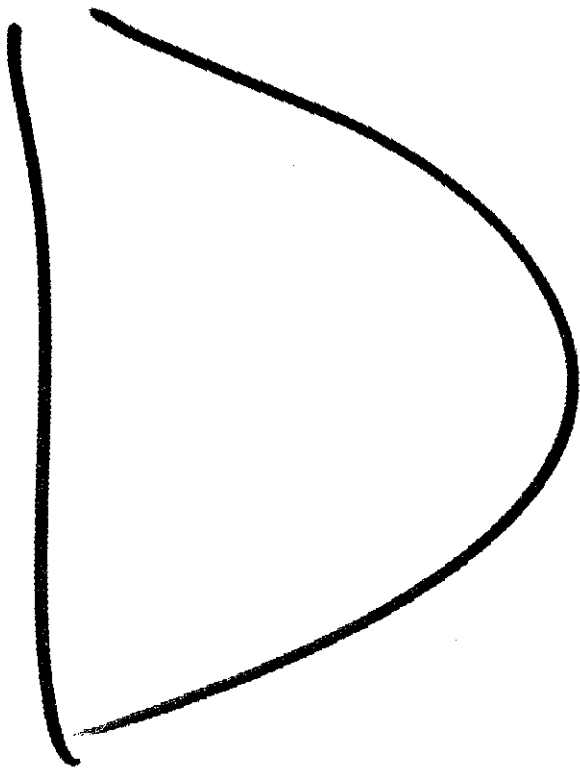
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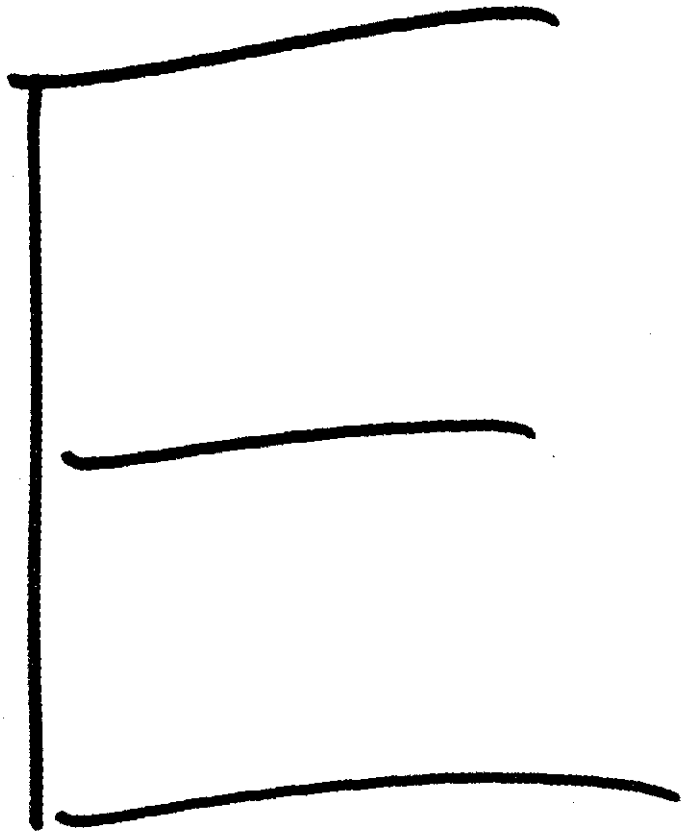




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