

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

)	
In the Matter of)	
)	
HONEYWELL INTERNATIONAL INC.)	Docket No. C-
a corporation;)	
)	
)	

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Intermec, Inc. (“Intermec”) by Respondent Honeywell International Inc., hereinafter referred to as “Honeywell” or “Respondent,” 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 which, 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 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 has 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 executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Honeywell is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 101 Columbia Road, Morris Township, New Jersey 07962.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Respondent” or “Honeywell” means Honeywell International Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Honeywell International Inc. (including LXE LLC, and, after the Effective Date, Intermec) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Honeywell includes Hand Held Products Inc. and Metrologic Instruments, Inc., and their respective subsidiaries, doing business as Honeywell Scanning and Mobility and having a place of business at 9680 Old Bailes Road, Fort Mill, South Carolina 29707.
- B. “Intermec” means Intermec, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business at 6001-36th Avenue West, Everett, Washington 98203-1265.
- C. “Datalogic” means Datalogic IPTECH s.r.l., a corporation organized, existing and doing business under and by virtue of the laws of Italy, with its office and principal place of business located at Via San Vitalino, 13, 40012 Lippo de Calderara di Reno, Bologna, Italy, along with its subsidiaries and affiliates.
- D. “Acquisition” means the proposed acquisition of Intermec by Respondent pursuant to an Agreement and Plan of Merger signed on December 9, 2012.
- E. “Acquisition Date” means the date on which the Acquisition is consummated.
- F. “Acquirer” means Datalogic or any other Person approved by the Commission to enter a Remedial Agreement.
- G. “Acquirer Confidential Information” means information not in the public domain related to the Acquirer’s research, development, making, marketing and selling of a Relevant Device.

- H. “Business Day” means any day excluding Saturday, Sunday and any United States federal holiday.
- I. “Contract Manufactured” means to produce goods of another firm’s design for sale by that firm under the firm’s own label or brand.
- J. “Customer of the Acquirer” includes the direct customers of the Acquirer as well as all other customers in the chain of supply from the Acquirer to the end user of the product acquired from the Acquirer.
- K. “Datalogic-Honeywell Agreement” means the Cross-License Agreement dated September 4, 2013 between Honeywell Scanning and Mobility and Datalogic, attached hereto as Confidential Exhibit A, and all future amendments, exhibits, attachments, agreements, and schedules thereto that receive the prior approval of the Commission.
- L. “Design Patent(s)” means design patent(s) as provided for in 35 U.S.C. § 171 (2013).
- M. “Divestiture Trustee(s)” means any person or entity appointed by the Commission pursuant to Paragraph IV of the Decision and Order to act as a trustee in this matter.
- N. “Patent” means a patent issued by the United States Patent and Trademark Office (“USPTO”) that claims an invention or priority date on or before the Acquisition Date.
- O. “Relevant Device” means any device for reading barcodes that incorporates a two-dimensional image sensor made, in whole or part, by or for the Acquirer, other than the following devices: non-retail, fixed scanners (including but not limited to industrial automation unattended scanners and logistic over-the-belt scanners).
- P. “Relevant IP” means all Patents other than Design Patents that Honeywell has the right to license (including Patents obtained by Honeywell through the Acquisition) that contain a claim infringed directly or indirectly by a Relevant Device.
- Q. “Remedial Agreement” means
1. The Datalogic-Honeywell Agreement as approved by the Commission, or
 2. any other agreement between the Respondent and an Acquirer (or a trustee appointed pursuant to Paragraph IV of this Order and an Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Relevant IP that has been approved by the Commission.

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) Business Days after the Acquisition Date, Respondent shall license the Relevant IP to Datalogic and execute and make effective the Datalogic-Honeywell Agreement,

PROVIDED that, if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that Datalogic is not an acceptable licensee of the Relevant IP, or the manner in which the Relevant IP was licensed is not acceptable, Respondent shall immediately notify Datalogic and shall as soon as practicable rescind the Datalogic-Honeywell Agreement, and within six (6) months from the date this Order becomes final, absolutely and in good faith, at no minimum price, license the Relevant IP to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.

- B. Respondent shall irrevocably license the Relevant IP to the Acquirer in a manner that receives the approval of the Commission and conforms with the following:
1. the term of the license shall be no less than twelve years;
 2. the license shall include rights to make, have made (for lease, sale, or resale by the Acquirer), lease, sell, offer for sale, import or use any Relevant Device; except that the scope of the license may exclude devices Contract Manufactured by the Acquirer, if such exclusion is agreed to by the Acquirer and approved by the Commission;
 3. the license shall extend to the incorporation and use of Relevant Devices in the products of any Customer of the Acquirer; and
 4. the license shall be fully transferrable and assignable except as explicitly agreed to by the Acquirer and approved by the Commission.
- C. Unless otherwise agreed to by the Acquirer and approved by the Commission, the Remedial Agreement shall require the Respondent to provide technical assistance and facilitate the ability of the Acquirer to hire employees of the Respondent as needed to enable the Acquirer to compete with Respondent in the United States through the manufacturing, marketing and selling of Relevant Devices.
- D. Respondent shall:
1. not join, or file, prosecute or maintain any claim of infringement against the Acquirer, a supplier to the Acquirer, or any Customer of the Acquirer, that is based on alleged infringement by the research, manufacture, sale, offer for sale, importation or use of a Relevant Device, except where the claim of infringement i) is based on an invention conceived after the date the Order is issued; or ii) is based on infringement of a Design Patent; and

2. include in the Remedial Agreement a covenant not to sue that includes at least the provisions of this Paragraph.
- E. Respondent shall not assign or transfer the Relevant IP, or license Relevant IP under terms that give a licensee rights to sue for infringement, unless the assignee, transferee or licensee agrees in writing to assume the obligations contained in this Paragraph II with respect to such Relevant IP.
 - F. Respondent shall not require or solicit the disclosure of Acquirer Confidential Information through the operation of any Remedial Agreement; shall take all reasonable steps to prevent disclosure of Acquirer Confidential Information through operation of any Remedial Agreement; and shall not use Acquirer Confidential Information disclosed through operation of any Remedial Agreement for any purpose.
 - G. The purpose of this Order is to enable the Acquirer to compete with Respondent in the United States through the manufacturing, marketing and selling of Relevant Devices and to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. The Commission may appoint a monitor or monitors ("Monitor") to assure that Respondent expeditiously complies with all obligations and performs all responsibilities required by the Order, including compliance with the Remedial Agreement. The Commission shall select the 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 any proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor using the same procedure as that for appointment of the Monitor.
- B. The Monitor shall act in a fiduciary capacity for the benefit of the Commission for such time as is necessary to monitor Respondent's compliance with the provisions of the Order and shall submit such compliance reports as are requested by staff of the Commission. The Commission shall require the Monitor to sign a customary confidentiality agreement.
- C. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission approves. The Monitor shall have authority to employ, at the expense of Respondent, such assistants (including but not limited to consultants, accountants, or attorneys) as are reasonably necessary to enable the Monitor to carry out its duties and responsibilities, *provided that* all such assistants enter into the same customary confidentiality agreements as the Monitor.

- D. Within ten (10) days after appointment of the Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, grants and transfers to the Monitor all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities. Respondent may require the Monitor to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission, require the Monitor to provide information to Respondent regarding its communications with the Commission, or provide Respondent with copies of any compliance reports submitted to the Commission.
- E. The Monitor shall have the power and authority to monitor Respondent's compliance with the terms of this Order, including the Remedial Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to assuring that Respondent complies with all its obligations and performs all its responsibilities under the Order.
- F. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under this Order.
- G. Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with this Order, including the Remedial Agreement.
- H. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel; and other reasonable expenses incurred in connection with the preparations 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 malfeasance gross negligence, willful or wanton acts, or bad faith by the Monitor.
- I. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- J. The 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 specified in Paragraph II.A and B of this Order, the Commission may appoint a Divestiture Trustee to license the Relevant IP and enter a Remedial Agreement in a manner that satisfies the requirements of Paragraph II. 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. 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 the Respondent to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If 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. The Commission shall require the Divestiture Trustee to sign a customary confidentiality agreement.
 2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to license the Relevant IP.
 3. Within ten (10) days after appointment of the Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to license the Relevant IP and enter a Remedial Agreement in a manner that satisfies the requirements of Paragraph II of the Order.
 4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. to accomplish the license, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan to license or believes that the license can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-

appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the Relevant IP that are required to be licensed by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the license. Any delays in licensing caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each license that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to license at no minimum price. The license shall be made in the manner and to a Commission-approved Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall license to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) Business Days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the license and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the 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 licensing of all Relevant IP.
8. 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture Trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this Order.
10. The Commission or, in the case of a court-appointed 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 license required by this Order.
11. The Divestiture Trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the license.
12. Respondent may require the Divestiture Trustee to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

V.

IT IS FURTHER ORDERED that:

- A. The Remedial Agreement shall be incorporated by reference into this Order and made a part hereof. Further, nothing in the Remedial Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of Respondent under a Remedial Agreement. Respondent shall comply with the terms of the Remedial Agreement, and a breach by Respondent of any term of the Remedial Agreement shall constitute a violation of this Order. To the extent that any term of the Remedial Agreement conflicts with a term of this Order such that Respondent cannot fully comply with both, Respondent shall comply with the term of this Order.
- B. Respondent shall include in the Remedial Agreement 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.
- C. Between the date the Commission grants approval of the Remedial Agreement and the date the Remedial Agreement becomes effective, Respondent shall not modify or amend any material term of the Remedial Agreement without the prior approval of the Commission. Further, any failure to meet any material condition precedent to closing (whether waived or not) shall constitute a violation of this Order.
- D. During the term of the Remedial Agreement, Respondent shall not modify (materially or otherwise) the Remedial Agreement without the Commission's prior approval pursuant to Rule § 2.41(f), 16 C.F.R. § 2.41(f).

VI.

IT IS FURTHER ORDERED that:

- A. Respondent shall submit to the Commission a verified written report:
1. within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has complied with the obligations of Paragraphs II.A and II.B of this Order; and
 2. on the first anniversary of the date on which the Order becomes final, and annually for nine (9) years, thereafter,
- which report shall set forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order and the Remedial Agreement since the filing of any previous compliance report, and shall, *inter alia*, identify all assignments, transfers and licenses subject to Paragraph II.E and provide information sufficient to demonstrate that such assignments, transfers and licenses comply with Paragraph II.E.
- B. 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 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:
1. access, during business office hours of 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 Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
 2. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

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

- A. any proposed dissolution of Respondent; or
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in Respondent, including without limitation, assignment and the creation, sale or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VIII.

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

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

In re Honeywell International Inc.

Confidential Exhibit A

Honeywell-Datalogic Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]