

Complaint

IN THE MATTER OF

ALLIED CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-3157. Complaint, June 17, 1985—Decision, June 17, 1985

This consent order with Allied Corporation and King Radio Corporation requires Allied to divest the King Weather Radar Line to Narco Avionics, Inc., or another Commission-approved purchaser. With certain exceptions, the order also prohibits Allied, for a period of ten (10) years, from acquiring, without the Commission's prior approval, any interest in any company that manufactures or sells general aviation weather detection systems in the United States.

Appearances

For the Commission: *Stephen W. Riddell, Sandra G. Wilkof, Laurie T. Baulig and John C. Weber.*

For the respondents: *Brian D. Forrow*, in-house counsel, Morris Township, N.J. and *C. Benjamin Crisman, Jr. and Peter E. Greene, Skadden, Arps, Slate, Meagher & Flom*, Washington, D.C., for respondent Allied Corporation, and *Owen M. Johnson and Paul B. Hewitt, Akin, Gump, Strauss, Hauer & Feld*, Washington, D.C., for respondent King Radio Corporation.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Allied Corporation ("Allied"), has acquired respondent, King Radio Corporation ("King"), both corporations subject to the jurisdiction of the Commission, and that such acquisition constitutes a violation 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 that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

(a) *General aviation aircraft* means those aircraft predominantly

used for private purposes rather than (i) for military purposes or (ii) for the transport of people or cargo for a fee.

(b) *Airborne weather detection system* means (i) a product designed for use in aircraft consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions, or (ii) a product designed for use in aircraft, consisting of a receiver system that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. *Airborne weather detection system* shall also include any device that performs the same function in the same manner as the King products designated KGR 356 and KGR 358 for display on the products, defined in (b)(i) and (b)(ii) above.

II. ALLIED

2. Allied is a corporation organized under the laws of New York with its executive offices at Columbia Road and Park Avenue, Morris Township, New Jersey.

3. Allied is a major worldwide supplier of industrial chemicals, petroleum and natural gas, scientific laboratory instruments, typesetting equipment, semiconductor components, automotive parts and aviation and aerospace products.

4. The Bendix Aerospace Sector of Allied develops and manufactures products used in military and civil aircraft, spacecraft, missiles and other defense and space exploration products.

5. In 1983, Allied had sales of \$10.02 billion, assets of \$7.65 billion, and net income of \$98 million.

III. KING

6. King is a corporation organized under the laws of Kansas with its executive offices at 400 North Rogers Road, Olathe, Kansas.

7. King is primarily engaged in the design, manufacture and distribution of electronic communication, navigation, weather radar and flight control equipment for general aviation aircraft.

8. In 1983, King's sales amounted to approximately \$86 million, and it had about \$76 million in assets.

IV. JURISDICTION

9. At all times relevant herein, respondent, Allied, and respondent, King, have been and are now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

V. THE ACQUISITION

10. On or about September 26, 1984, Edward King, Chairman of the Board and founder of King entered into a stock purchase agreement to sell his 47.5% share of voting stock in King to AC Acquisition Corporation, a wholly-owned subsidiary of Bendix, itself a subsidiary of Allied. In addition, a trustee for a trust which controls a 6.2% interest in King agreed to sell that interest to AC Acquisition. Pursuant to another agreement AC Acquisition would be merged into King. The total acquisition, which has been valued at \$109.8 million, was consummated on January 31, 1985.

VI. TRADE AND COMMERCE

11. The relevant market in which to evaluate the effects of this acquisition is the manufacture and sale, in the United States and worldwide, of airborne weather detection systems designed for use in general aviation aircraft.

12. Allied and King are actual, direct competitors in the manufacture and sale, in the United States and throughout the world, of airborne weather detection systems designed for use in general aviation aircraft.

VII. EFFECTS OF THE ACQUISITION

13. The effects of the acquisition of King by Allied may be substantially to lessen competition or to tend to create a monopoly in the relevant market in violation 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 because, *inter alia*:

(a) Substantial direct competition between Allied and King in the relevant line of commerce will be eliminated;

(b) Already high concentration in the relevant line of commerce will be increased, thereby increasing the likelihood of successful collusive behavior among the remaining firms in the relevant line of commerce; and

(c) King will be eliminated as a significant independent competitive influence on the relevant lines of commerce.

VIII. VIOLATION CHARGED

14. The acquisition of the stock of King by Allied violates 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.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the acquisition of King Radio Corporation ("King") by the Allied Corporation ("Allied"), and Allied and King having been furnished hereafter with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Allied and King with violations of the Clayton Act and Federal Trade Commission Act; and

Allied, King, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Allied and King of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Allied and King that the law has been violated as alleged in such complaint, 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 had reason to believe that Allied and King have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order:

1. Allied is a corporation organized, existing and doing business under and by virtue of the laws of New York with its executive offices at Columbia Road and Park Avenue, Morris Township, New Jersey.
2. King is a corporation organized, existing and doing business under and by virtue of the laws of Kansas with its executive offices at 400 North Rogers Road, Olathe, Kansas.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Allied and King, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions shall apply:

(A) *Allied* means Allied Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by Allied and their re-

spective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) *King Radio* means King Radio Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by King Radio and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) *King Weather Radar Line* means all airborne weather detection systems currently manufactured, sold or owned by King Radio, including but not limited to the KWX 565 and the KWX 58 weather radar systems; all airborne weather detection systems that King Radio has under development, including but not limited to the KWX 57, the KWX 460, and improvements or modifications to the KWX 56 or KWX 58 systems; and any other plans or research related to airborne weather detection systems. The KWX 56 and the KWX 58 weather radar systems shall be construed to include, respectively, the KI 244 and the KI 248 control/indicators, the KA 126 and the KA 128 combined antenna/receiver/transmitter units and the KGR 356 and the KGR 538 graphics interface units.

(D) *Airborne weather detection system* means (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. *Airborne weather detection system* shall also include any device that performs the same function in the same manner as the King Radio products designated KGR 356 and KGR 358 for display on the products, defined in D (1) and D (2) above.

(E) *Piece Parts* are components and raw materials purchased or made by King Radio for use in manufacturing, producing or repairing the King Weather Radar Line or spare parts. *Kits* are all Piece Parts required to assemble a specific quantity of the King Weather Radar Line.

I.

It is ordered, That:

(A) Within eight (8) months from the date this order becomes final, Allied shall divest, absolutely and in good faith all of the assets described below, so as to transfer the King Weather Radar Line as a viable product line such that a purchaser could compete as a manufacturer and seller of airborne weather detection systems:

(1) All inventories, including Piece Parts, Work-In-Process, finished

goods and kits solely dedicated to the King Weather Radar Line, as determined pursuant to a physical inventory to be taken approximately seven (7) days in advance of the closing of the sale, except that Allied may retain, at its discretion, sufficient quantities of Finished Goods and spare parts as to be able to service, maintain and repair its products in the field and fulfill those contracts not assignable to the purchaser.

(2) All tooling, whether or not in the custody of vendors, and test equipment, including fixtures thereof, solely dedicated to the King Weather Radar Line.

(3) All know-how, and trade secrets, if any, solely dedicated to the King Weather Radar Line, including one patent (no. 3973145) and one patent application (no. 412913).

(4) All engineering and design drawings, including but not limited to all documentation for software contained in or used in the manufacture of the King Weather Radar Line; all documentation related to a new weather radar antenna/receiver/transmitter unit that is in the early development stage; all documentation related to a design for a test adapter to enable the testing of the KGR 356 and KGR 358 graphics interface units utilizing an Apple Computer; and all other documentation, design and development studies, inventory, models and all other data related to the King Weather Radar Line.

(5) All processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the King Weather Radar Line; vendor and distribution lists; and documentation related to a sales history and marketing of the King Weather Radar Line to the extent that such documentation is separable from other confidential information not related to the King Weather Radar Line.

(6) All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the King Weather Radar Line, all customer lists for King Weather Radar Line products and all contracts for the sale of King Weather Radar Line to the extent that they are assignable.

(B) Divestiture of the King Weather Radar Line shall be made to Narco Avionics, Inc. pursuant to the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or to such other purchaser or purchasers that receive(s) the prior approval of the Commission and only in a manner that receives prior approval of the Commission.

(C) For a period of ninety (90) days following the divestiture of the King Weather Radar Line, or such longer period (not to exceed six (6) months) as agreed between the purchaser and Allied, Allied shall assist the purchaser in the start-up and manufacturing process of the King Weather Radar Line by making personnel available to train and

educate employees of the purchaser selected by it in all facets of the start-up, manufacture, production and repair of the King Weather Radar Line. Allied shall name a single technical coordinator to serve as the focal point for such technical assistance. For such technical assistance, Allied may assess the purchaser an amount in accord with the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or may charge the purchaser an amount not to exceed its cost for the time and materials (plus a reasonable material burden rate) involved, plus its reasonable travel, lodging and subsistence costs, if any.

(D) Pending the divestiture of the King Weather Radar Line required by this Order, Allied shall use its best efforts to advertise, promote, manufacture and sell the King Weather Radar Line at substantial present levels. Allied shall also continue to fund all ongoing research and development projects with regard to the King Weather Radar Line at 1984 levels. Allied shall be required to designate an appropriate King Radio employee to be responsible for managing the King Weather Radar Line pending its divestiture.

(E) Pending the divestiture of the King Weather Radar Line required by this order, Allied and King shall maintain the viability, integrity and marketability of the properties described in Paragraph I (A) and shall not use or permit the destruction, removal or impairment of any assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

II.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Allied shall not, without the prior approval of the Commission, directly or indirectly, acquire any stock, share capital or equity interest in any concern engaged in, or any assets used in the manufacture and sale in or to the United States, of airborne weather detection systems designed for use in general aviation aircraft; *provided, however,* that nothing in this order shall prohibit Allied from (i) acquiring, for investment purposes only, an interest of not more than one (1) percent of the stock, share capital or equity of any such concern; or (ii) making purchases, in the ordinary course of business, of components and equipment used to manufacture airborne weather detection systems (*e.g.*, tools, test equipment and components). For the purposes of this Paragraph, the term *general aviation aircraft* means those aircraft predominantly used for private purposes rather than (i) for military purchases or (ii) for the transport of people or cargo for a fee.

III.

It is further ordered, That if Allied has not accomplished the divestiture required by Paragraph I of this order within the eight-month period, Allied shall consent to the appointment of a trustee who shall have the power and authority to accomplish the divestiture at the most favorable price and terms available consistent with this order's unconditional obligation to divest. The trustee shall be a person with experience and expertise in acquisitions and divestitures and shall be selected by the Commission subject to Allied's consent, which shall not be unreasonably withheld. The trustee shall serve at the cost and expense of Allied based on reasonable and customary terms. The trustee's compensation shall be based on reasonable and customary terms. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust assets. The trustee shall have the cooperation of Allied in accomplishing the divestiture within a reasonable period not to exceed ten (10) months and subject to the prior approval of the Federal Trade Commission. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Allied to comply with Paragraphs I through VI of this order.

IV.

It is further ordered, That within sixty (60) days from the date on which this order becomes final and the first two sixty (60) day periods thereafter and every ninety (90) days thereafter until Allied has fully complied with the provisions of Paragraph I of this order, Allied shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision of this order. All such compliance reports shall include a summary of all discussions and negotiations with any persons who are potential purchasers of the assets to be divested as specified in Paragraph I of this order, including the identity of all such persons, copies of all written communications to and from such persons, and all internal memoranda, reports and recommendations concerning divestiture.

V.

It is further ordered, That for a period of ten (10) years from the date on which this order becomes final, Allied shall notify the Commission at least thirty (30) days prior to any proposed corporate changes that

may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergency of successor corporations and the creation or dissolution of subsidiaries.

VI.

On the first anniversary of the date this order becomes final and on every anniversary date thereafter for the following nine (9) years, Allied shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with this order.

EXHIBIT A*

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made and entered on this 23rd day of January, 1985 (the "Agreement") by and between Narco Avionics, Inc., a Delaware corporation, with its principal offices at 270 Commerce Drive, Fort Washington, Pennsylvania 19034 ("Buyer") and King Radio Corporation, a Kansas corporation, with its principal offices at 400 North Rodgers Road, Olathe, Kansas 66062 ("Seller").

Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, on the terms and conditions set forth herein, a portion of the assets used in the business and operations of Seller set forth in paragraph 1 below, which has been generally identified by Seller as its Weather Radar Product Line and Graphics Interface Product Line, more particularly described as:

(a) All Airborne Weather Detection Systems currently manufactured, sold or owned by Seller, including but not limited to:

- (1) The KWX 56 Weather Radar System consisting of the KA 126 Antenna/Receiver/Transmitter and the KI 244 Control/Indicator;
- (2) The KWX 58 Weather Radar System consisting of the KA 128 Antenna/Receiver/Transmitter and the KI 248 Control/Indicator;
- (3) The KGR 356 Graphics Interface Unit; and
- (4) The KGR 358 Graphics Interface Unit;

(b) All Airborne Weather Detection Systems that Seller has under development, including but not limited to the KWX 57 and KWX 460, and improvements or modifications to the KWX 56 or KWX 58 systems; and

(c) Any other plans or research related to Airborne Weather Detection Systems.

all of which to be sometimes hereinafter referred to individually as the "Products", and collectively (including the items set forth in paragraph 1) as the "Product Lines".

In consideration of the mutual covenants, agreements, representations and warranties hereinafter contained, the parties agree as follows:

1. Purchase and Sale.

* Material which the Commission has granted confidential treatment has been replaced in the text with the symbol [***].

At the closing (the "Closing") as hereinafter defined in paragraph 3.1(a), Seller shall sell, transfer and convey to Buyer, and Buyer shall purchase and accept:

(a) *Inventories*. All inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits solely dedicated to the Product Lines subject to the provisions of paragraph 1.1 and 1.2.

(b) *Tooling and Test Equipment*. All tooling, whether or not in the custody of vendors and test equipment including fixtures thereof, solely dedicated to the Product Lines, as set forth in *Exhibit 1(b)*.

(c) *Industrial Property Rights*. All know-how, and trade secrets, if any, solely dedicated to the Product Lines, one patent (no. 3973145), one patent application (no. 412913). Copies of the assignment of the patent and patent application are annexed to this Agreement as *Exhibit 1(c)*.

(d) *Documents, Lists and Design Data*. All engineering and design drawings including but not limited to processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the Product Lines; vendor and distribution lists; all documentation for software contained in or used in the manufacture of the Products; all documentation related to a new weather radar antenna/receiver/ transmitter unit that is in the [***] developmental stage; all documentation related to a design for a test adapter to enable testing of the KGR 356 and KGR 358 graphics interface units utilizing [designated equipment]; all other documentation, design and development studies, inventory, models and other data related to the Products; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts*. All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the Product Lines, all customer lists for the Product Lines and all contracts for the sale of Products to the extent that they are assignable, as set forth in *Exhibit 1(e)* to be provided at the Closing.

1.1 *Limitation on Inventory*. Anything to the contrary notwithstanding, Buyer, at its election, shall not be obligated to purchase, accept and pay for Piece Parts in excess of those necessary to manufacture more than a cumulative total of [***] Weather Radar Products and, in addition thereto, a cumulative total of [***] Graphics Interface Products.

1.2 *Retention by Seller*.

(a) Anything to the contrary notwithstanding, Seller shall retain and not convey to Buyer all Piece Parts, purchase orders for Piece Parts not solely dedicated to the Product Lines, and purchase orders for Piece Parts solely dedicated to the Product Lines that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer. Seller shall also retain and not convey to Buyer contracts for the sale of spare parts, and for Products that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer. Seller shall also retain the right to continue to conduct business with vendors and distributors set forth on the vendor and distributor lists. Seller shall also retain and not convey to Buyer a sufficient quantity of Finished Goods and spare parts, in Seller's discretion, as to be able to service, maintain and repair its Products in the field and fulfill any contracts not assignable to Buyer.

(b) Buyer shall grant to Seller a nonexclusive, irrevocable, royalty free license (including the right to grant sublicenses) (i) under the patent and patent application to be conveyed herein, to make, have made, use, and sell Piece Parts and (ii) to utilize the tooling (in the custody of vendors) to be conveyed herein, only as necessary for Seller to service, maintain and repair the Products sold by Seller to third parties prior to the

Closing. Such license shall be for the duration of any patents that are in existence or may be issued that are conveyed herein, and for the life of the tooling. The license to be used is set forth as *Exhibit 1(c)*, annexed to this Agreement.

1.3 *Definitions.* As used herein the following terms apply:

(a) "Finished Goods" shall mean each completed Product.

(b) "Piece Parts" shall mean components and raw material purchased or made by Seller for use in manufacturing, producing, maintaining or repairing the Products or spare parts.

(c) "Kits" shall mean all required Piece Parts to assemble a specific quantity of the Products.

(d) "Work-In-Process" shall mean Products in various stages of manufacture or production.

(e) The phrase "solely dedicated to the Product Lines" in connection with assets to be conveyed herein, shall mean those assets which have no use or value to Seller in connection with its business other than for the Product Lines.

(f) "Weather Radar Products" shall mean the KWX 56 and KWX 58 weather radar systems.

(g) "Graphics Interface Products" shall mean the KGR 356 and KGR 358 Graphics Interface units.

(h) "Airborne Weather Detection System" shall mean (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne Weather Detection System" shall also include any device that performs the same function in the same manner as the Seller's products designated KGR 356 and KGR 358 for display on the products defined in (h)(1) and (h)(2) above.

2. *Purchase Price.* The purchase price shall consist of a payment made at the Closing as set forth in paragraph 2.1 below, payments or credits as set forth in paragraph 2.2 below, and payments made over a period of seven years as set forth in paragraph 2.3 below.

2.1 *Current Payment.* At the Closing, Buyer shall pay to Seller as part of the purchase price, [* * *]. Such payment shall be made by certified check or wire transfer at the election of the Seller.

2.2 *Payments and Credits.*

(a) Buyer shall also pay to Seller, as part of the purchase price, a sum [* * *] for Finished Goods on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [***] of such costs for variance factors, and a sum [* * *] for its Kits, Piece Parts and Work-In-Process on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [***] of such costs as a material burden rate.

(b) The Buyer shall receive a credit of [* * *] which credit shall be deducted from sums due Seller under paragraph 2.2(a). The net amount due Seller after deduction of the credit shall be payable in accordance with the terms of paragraph 2.2(c).

(c) Such sums due Seller pursuant to paragraph 2.2(b) shall be payable in principal increments of [* * *] ninetieth (90th) day following the Closing Date, and on each ninetieth (90th) day thereafter, until fully paid, in accordance with a promissory note bearing a rate of interest of [***] per annum in the form set forth as *Exhibit 2.2(c)* annexed to this Agreement. If less than [* * *] is due Seller, the full sum shall be paid to Seller on the ninetieth (90th) day following the Closing Date, plus interest due. In

the event an adjustment in the cost of inventory that was in production is necessary, such an adjustment shall be made pursuant to paragraph 4.7.

2.3 Additional Payments.

(a) In addition, Buyer will pay, as part of the purchase price, the sum of [* * *] with interest at [* * *] per annum, payable in 27 equal installments of [* * *] and a final installment of [* * *] in accordance with an unsecured promissory note set forth in *Exhibit 2.3(a)*. Payments shall commence on the ninetieth (90th) day following the final payment due under the promissory note set forth in *Exhibit 2.2(c)*, and shall continue on each ninetieth (90th) day thereafter, until fully paid.

3. The Closing.

3.1 *Closing.* The purchase and sale of the Product Lines contemplated by this Agreement and the assignment, conveyance and transfer thereof by Seller to Buyer, and payment, delivery of a promissory note, execution of a license agreement, guarantees, security interests, and performance of other obligations as set forth in this Agreement, which are considered conditions of Closing, shall take place at: the offices of Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, Virginia 22209, at such time and date to be mutually agreed upon after appropriate approvals are obtained from the FTC pursuant to the FTC investigation, or at such other time and place as the parties may agree to in writing ("Closing Date").

3.2 *Instruments of Transfer.* At the Closing, Seller will deliver to Buyer an Assignment and Bill of Sale, passing all right, title and interest in and to the Product Lines free and clear of all liens, security interests and other encumbrances in the form set forth in *Exhibit 3.2*, annexed to this Agreement.

4. Standard Costs, Physical Inventory Count and Transfer of Inventory.

4.1 The inventories, including Finished Goods, Kits, Piece Parts and Work-In-Process have been valued at [* * *] in accordance with Seller's accounting practices.

4.2 Within approximately seven days prior to the Closing, Seller and Buyer together, will count the inventory on hand, not committed to production, (including test counts and sample counts, where total counting is impractical), and establish an agreed upon quantity which will be valued at Seller's cost plus [***]. Seller and Buyer will supervise the packaging and sealing of the cartons of such inventory. The quantities as established will not be subject to adjustment, since Buyer will have partaken in the inventories count and sealing of such cartons.

4.3 Seller will continue production until approximately one day prior to Closing. An estimated amount of inventory in production will be established and valued at Seller's cost plus [***].

4.4 At the Closing, the cost of inventory on hand (plus [***]) and the cost of the estimated inventory in production (plus [***]) will serve as the basis of payment pursuant to the promissory note described in paragraph 2.2(c).

4.5 As soon as practicable after the Closing Date, per agreement of the parties, the inventory on hand (not in production) will be shipped to Buyer on a carrier designated by Buyer, f.o.b. Seller's plant.

4.6 Within thirty (30) days after the Closing, as soon as practicable, Seller will gather up the inventory that was in production (possibly in three plants) and place it in a central location at Seller's plant. Seller and Buyer will count the inventory that was in production and will supervise the packaging and sealing of the cartons of such inventory, which will be valued at Seller's cost (plus [***]). The quantities established will not be subject to adjustment.

4.7 An adjustment between the estimated quantity of inventory that was in production given at the Closing by Seller, and the actual quantity of such inventory will be

