

802.50

November 8, 2004

BY FACSIMILE

Michael B. Verne
Federal Trade Commission
Premerger Notification Office
Room 303
Washington, DC 20580

Re: *Confirmation of Advice Regarding Foreign Registered
Intellectual Property and Allocation of Purchase Price*

Dear Mike:

This letter will confirm our discussion on November 3, 2004, as well as your conversation with [REDACTED] on November 2, 2004 regarding the allocation of the purchase price for the acquisition of certain intellectual property and goodwill.

As we discussed, COMPANY A will acquire certain intellectual property and goodwill from COMPANY B for approximately \$92 million (the "Transaction"). COMPANY A presently does not hold any other assets of COMPANY B and will not hold any such assets until the Transaction closes. The intellectual property that will be acquired includes various types of technology such as trade secrets, know-how, and patents that are used to manufacture and sell products in the United States as well as abroad. Certain patents are registered with the U.S. Patent and Trademark Office, and corresponding patents are registered outside of the United States. You confirmed that the foreign patents and other technology are deemed foreign assets for purposes of HSR analysis even though the underlying technology is directly or indirectly owned by Company B and is the same or similar to the technology used in the U.S.

Under Section 802.50, the acquisition of assets located outside the United States is exempt from the requirements of the HSR Act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$50 million during the acquired person's most recent fiscal year. In this case, less than \$50 million in sales into the U.S. was generated from products that were manufactured outside the United States pursuant to the foreign technology. You confirmed that the exemption in 802.50 applies to the foreign technology and we may properly exclude the value of those assets from the total value of the transaction for purposes of HSR coverage analysis.

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[REDACTED]

In connection with the HSR analysis, the acquiring person has done a fair market valuation and allocation of the purchase price of the intellectual property and goodwill that it will acquire in connection with the Transaction. Under this analysis, the value of the U.S. intellectual property and goodwill falls well below the \$50 million HSR threshold because only about 44% of the products are manufactured in the U.S. and only about 32% of the products are sold in the U.S. For purposes of tax allocation, the parties may allocate to a U.S. entity a portion of the purchase price that is attributable to the foreign technology described above. Under the tax allocation, the value of the transaction assigned to the U.S. may exceed \$50 million. However, the tax allocation is to be based upon which of Company B's entities receives the proceeds of the sale, rather than where the products are manufactured or sold. You have advised us that the tax allocation is not determinative for the HSR coverage analysis and that the appropriate valuation to consider here is the value of the U.S. assets only, excluding the foreign assets that are exempt under 802.50.

We truly appreciate your advice on the above-described fact pattern. Please contact me promptly at [REDACTED] in the event that your understanding of our telephone discussion varies in any way from mine.

Sincerely yours,

[REDACTED]

cc: [REDACTED]

Agree -
B. Verne
11/8/04