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11 **Plaintiffs' Liaison Counsel**

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 _____ : Case No. C-04-3181 (MJJ)
16 IN RE INVISION TECHNOLOGIES, INC. :
SECURITIES LITIGATION :
_____ :

17 **DECLARATION OF LAWRENCE D. LEVIT IN SUPPORT OF**
18 **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO**
DISMISS THE SECOND AMENDED CONSOLIDATED COMPLAINT

19 I, Lawrence D. Levit, declare as follows:

20 1. I am an attorney admitted to practice in the State of New York, am an attorney with
21 the firm of Abraham Fruchter & Twersky LLP, counsel for the lead plaintiffs Glazer Capital
22 Management, LP and Glazer Offshore Fund, Ltd. in this action and submit this declaration in
23 support of plaintiffs' opposition to Defendants' Motion to Dismiss the Second Amended
24 Consolidated Complaint. I am fully familiar with this matter and have knowledge of the
25 information stated herein.

26 2. Attached hereto as Exhibit 1 is a true and correct copy of Remarks to the ABA
27 White Collar Crime Luncheon by Christopher A. Wray, Assistant Attorney General, Criminal
28

EXHIBIT 1



Criminal Division

CHRISTOPHER A. WRAY
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

REMARKS* TO THE
ABA WHITE COLLAR CRIME LUNCHEON
UNIVERSITY CLUB
WASHINGTON, DC
FEBRUARY 25, 2005

*Note: Mr. Wray frequently speaks from notes and may depart from the speech as prepared.

Thank you for that kind introduction and for the invitation to be here. By now, it should be completely clear that rooting out corporate fraud and restoring public confidence in the integrity of our markets is one of the Administration's highest priorities. I'd like to talk with you about the President's Corporate Fraud Task Force, what it is, what it does, and so on. I'd also like to talk about how our approach to criminal investigations of corporations has evolved since the President announced his Corporate Fraud Initiative two and a half years ago.

In particular, I thought I'd talk a little about two closely related issues: the increased importance we're placing on companies cooperating with government investigations, and how we evaluate the authenticity of that cooperation. I'll also offer some quick observations about a couple of other areas we're giving renewed emphasis: aggressive response to efforts to obstruct government investigations; and greater attention to the complicity of professionals (accountants and even lawyers, for example) where appropriate. If I have time, I'll touch briefly on our recent prosecutions for violations of the Foreign Corrupt Practices Act and for failures to maintain anti-money laundering programs.

The President's Corporate Fraud Task Force

President Bush established the Corporate Fraud Task Force about two and a half years ago and called on us to clean up corruption in the boardroom, restore investor confidence in our markets, and send a strong message that corporate wrongdoing won't be tolerated. From the Enron scandal that surfaced in late 2001, through the WorldCom and Adelphia prosecutions announced in the summer of 2002, a series of high-profile acts of deception in corporate America had shaken the public's trust in the markets and the economy. A few dishonest individuals hurt the reputations of many honest companies and executives.

The Corporate Fraud Task Force was a response to this crisis of confidence. The Task Force is chaired by the Deputy Attorney General, and, in addition to me and the head of the Department's Tax Division, includes several key U.S. Attorneys as members. It also includes a whole slew of law enforcement and regulatory agencies, including the FBI, the Postal Inspection Service, the SEC, the CFTC, the IRS, and quite a few others. At the leadership level, we meet periodically in D.C., mapping out strategy, best practices, and ways to leverage each other's expertise. At the working level, of course, our offices are talking daily on individual matters.

By marshaling our collective resources, we've been able to conduct thorough but remarkably swift investigations—what we've been calling “real-time enforcement”—in

even the most sophisticated cases. In this way, we've met the President's charge by making clear that corporate fraud won't be tolerated. Just as importantly, there are signs that public confidence in our markets is returning.

Successes of the Task Force's First Two Years

Since the Task Force's start through this past November, we've:

- (1) Obtained over 600 corporate fraud convictions; and
- (2) Charged over 990 defendants—and convicted 77 corporate CEOs and presidents—with some type of corporate fraud crime, in connection with over 480 charged cases.

In the Enron matter alone, our Enron Task Force has charged 33 defendants, including the former Chief Accounting Officer, Rick Causey, the former CFO, Andy Fastow, the former CEO, Jeff Skilling, and most recently the former Chairman, Ken Lay, along with a bevy of other former Enron executives. We've also seized a whopping \$162 million plus for the benefit of victims of the Enron frauds.

During the Task Force's second year, our prosecutors won important convictions in the Adelphia, Craig Consumer Electronics, Dynegy, Martha Stewart, Frank Quattrone, and U.S. Technologies matters.

On the civil enforcement side, the SEC got a \$2.25 billion penalty—the largest in SEC history—against WorldCom, and settled significant financial fraud, reporting, and disclosure cases with companies including Gemstar, Lucent, and Vivendi. The SEC also brought and settled a number of significant cases against mutual funds and their executives, financial services providers, and brokers for alleged market timing and late trading in fund shares.

We believe these successes reflect how much better we're getting at coordinating aggressively and effectively. The kind of coordination that now exists on the Task Force ensures priority and focus and maximizes our combined impact.

"Real-Time Enforcement"

A major benefit of this aggressive, team-oriented approach is, again, that ability to bring "real-time enforcement"—in other words, punishing wrongdoers promptly after they commit their crimes. Simply put, speed matters in corporate fraud investigations.

The days of five-year investigations, of agreement after agreement tolling the statute of limitations—while ill-gotten gains are frittered away and investor confidence sinks—are increasingly a thing of the past.

Instead, now, restoring some of those gains to investors and other victims before they can be dissipated or stashed in some offshore account is one of our principal aims. Where executives have committed fraud, protecting the public (and, frankly, the company itself) often requires quick action to remove wrongdoers from their positions so they can't run the company further into the ground. A rapid, real-time response to allegations of fraud is critical to maintaining confidence in the markets and the economy as a whole.

The Task Force's commitment to just such a response has had a dramatic impact. Criminal charges are often now brought months, instead of years, after investigations begin.

Our new strategy of "segmenting" investigations is a perfect illustration of this major shift. These cases are so complex that we could easily spend years investigating them. But we don't have years to build the "perfect" case, in which every defendant and all wrongdoing are compiled into a single mother-of-all indictments or enforcement action. Rather, agents and prosecutors take action as swiftly as the evidence allows. We identify distinct cases, which may comprise separate segments of conduct involved in a larger investigation, and bring them as fast as we can.

For example, in the Enron investigation, we've systematically unraveled the most complicated corporate scandal in history. We've charged 33 defendants so far, but not in one big case. We peeled off Arthur Andersen and quickly won a conspiracy conviction. Many Enron executives, including the CFO, have pled guilty to parts of the massive fraud that destroyed the company. That step-by-step approach led to the indictments of Skilling and Lay last year. Although the investigation has continued for more than two years—and remains active and ongoing—these results are lightning-fast compared to the old way of doing things.

In the case of Adelphia, one of the country's largest cable operators, investigators began looking into allegations of accounting fraud in April 2002, just days after the allegations first surfaced. They quickly uncovered a management scheme to deceive the public about Adelphia's performance. Within only four months, from April to July, the CEO and four other top executives were in handcuffs. The CEO and CFO were convicted last July.

In the WorldCom investigation, the SEC filed its civil enforcement action the day

after WorldCom revealed its improper accounting for billions in expenses. Prosecutors immediately began an intensive criminal investigation. Although it soon became clear that accounting irregularities extended to many aspects of WorldCom's financial reporting, the prosecutors focused on those most likely to support criminal charges, and charged the CFO and Controller just five weeks after the revelation of fraud. The CFO pled guilty and agreed to cooperate with us. That helped secure the indictment of the CEO, Bernie Ebbers, whose trial is now underway.

Expecting Corporate Cooperation

To conduct these complex investigations quickly and thoroughly, we've simply got to secure the companies' true cooperation, where appropriate. Sometimes, we'll prosecute only the guilty employees and executives, but in other cases, we seriously consider prosecuting the company itself. Our message on this point is two-fold: Number one, you'll get a lot of credit if you cooperate, and that credit can make the difference between life and death for a corporation. Number two, you'll only get credit for cooperation if it's authentic. You have to get all the way on board and do your best to help the Government.

On the one hand, that doesn't mean we automatically prosecute companies that don't cooperate. And on the other hand, in some rare cases, the conduct may be so outrageous that no amount of cooperation will persuade us not to prosecute. But in most cases, cooperation is a very important factor in our charging decision.

What I find especially encouraging—and a credit to a number of companies and their executives—is that we're seeing more and more cooperation. Maybe more companies recognize the resources we've devoted to corporate fraud and see that we mean business. Maybe they see that we investigate and prosecute these cases in weeks or months, not years. Maybe they realize that adopting a new ethical standard is really in everyone's long-term economic interest. Whatever the reason, those companies that have actually weathered a corporate crisis are almost invariably the ones that understand that cooperation means a lot more than doing the bare minimum necessary to comply with our subpoenas.

Those companies are raising the bar. They want to make sure they get proper credit for cooperation. They're not just looking for a passing grade, they're shooting for an A+. They call us; they don't wait for us to call them. All too often, management would prefer to lay low and hope the crisis will blow over. But when the company sits quietly instead of coming forward, it's not only a red flag that something may be seriously wrong, it also makes it less likely that the company will get credit for prompt

cooperation. In contrast, a company that steps up and begins a dialogue makes a great first impression.

I'll give you some examples of how serious some companies have gotten about cooperating with the Government. Now, there's no magic formula; none of these things is either a requirement on one extreme or a safe harbor on the other.

- More and more companies have made witnesses available whenever and wherever we want to interview them, without subpoenas. That helps us investigate a lot more quickly and efficiently.
- Some companies have taken swift disciplinary action, not only by replacing managers who are accountable for the underlying problems, but by terminating employees who refuse to cooperate with the investigation.
- A lot of companies have turned over interview memoranda and other materials generated in their internal investigations, notwithstanding any claim of privilege they might have.

I want to pause for a second to be very clear on this point because I've heard a lot of anxiety and misunderstanding on it: Waiving the privilege is not a requirement or a litmus test for cooperation. But it is a very valuable and helpful action that goes a long way toward persuading us that a company's cooperation is authentic. It's a big step, and we recognize that. If your client takes that step, we should be giving them more credit for it than if they hadn't.

- Companies have directed professionals working for them, including outside auditors and counsel, to meet with us and give us prompt access to their workpapers and other records.
- Some companies have postponed or adjusted their internal investigations to suit our needs. Instead of working at cross-purposes, they coordinate with us to contribute to the investigation efficiently.
- Several companies have agreed to retain attorneys and accountants of our choice to evaluate their business practices, and to accept their recommendations. That can produce real and substantial reform.
- In a few dramatic cases, members of the company's most senior management have actually worked directly with prosecutors and agents and directed employees to cooperate on pain of termination. Needless to say,

that kind of personal involvement can be an awfully impressive demonstration of a company's commitment to cooperation.

Other companies talk the talk, but don't really walk the walk. Companies that find themselves under investigation almost always tell us—and invariably tell the public—that they're "fully cooperating." We now take a harder look at whether the company is really cooperating with us, or just paying lip service to doing so. When a corporation acts responsibly and promptly to help us, it can contribute a lot to a fair and speedy resolution of the investigation. All too often, though, the company's actions, even if they don't amount to downright obstruction, can delay and impede us.

Alternative Resolutions

Just as companies can demonstrate true cooperation in different ways, we're encouraging prosecutors to develop flexible and innovative approaches as they work to ensure that companies accept responsibility and cooperate with us. In certain cases, an alternative resolution—like a deferred prosecution or even a nonprosecution agreement—can strike that balance.

One option we've used increasingly is the deferred prosecution agreement, which some people describe as pretrial diversion. We file charges, but agree to defer prosecution for a year, two years, or even longer. In return, the company agrees to cooperate fully and admits publicly the facts of its misconduct. It also typically makes a payment, which can be structured as a fine, restitution, forfeiture, or some other category. We can also require the company to take remedial actions to make sure the conduct doesn't happen in the future. If the company complies with the agreement, the charges are dismissed at the end of the term. If not, we go to trial, now armed with the company's admission and all the evidence we obtained from its cooperation. In other words, if the company violates the agreement, its conviction is virtually a foregone conclusion.

The DP structure has many of the same benefits as a conviction. In terms of remedies, anything that the judge could impose under the organizational sentencing guidelines can be required under a DP agreement. The DP won't result in a criminal conviction if the defendant complies with the agreement, but filing charges publicly condemns the company's conduct.

For example, in December, the Criminal Division's Fraud Section and the U.S. Attorney's Office in Alexandria entered into a DP agreement with America Online. In 2000, AOL entered into a strategic partnership with PurchasePro, a software firm, and

helped PurchasePro meet its revenue goals by buying products that AOL didn't need. AOL then helped mislead PurchasePro's auditors about where the revenue really came from.

The Government charged AOL, pursuant to a DP agreement, with aiding and abetting securities fraud. AOL admitted its conduct in a statement of facts that we filed with the court, and paid \$210 million in restitution and penalties. AOL must also cooperate with the investigation, adopt internal controls, and work with an independent monitor. After 2 years, we'll move to dismiss if AOL has complied with the agreement.

In other cases, we've used nonprosecution agreements with cooperating companies. These don't involve the filing of charges, but we still typically require the company to admit its conduct publicly. We also retain enormous leverage over the company, because we reserve the right to prosecute if it fails to comply with the agreement – again, armed with the company's admissions. And we can still include virtually any combination of payments and remedial measures.

In the Enron investigation, we entered into nonpros agreements with Merrill Lynch and CIBC, a large Canadian bank, both of which had facilitated fraudulent transactions involving Enron. Both banks cooperated quickly and fully, and agreed to very substantial remedial measures. They also agreed to admit publicly their roles in the Enron meltdown. Getting cooperation like that has helped us move more quickly and extensively in the Enron investigation.

In some cases, despite our emphasis on cooperation, we'll still insist on an outright guilty plea by the company, as we did in the Guidant investigation out in San Francisco. And, of course, companies need to understand that we won't hesitate to indict and vigorously pursue companies themselves, not just their executives, where it's warranted. There is, after all, more than one factor in the Thompson memo. Last April, for example, we indicted not only four officers but Reliant Energy Services itself, in investigations into the manipulation of the California energy markets.

Obstruction of Justice

Across the board, we're also taking obstructive conduct more seriously, and not just in our own criminal investigations. Folks who lie to the SEC should know that we won't hesitate to prosecute them. Compliance with SEC investigations is important to all of us, especially as we coordinate more with each other and benefit on the criminal side from that coordination. Those who lie in an SEC deposition or destroy documents in an SEC investigation are hiding the truth from all the members of the Corporate

Fraud Task Force and will have more than just the SEC to worry about. Lying to government investigators needs to be seen as one of the surest paths to severe consequences. That message should be coming through loud and clear with the convictions of Martha Stewart, Frank Quattrone, and, of course, Arthur Andersen.

There may even be instances where executives don't have to lie directly to the government to face obstruction charges. In 2002, the FBI and the SEC began investigating accounting practices at Computer Associates, a huge software company. CA promised to cooperate and hired a law firm to conduct an internal investigation. Those attorneys interviewed various executives, who falsely denied using improper accounting to meet earnings estimates. The company later waived all privileges and provided the results of the internal investigation—including the false statements—to federal investigators. The Brooklyn U.S. Attorney's Office then charged them with obstruction of justice for misleading the company's own lawyers. Last April, each of those three executives pled guilty to obstructing justice and securities fraud. Two face up to 10 years in prison; the third could be jailed for as long as 20 years.

These investigations are already hard enough. We simply can't allow companies or executives to make them even harder by obstructing. When that happens, we're going to respond swiftly and severely.

The Role of Professionals

As the Andersen conviction illustrates, some of the people obstructing investigations—or even committing the underlying criminal conduct—will be professionals: accountants, investment bankers, and lawyers. These folks are not off-limits to our investigations. Among the six top executives convicted in the Rite-Aid case in Pennsylvania, for example, was the company's general counsel, who lied and obstructed the SEC's investigation. Among the Enron defendants are a number of investment bankers at Merrill Lynch, indicted for assisting the fraud. In Brooklyn, after we indicted executives whose fraud led to the collapse of paper manufacturer American Tissue and cost banks and investors almost \$300 million, we also arrested a former Arthur Andersen auditor who had shredded documents as the scheme unraveled. And in the Nicor Energy case in Chicago, we've indicted one of the company's outside lawyers for his role in the fraud. Even where criminal charges aren't warranted against professionals, action by the SEC or other agencies may apply.

You can expect to see more prosecutions of professionals where it's warranted. These are big sophisticated companies, involved in big sophisticated deals, which the companies' executives don't put together all on their lonesome. We wouldn't be doing

our jobs if we weren't asking now, in every corporate fraud investigation, "What about the professionals?" "Where were they?" "What was their role?"

Foreign Corrupt Practices Act

Another area where these trends are having an impact is our enforcement of the Foreign Corrupt Practices Act. I assume everyone here is basically familiar with the FCPA, making it illegal for U.S. companies to get business abroad by bribing foreign government officials. Even today, attitudes toward that kind of conduct vary widely among executives around the world and, unfortunately, right here at home. Some folks persist in thinking that bribery is just a cost of doing business in certain countries. The problem is, these bribes undermine exactly what the Corporate Fraud Task Force is intent on restoring: public confidence in the integrity of American business. Under-the-table bribes distort the playing field and hide the truth from the public.

For a number of reasons, I think you'll continue to see steady growth in the number of our FCPA cases. First, the SEC has significantly stepped up enforcement of the FCPA's civil provisions against publicly held companies. That's only helped our efforts on the criminal side, as we coordinate our enforcement efforts, conduct parallel investigations, and bring civil and criminal charges simultaneously when appropriate.

Second, we're seeing more cooperation from anti-bribery investigators and prosecutors around the world. That kind of cooperation is essential because these are often tough cases to make. Evidence of the bribe is often located abroad—sometimes in the very country whose officials have been bribed. And these matters are almost always politically sensitive. Our investigators rely on the good graces and cooperation of our international partners. Our relationships with them—particularly the French, the Germans, and the Swiss—are healthy and growing stronger and more productive every day.

Finally, we're seeing many more companies disclose FCPA violations voluntarily. As I said earlier, companies are getting the message that we're serious about rooting out illegal corporate conduct, and that helping us get to the bottom of it is far wiser than laying low or trying to hide it.

The extent of such cooperation can be reflected in the deferred prosecution and nonpro agreements I mentioned earlier. The breadth of outcomes in our FCPA cases illustrates our willingness to craft an appropriate disposition for each set of circumstances. In each case, the companies have agreed to cooperate fully with ongoing civil and criminal investigations, improve internal controls and compliance, and retain

independent monitors.

Last month, for example, the Department charged Monsanto, a global producer of agricultural products, for making an illegal payment to a senior Indonesian official for the approvals and licenses necessary to sell its products in Indonesia, and with falsely certifying the bribe as “consultant fees” in the company’s books. We agreed to defer prosecution for three years and Monsanto will pay a \$1 million penalty. We’ll dismiss the charges after three years if Monsanto has satisfied our agreement.

This past December, the Department entered into nonprosecution agreements with General Electric and InVision Technologies, a maker of airport security screening products designed to detect explosives in passenger baggage. InVision employees had paid or offered to pay foreign officials in Thailand, China, and the Philippines to buy and install their airport security products. GE discovered the transactions while performing due diligence in anticipation of acquiring InVision, and voluntarily disclosed the conduct to the Department and the SEC. InVision disgorged almost \$600,000 in profits and paid a criminal penalty of \$800,000; GE agreed to integrate InVision into its own FCPA compliance program.

It’s important to note, however, that not all FCPA investigations result in deferred prosecution or nonpros agreements. Again, the Thompson memo has more than one factor. Last July, ABB Vetco Gray and ABB Vetco Gray UK—the U.S. and U.K. subsidiaries of Swiss company ABB—each pled guilty to FCPA violations. In pursuing oil and gas construction contracts in Nigeria, these companies had paid more than \$1 million in bribes to Nigerian officials for confidential bid information and favorable recommendations. Parent company ABB voluntarily disclosed the suspicious payments to the Justice Department and the SEC. Each subsidiary paid a criminal fine of \$5.25 million. On the civil side, ABB agreed to disgorge \$6 million in profits and to hire an outside consultant to review its system of internal controls. I think you can expect rigorous and fair enforcement of the FCPA to remain a major priority for the Department.

Bank Prosecutions

Let me wind up by touching briefly on another set of cases to which the Department—and the public—have been paying greater attention recently. Over the past two years, the Department has pursued criminal charges against five banks for failing to safeguard against money laundering or to report suspicious financial transactions to the Government. The most recent, of course, was the guilty plea we secured from Riggs Bank itself, right here in DC. I want to make a couple of points about these cases.

First, contrary to the perception of some in the banking industry, the Department is not filing criminal charges against banks for simply neglecting to report one or two suspicious transactions. We're not prosecuting for negligence. Rather, the cases we've brought were triggered by egregious failures, over periods of years, to perform a minimal level of due diligence.

For example, from 1995 through 1998, the Banco Popular in Puerto Rico allowed drug dealer Roberto Ferrario to launder about \$32 million in cash drug proceeds. The bank believed Ferrario's story that he ran a telephone service business two doors down from the bank branch he used, but never walked down the street to see where all this money was coming from. The bank failed to report huge cash deposits—at times over \$500,000 a day—that took tellers hours to process. The bank didn't file a Suspicious Activity Report until February 1998, after about \$21 million of narcotics proceeds had been laundered at one branch.

Another example: Over a two-year period, several drug trafficking organizations used Broadway National Bank in New York to launder their money. The drug dealers used accounts opened by several front businesses located within a few blocks of the bank branch. Just a short walk and a look-see would have confirmed that these small businesses couldn't have generated all of the cash being deposited. Broadway failed to report suspicious transactions involving hundreds of bulk cash deposits totaling more than \$46 million and thousands of structured deposits of more than \$76 million in cash into more than 100 separate accounts.

Now, given that most banks are good corporate citizens, this sort of behavior should outrage the rest of industry. Banks like the ones I just mentioned have completely and unfairly abandoned their legal obligations, unlike most of their peers (and competitors) that take these responsibilities very seriously. In the Broadway case, for example, when the agents asked a drug trafficker why he laundered his drug proceeds through Broadway, the traffickers said that at Broadway, "they didn't ask any questions." Prosecuting these rogue banks helps to level the industry's playing field.

These examples also illustrate my second point: Strengthening safeguards against money laundering is critical to fighting other types of crime. Congress didn't pass the relevant statutes, and we don't enforce them, to just annoy the banking industry. Rather, we do so because it makes life harder for the people who need to launder money: drug dealers, terrorists, and others like them. The one thing that all of these bad guys need is money. Terrorists need it to pay rent, book airplane tickets, rent cars, secure identification, build bombs, and so on. That's why our efforts to clamp down on

terrorist financing are so important, and getting banks to remain vigilant and cooperative is just another part of that fight. As I've said often when speaking to audiences about the Department's efforts to fight terrorism, we'd much rather catch a terrorist with his hands on a check than on a bomb.

Conclusion

To wrap up: By offering your clients sound advice in times of crisis, you can help them fix a corrupt corporate culture and focus on their core businesses. You're the ones they're going to listen to in deciding when to make a voluntary disclosure; you're the ones who help them put in place real compliance programs; you're the ones they're going to heed in deciding how to handle or launch internal investigations. And the more folks we have focused on fraud prevention, the better off we'll all be as a nation. I hope that our combined efforts strengthen the integrity of the market place, protect the public, and restore confidence—confidence that the few bad apples are being ferreted out and dealt with severely, so that the remaining vast majority will be trusted the way we all want them to be.

Thank you.

EXHIBIT 2

1 HELANE L. MORRISON (Cal. Bar No. 127752)
ROBERT L. MITCHELL (Cal. Bar No. 161354)
2 TRACY L. DAVIS (Cal. Bar No. 184129)
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E-filing

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 SECURITIES AND EXCHANGE COMMISSION, C

12 Plaintiff,

13 vs.

14 GE INVISION, INC. (formerly known as INVISION
TECHNOLOGIES, INC.),

15 Defendant.
16

05 0660

COMPLAINT

17
18 Plaintiff Securities and Exchange Commission ("Commission") alleges against defendant GE
19 InVision, Inc., formerly known as InVision Technologies, Inc. ("InVision" or "Defendant"):

20 SUMMARY OF THE ACTION

21 I. This matter involves violations of the Foreign Corrupt Practices Act ("FCPA") by
22 InVision, a California-based manufacturer of explosive detection systems used at airports. In three
23 instances from at least June 2002 through June 2004, InVision was aware of a high probability that its
24 sales agents or distributors made or offered to make improper payments to foreign government officials
25 in China, the Philippines and Thailand, in order to obtain or retain business for InVision. Despite this,
26 InVision allowed the agents or distributors to proceed on InVision's behalf, in violation of the FCPA.
27 InVision also failed to devise and maintain a system of internal controls with respect to foreign sales
28 sufficient to assure compliance with the FCPA.

ORIGINAL
FILED
05 FEB 14 AM 10:17
RICHARD W. HIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEJ

1 Electric. All of the conduct described in this Complaint occurred prior to the acquisition of InVision
2 by General Electric.

3 FACTS

4 8. During the relevant period, InVision marketed and sold its explosive detection systems
5 to customers worldwide. To facilitate its sales outside the United States, InVision retained local sales
6 agents and distributors who were familiar with the business practices and customs of their respective
7 countries. The sales agents and distributors negotiated with InVision's customers, including
8 governmental aviation authorities, and typically reported to InVision through an InVision Regional
9 Sales Manager. The Regional Sales Managers reported directly to an InVision senior sales executive
10 (the "Senior Executive").

11 A. China

12 9. In November 2002, InVision agreed to sell two explosive detection machines for use
13 at an airport under construction in Guangzhou, China. The airport is owned and controlled by the
14 government of China. The sale to the airport was conducted through InVision's local distributor in
15 China, which purchased the two machines from InVision for approximately \$2.8 million. The
16 distributor, in turn, negotiated the sale of the machines and was InVision's primary representative to
17 the airport and associated governmental agencies.

18 10. Under the terms of the transaction, InVision was obligated to deliver the two machines
19 by mid-2003. Due to problems in obtaining an export license from the United States government,
20 however, InVision did not deliver the machines until October 2003. During the delay, the distributor
21 in China informed the responsible Regional Sales Manager and the Senior Executive that the airport
22 intended to impose a financial penalty on InVision. The distributor advised the Regional Sales
23 Manager that, in order to avoid this penalty, it intended to offer foreign travel and other benefits to
24 airport officials. The Regional Sales Manager notified the Senior Executive of the distributor's
25 intention.

26 11. The distributor requested financial compensation from InVision to pay for penalties
27 and costs that, it claimed, would be incurred as a result of the delay in shipment. The distributor's
28

1 request included compensation for benefits that the distributor intended to offer to airport officials.
2 In October 2003, the Senior Executive agreed to pay the distributor \$95,000. Based on information
3 provided by the Senior Executive and the Regional Sales Manager, InVision's finance department
4 subsequently authorized the payment, which was completed in April 2004. At the time of the
5 payment, based on the information provided to the Regional Sales Manager and the Senior Executive,
6 InVision was aware of a high probability that the distributor intended to use part of the funds it
7 received from InVision to pay for foreign travel and other benefits for airport officials.

8 12. InVision improperly recorded the payment in its books as a cost of goods sold.
9 InVision realized profits of approximately \$589,000 from the sale of the two machines in China.

10 **B. Philippines**

11 13. InVision sold two explosive detection machines for use in an airport in the Philippines
12 in November 2001. Although InVision had retained a sales agent in the Philippines since at least
13 1996, the sale was made directly by InVision to the subcontractor responsible for building the airport
14 terminal baggage handling system.

15 14. Beginning at about the time of the November 2001 sale, InVision received repeated
16 requests for a commission on the sale from its sales agent in the Philippines. At the same time, in
17 communications with both the responsible Regional Sales Manager and the Senior Executive, the
18 agent indicated that it was negotiating for additional sales of InVision products to other airports
19 owned and controlled by the government of the Philippines. The agent indicated that it intended to
20 use part of any commission it obtained in connection with the November 2001 sale to make gifts or
21 pay cash to government officials in order to influence their decision to purchase additional InVision
22 products.

23 15. In December 2001, the Senior Executive agreed to pay the Filipino sales agent a
24 commission in the amount of approximately \$108,000 in connection with the November 2001 sale.
25 Based on information provided by the Regional Sales Manager and Senior Executive, InVision's
26 finance department subsequently authorized the payment, which was completed in July 2002. At the
27 time of the payment, based on the information provided to the Regional Sales Manager and the
28

1 Senior Executive, InVision was aware of a high probability that the sales agent intended to use part of
2 the commission to make gifts or pay cash to influence Filipino government officials to purchase
3 InVision products. InVision improperly recorded the payment in its books as a sales commission.
4 The Filipino agent did not complete any additional sales on behalf of InVision.

5 C. Thailand

6 16. Beginning no later than 2002, InVision competed for the right to supply explosive
7 detection machines to an airport under construction in Bangkok, Thailand. Construction of the
8 airport is overseen by a corporation controlled by the government of Thailand. InVision retained a
9 distributor in Thailand to lobby the airport corporation and the Thai government on the Company's
10 behalf. Under the terms of the transaction, the distributor would purchase the explosives detection
11 machines from InVision and then make its profit by reselling them at a higher price for use by the
12 airport. The distributor was InVision's primary representative to the airport and associated
13 governmental agencies.

14 17. From at least January 2003 through April 2004, in communications with the
15 responsible Regional Sales Manager and the Senior Executive, the distributor indicated that it had
16 offered to make gifts or payments to officials with influence over the airport corporation. Based on
17 the information provided to the Regional Sales Manager and the Senior Executive, InVision was
18 aware of a high probability that the distributor intended to fund any such gifts or offers out of the
19 difference between the price the distributor paid InVision to acquire the machines and the price for
20 which the distributor was able to resell them. Despite this awareness, InVision authorized the
21 distributor to continue to pursue the transaction.

22 18. In or about April 2004, the airport corporation, through its general contractor, agreed
23 to purchase 26 of InVision's explosive detection machines from the InVision distributor in a sale
24 InVision valued at approximately \$35.8 million. Consummation of the transaction was deferred after
25 InVision received notification of possible FCPA violations. InVision has not recognized any revenue
26 from the transaction and has agreed that the transaction will proceed, if at all, only as a sale directly
27 to the airport corporation or another Thai governmental entity.
28

1 **D. InVision's Lack of Internal Controls**

2 19. During the period of the foreign transactions described above, InVision failed to
3 develop an adequate process to select and train its sales agents and distributors employed outside the
4 United States. In choosing foreign sales agents and distributors, InVision primarily relied on
5 introductions by other American companies. InVision conducted little, if any, investigation into the
6 backgrounds of its foreign sales agents and distributors.

7 20. InVision's standard agreement with its foreign agents and distributors contained a
8 clause prohibiting violations of the FCPA. Beyond the contractual provision, however, InVision
9 provided no formal training or education to its employees (including its Regional Sales Managers) or
10 its sales agents and distributors regarding the requirements of the FCPA.

11 21. InVision also failed to establish a program to monitor its foreign agents and
12 distributors for compliance with the FCPA. For example, InVision did not have a regular practice of
13 periodically updating background checks or other information regarding foreign agents and
14 distributors. With respect to the transactions described above, InVision failed to establish an internal
15 system sufficient to prevent and detect violations of the FCPA.

16 **FIRST CLAIM**

17 *Violation of Section 30A of the Exchange Act*
18 *(Illegal Offers and Payments)*

19 22. Paragraphs 1 through 21 are re-alleged and incorporated by reference.

20 23. As described above, InVision made or authorized payments, through money and gifts,
21 to foreign officials for the purpose of influencing their official acts and decisions and inducing them
22 to use their influence to assist InVision in obtaining or retaining business with foreign airport
23 authorities. Throughout the relevant period, the recipients of these offers and payments were foreign
24 officials within the meaning of the FCPA, and the relevant foreign airport authorities were
25 instrumentalities of foreign governments within the meaning of the FCPA.

26 24. By reason of the foregoing, InVision violated the illegal offers and payments
27 provisions of the FCPA, codified as Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].
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SECOND CLAIM

*Violation of Section 13(b)(2)(A) of the Exchange Act
(Books and Records)*

25. Paragraphs 1 through 24 are re-alleged and incorporated by reference.

26. As described above, with respect to the offers and payments described above, InVision failed to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets.

27. By reason of the foregoing, InVision violated the books-and-records provisions of the FCPA, as codified at Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

THIRD CLAIM

*Violation of Section 13(b)(2)(B) of the Exchange Act
(Internal Controls)*

28. Paragraphs 1 through 27 are re-alleged and incorporated by reference.

29. As described above, with respect to the offers and payments described above, InVision failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for its assets.

30. By reason of the foregoing, InVision violated the internal controls provisions of the FCPA, as codified at Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment
3 ordering Defendant to pay a \$500,000 civil penalty pursuant to Section 21(d)(3) and 32(c) of the
4 Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78ff(c)], and granting such other relief as the Court deems
5 appropriate.

6
7 Dated: February 11, 2005

8 Respectfully submitted:

9
10
11 By: 

12 _____
13 Helane L. Morrison
14 Robert L. Mitchell
15 Tracy L. Davis
16 Robert L. Tashjian

17
18 Attorneys for Plaintiff
19 SECURITIES AND EXCHANGE COMMISSION
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EXHIBIT 3



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, DECEMBER 6, 2004
WWW.USDOJ.GOV

CRM
(202) 514-2008
TDD (202) 514-1888

INVISION TECHNOLOGIES, INC. ENTERS INTO AGREEMENT WITH THE UNITED STATES

WASHINGTON, D.C. - Assistant Attorney General Christopher A. Wray of the Criminal Division announced today that InVision Technologies, Inc. - a public company based in Newark, California that sells, in domestic and foreign markets, an airport security screening product designed to detect explosives in passenger baggage - has agreed to resolve the criminal liability associated with potential violations of the Foreign Corrupt Practices Act (FCPA) by paying \$800,000 in penalties to the United States and cooperating fully in the parallel investigations by the Department of Justice and the Securities and Exchange Commission.

In a separate, related agreement, General Electric Company, which announced today that it had completed its acquisition of InVision, agreed, among other things, to ensure compliance by InVision of InVision's obligations under its agreement and to effect FCPA compliance programs within its new InVision business.

The investigations by the Department and the SEC revealed that InVision, through the conduct of certain employees, was aware of a high probability that its agents or distributors in the Kingdom of Thailand, the People's Republic of China and the Republic of the Philippines had paid or offered to pay money to foreign officials or political parties in connection with transactions or proposed transactions for the sale by InVision of its airport security screening machines. The investigations followed the voluntary disclosure to the Department and the SEC by InVision and GE of facts obtained in their internal investigation into the potential FCPA violations.

The key terms of the Department's agreements with InVision and General Electric are as follows:

The InVision Agreement

The term of the InVision Agreement is two years. In exchange for the Department's agreement not to prosecute InVision for the conduct disclosed by InVision and GE (which assisted InVision in conducting an internal investigation) to the Department and the SEC, InVision agrees, among other things, to:

- Accept responsibility for its misconduct, agree that a statement of facts summarizing the subject transactions is materially accurate and agree not to contradict those facts;
- Negotiate in good faith a settlement with the SEC;
- Pay a monetary penalty to the United States of \$800,000; and
- Fully and affirmatively disclose to the Department and the SEC activities that InVision believes may violate the FCPA, and continue to cooperate with the Department and the SEC in their investigations.

The GE Agreement

The GE Agreement, which has a term of one year, governs the obligations of GE with respect to its InVision business. In exchange for the Department's agreement not to prosecute GE for conduct disclosed by InVision and GE

to the Department and the SEC, GE agrees, among other things, to:

- Integrate the InVision business into GE's FCPA compliance program and retain an independent consultant acceptable to the Department to evaluate the efficacy of GE's effort in that regard;
- Cause the full performance by InVision of the InVision Agreement;
- Accept, based on its present factual understandings, that the factual statement in the InVision Agreement describing the subject transactions is materially accurate and refrain from contradicting that statement; and
- Fully and affirmatively disclose to the Department and the SEC activities that GE reasonably believes are material to the investigations of the Department and the SEC, and to continue to cooperate in those investigations.

The case was prosecuted by Deputy Chief Peter B. Clark, Acting Deputy Chief Mark F. Mendelsohn and Trial Attorney Thomas E. Stevens of the Fraud Section.

###

04-780

EXHIBIT 4



U.S. Securities and Exchange Commission

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**Securities Exchange Act of 1934
Release No. 51199 / February 14 2005**

**Accounting and Auditing Enforcement
Release No. 2186 / February 14, 2005**

Admin. Proc. File No. 3-11827

| | | |
|--|--|--|
| <p>In the Matter of</p> <p>GE InVision, Inc. (formerly known as InVision Technologies, Inc.),</p> <p>Respondent.</p> | <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> | <p>ORDER INSTITUTING CEASE-AND- DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE- AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934</p> |
|--|--|--|

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against GE InVision, Inc., formerly known as InVision Technologies, Inc. ("InVision" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This proceeding involves violations of the Foreign Corrupt Practices Act ("FCPA") by InVision, a California-based manufacturer of explosives detection systems used by airports. From at least June 2002 through June 2004, InVision, through its employees, sales agents and distributors, engaged in transactions in violation of the FCPA in three countries: the People's Republic of China, the Republic of the Philippines and the Kingdom of Thailand. In each of the transactions, InVision was aware of a high probability that its foreign sales agents or distributors paid or offered to pay something of value to government officials in order to obtain or retain business for InVision. Despite this, InVision authorized improper payments to the agents or distributors, or allowed them to proceed with transactions on InVision's behalf, in violation of the FCPA. During this period, InVision improperly accounted for certain payments to its agents and distributors in its books and records in violation of the FCPA, and failed to devise and maintain a system of internal controls with respect to foreign sales sufficient to assure compliance with the FCPA.

Respondent

2. InVision, incorporated in Delaware and headquartered in Newark, California, designs and manufactures advanced explosives detection systems to scan checked baggage by airport security personnel in the United States and other countries. At the time of the conduct described below, InVision's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was listed on the NASDAQ National Market. InVision filed reports with the Commission pursuant to Section 13 of the Exchange Act.²

Facts

3. To facilitate its sales abroad, InVision retained local sales agents and distributors who were familiar with the business practices and customs of their respective countries. The sales agents and distributors negotiated with InVision's customers, including governmental aviation authorities, and typically reported to InVision through an InVision Regional Sales Manager. The Regional Sales Managers reported directly to an InVision senior sales executive (the "Senior Executive").

A. China

4. In November 2002, InVision agreed to sell two explosives detection machines for use at an airport under construction in Guangzhou, China. The airport is owned and controlled by the government of China. The sale to the airport was conducted through InVision's local distributor in China, which purchased the two machines from InVision for approximately \$2.8 million. The distributor, in turn, negotiated the re-sale of the machines and was InVision's primary representative to the airport and associated governmental agencies.

5. Under the terms of the transaction, InVision was obligated to deliver the two machines by mid-2003. Due to problems in obtaining an export license from the United States government, however, InVision did not deliver the machines until October 2003. During the delay, the distributor in China informed the responsible Regional Sales Manager and the Senior Executive that the airport intended to impose a financial penalty on InVision. The distributor advised the Regional Sales Manager that, in order to avoid this penalty, it intended to offer foreign travel and other benefits to airport officials. The Regional Sales Manager notified the Senior Executive of the distributor's intention.

6. The distributor requested financial compensation from InVision to pay for penalties and costs that, it claimed, would be incurred as a result of the delay in shipment. The distributor's request included compensation for benefits that the distributor intended to offer to airport officials. In October 2003, the Senior Executive agreed to pay the distributor \$95,000. Based on information provided by the Senior Executive and the Regional Sales Manager, InVision's finance department subsequently authorized the payment, which was completed in April 2004. At the time of the payment, based on the information provided to the Regional Sales Manager and the Senior Executive, InVision was aware of a high probability that the distributor intended to use part of the funds it received from InVision to pay for foreign travel and other benefits for airport officials.

7. InVision improperly recorded the payment in its books as a cost of goods sold. InVision realized profits of approximately \$589,000 from the sale of the two machines in China.

B. Philippines

8. InVision sold two explosives detection machines for use in an airport in the Philippines in November 2001. Although InVision had retained a sales agent in the Philippines since at least 1996, the sale was made directly by InVision to the subcontractor responsible for building the airport terminal baggage handling system.

9. Beginning at about the time of the November 2001 sale, InVision received repeated requests for a commission on the sale from its sales agent in the Philippines. At the same time, in communications with both the responsible Regional Sales Manager and the Senior Executive, the agent indicated that it was negotiating for additional sales of InVision products to other airports owned and controlled by the government of the Philippines. The agent indicated that it intended to use part of any commission it obtained in connection with the November 2001 sale to make gifts or pay cash to government officials in order to influence their decision to purchase additional InVision products.

10. In December 2001, the Senior Executive agreed to pay the Filipino sales agent a commission in the amount of approximately \$108,000 in connection with the November 2001 sale. Based on information provided by the Regional Sales Manager and Senior Executive, InVision's finance department subsequently authorized the payment, which was completed in July 2002. At the time of the payment, based on the information provided to the Regional Sales Manager and the Senior Executive, InVision was aware of a high probability that the sales agent intended to use part of the

commission to make gifts or pay cash to influence Filipino government officials to purchase InVision products. InVision improperly recorded the payment in its books as a sales commission. The Filipino agent did not complete any additional sales on behalf of InVision.

C. Thailand

11. Beginning no later than 2002, InVision competed for the right to supply explosives detection machines to an airport under construction in Bangkok, Thailand. Construction of the airport is overseen by a corporation controlled by the government of Thailand. InVision retained a distributor in Thailand to lobby the airport corporation and the Thai government on InVision's behalf. Under the terms of the transaction, the distributor would purchase the explosives detection machines from InVision and then make its profit by reselling them at a higher price for use by the airport. The distributor was InVision's primary representative to the airport and associated governmental agencies.

12. From at least January 2003 through April 2004, in communications with the responsible Regional Sales Manager and the Senior Executive, the distributor indicated that it had offered to make gifts or payments to officials with influence over the airport corporation. Based on the information provided to the Regional Sales Manager and the Senior Executive, InVision was aware of a high probability that the distributor intended to fund any such gifts or offers out of the difference between the price the distributor paid InVision to acquire the machines and the price for which the distributor was able to resell them. Despite this awareness, InVision authorized the distributor to continue to pursue the transaction.

13. In or about April 2004, the airport corporation, through its general contractor, agreed to purchase 26 of InVision's explosive detection machines from the InVision distributor in a sale InVision valued at approximately \$35.8 million. Consummation of the transaction was deferred after InVision received notification of possible FCPA violations. InVision has not recognized any revenue from the transaction and has agreed that the transaction will proceed, if at all, only as a sale directly to the airport corporation or another Thai governmental entity.

D. InVision's Lack of Internal Controls

14. During the period of the foreign transactions described above, InVision failed to develop an adequate process to select and train its sales agents and distributors employed outside the United States. In choosing foreign sales agents and distributors, InVision primarily relied on introductions by other American companies. InVision conducted little, if any, investigation into the backgrounds of its foreign sales agents and distributors.

15. InVision's standard agreement with its foreign agents and distributors contained a clause prohibiting violations of the FCPA. Beyond the contractual provision, however, InVision provided no formal training or education to its employees (including its Regional Sales Managers) or its sales agents and distributors regarding the requirements of the FCPA.

16. InVision also failed to establish a program to monitor its foreign agents

and distributors for compliance with the FCPA. For example, InVision did not have a regular practice of periodically updating background checks or other information regarding foreign agents and distributors. With respect to the transactions described above, InVision failed to establish an internal system sufficient to prevent and detect violations of the FCPA.

Legal Analysis

17. The FCPA, enacted in 1977, added Section 30A to the Exchange Act in order to prohibit public companies from, among other things, making or authorizing payments to any person while knowing that all or a portion of such payments will be offered or given to any foreign official for the purpose of influencing the official's decision in order to obtain or retain business. See 15 U.S.C. § 78dd-1(a).

18. The FCPA also added Exchange Act Section 13(b)(2)(A) to require public companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer, and Exchange Act Section 13(b)(2)(B) to require such companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets. See 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B).

19. In each of the transactions described above, based on the information provided to the responsible Regional Sales Manager and the Senior Executive, InVision was aware of the high probability that its foreign sales agents and distributors intended to make gifts or payments in order to obtain or retain business for InVision. In each instance, by proceeding with the transactions, InVision made or authorized the making of illegal payments to foreign officials, in violation of Section 30A. InVision violated Section 13(b)(2)(A) by improperly recording in its books and records payments it made in the transactions involving its distributor in China and its sales agent in the Philippines. Finally, InVision violated Section 13(b)(2)(B) by failing to devise and maintain an effective system of internal controls to prevent and detect violations of the FCPA.

Cooperation

20. In determining to accept the Offer, the Commission took into account InVision's cooperation afforded the Commission, including the fact that InVision brought this matter to the attention of the Commission's staff and the Department of Justice.

Undertakings

InVision and its corporate parent General Electric undertake to:

21. Incorporate InVision into General Electric's corporate compliance program, including its program designed to detect and prevent violations of

the FCPA.

22. Retain and pay for an Independent Consultant not unacceptable to the staff of the Commission and the Department of Justice within 60 calendar days of the issuance of this Order.

23. Require the Independent Consultant to:

- a. Evaluate the efficacy of the integration by General Electric of InVision into General Electric's existing FCPA compliance program, including but not limited to the implementation of FCPA training for appropriate InVision employees; and
- b. Within 180 days of the issuance of this Order, report to the staff of the Commission (with a copy of any such written report being provided to General Electric) regarding General Electric's efforts to comply with Paragraph 23(a), above.

24. Cooperate fully with the Independent Consultant and provide the Independent Consultant with access to its files, books, records and personnel as reasonably requested for the Independent Consultant's evaluation.

25. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement, and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with InVision, its successor-in-interest GE InVision, Inc., GE Security, Inc., General Electric, or any of these entities' present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant shall require that any firm with which the Independent Consultant is affiliated or of which Independent Consultant is a member, and any person engaged to assist the Independent Consultant in performance of Independent Consultant's duties under the Order memorializing the terms of this Offer, shall not, without prior written consent of the staff of the Commission's San Francisco District Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with InVision, its successor-in-interest GE InVision, Inc., GE Security, Inc., or any of these entities' present or former subsidiaries, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 30A of the Exchange Act.

B. Respondent shall comply with the undertakings enumerated in Section III, above.

C. IT IS FURTHER ORDERED that Respondent shall, within ten days of the entry of this Order, pay disgorgement of \$589,000 plus prejudgment interest of \$28,703.57, for a total amount of \$617,703.57 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies InVision as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helane L. Morrison, District Administrator, San Francisco District Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California 94104.

By the Commission.

Jonathan G. Katz
Secretary

Endnotes

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² On December 6, 2004, InVision was acquired by an affiliate of General Electric Company ("General Electric"). General Electric's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange. Following the acquisition, InVision filed a Form 15 Notice of Termination of Registration of its common stock under Exchange Act Section 12(g). The successor company, known as GE InVision, Inc., is a wholly-owned subsidiary of GE Security, Inc. and an indirect wholly-owned subsidiary of General Electric. All of the conduct described in Section III of this Order occurred prior to the acquisition of InVision by General Electric.

<http://www.sec.gov/litigation/admin/34-51199.htm>

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Modified: 02/14/2005

EXHIBIT 5



U.S. Securities and Exchange Commission

U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 19078 / February 14, 2005

**Accounting and Auditing Enforcement
Release No. 2187 / February 14, 2005**

Securities and Exchange Commission v. GE InVision, Inc. (formerly known as InVision Technologies, Inc.), United States District Court for the Northern District of California, Civil Action No. C-05-0660 MEJ

SEC SETTLES CHARGES AGAINST INVISION TECHNOLOGIES FOR \$1.1 MILLION FOR VIOLATIONS OF THE FOREIGN CORRUPT PRACTICES ACT

The Securities and Exchange Commission (Commission) charged InVision Technologies, Inc. (InVision), a Newark, California-based manufacturer of explosive detection machines used in airports, with authorizing improper payments to foreign government officials in violation of the Foreign Corrupt Practices Act (FCPA). Simultaneous with the filing of the Commission's charges InVision agreed, without admitting or denying the charges, to disgorge \$589,000 in profits from its FCPA violations plus prejudgment interest of approximately \$28,700, and pay a \$500,000 civil penalty. InVision was acquired in December 2004 by the General Electric Company, and now operates under the name GE InVision, Inc.; the conduct charged by the Commission occurred prior to the acquisition.

In both a federal court complaint and an administrative order, the Commission charged that from at least June 2002 through June 2004, InVision employees, sales agents and distributors pursued transactions to sell explosive detection machines to airports in China, the Philippines and Thailand. According to the Commission, in each of these transactions, InVision was aware of a high probability that its foreign sales agents or distributors made or offered to make improper payments to foreign government officials in order to obtain or retain business for InVision. Despite this, InVision allowed the agents or distributors to proceed on its behalf, in violation of the FCPA. The Commission also charged that InVision improperly accounted for certain payments to agents or distributors and failed to have an adequate system of internal controls to detect and prevent violations of the FCPA.

The Commission's administrative order finds that InVision violated the anti-bribery, books and records and internal controls provisions of the FCPA (respectively, Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934). Without admitting or denying liability or the Commission's findings, InVision agreed to pay disgorgement and prejudgment interest, cease and desist from violations of the FCPA, and

comply with its undertakings to retain an independent consultant to ensure that InVision adheres to a corporate compliance program designed to detect and prevent violations of the FCPA. In the district court action, which alleges the same violations, InVision agreed to settle the charges, without admitting or denying liability, and pay a civil penalty.

The Commission acknowledges the assistance of the Department of Justice in the Commission's investigation. The Commission's investigation is continuing.

➤ [SEC Complaint in this matter](#)

[*http://www.sec.gov/litigation/litreleases/lr19078.htm*](http://www.sec.gov/litigation/litreleases/lr19078.htm)

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Modified: 02/14/2005

EXHIBIT 6

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EXHIBIT 99.1

[INVISION TECHNOLOGIES, INC. LETTERHEAD]

NEWS RELEASE

Investor contact: InVision Technologies, Inc.
Laura Graves
Investor Relations
510-739-2448

Press contact: Brunswick Group
Stan Neve
212-333-3810

FOR IMMEDIATE RELEASE

INVISION TECHNOLOGIES ANNOUNCES INTERNAL INVESTIGATION

Investigation Could Impact Acquisition of InVision by General Electric

NEWARK, CA - JULY 30, 2004 - InVision Technologies, Inc. (NASDAQ: INVN) announced that it met yesterday with the Department of Justice and the Securities and Exchange Commission concerning its voluntary disclosure of an internal investigation of certain possible offers of improper payments by distributors in connection with foreign sales activities. InVision has been informed that the Department of Justice and the Securities and Exchange Commission may commence an investigation of InVision with respect to these matters, including with respect to possible violations of the Foreign Corrupt Practices Act. InVision's internal investigation has been conducted in consultation with General Electric (NYSE: GE), which has agreed to acquire InVision in a cash merger. InVision intends to cooperate fully with any governmental investigation of these matters.

The internal investigation and any related investigation by the Department of Justice and/or the Securities and Exchange Commission may not be completed by October 31, 2004. Completion of the acquisition of InVision by GE remains subject to the closing conditions in the merger agreement, including regulatory approvals. If the acquisition is not completed by October 31, 2004, either InVision or GE may be entitled to terminate the merger agreement.

ABOUT INVISION

InVision Technologies, Inc. and its subsidiaries develop, manufacture, market and support explosives detection systems based on advanced computed tomography technology, X-ray diffraction and quadrupole resonance. The company is a leading supplier of explosives detection systems to the U.S. government for civil aviation security. InVision is headquartered in Newark, CA. Additional information about the company can be found at www.invision-tech.com.

<PAGE>

INVISION TECHNOLOGIES, INC.

PAGE 2

CAUTION REGARDING FORWARD-LOOKING STATEMENTS

This news release contains forward-looking statements, including those regarding the possible impact of the internal investigation on the completion of InVision's planned acquisition by GE. These forward-looking statements are subject to material risks and uncertainties that could cause actual results to

differ materially from those in the forward-looking statements. Investors should consider important risk factors, which include: the risk that the Department of Justice and/or the Securities and Exchange Commission may initiate an investigation; the risk that any investigation by the Department of Justice and/or the Securities and Exchange Commission may take a substantial time to complete, the risk of criminal and civil sanctions; the risk that the completion of the acquisition of InVision by GE may be delayed; the risk that the merger agreement with GE may be terminated; and other risks detailed under the caption "Risk Factors" in InVision's most recent reports on Form 10-K and Form 10-Q filed with the Securities and Exchange Commission. InVision is under no obligation, and expressly disclaims any obligation, to update or alter its forward-looking statements whether as a result of new information, future events or otherwise.

Note to Editors: InVision is trademark of InVision Technologies, Inc.

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EXHIBIT 7

10 of 17 DOCUMENTS

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Los Angeles Times

February 15, 2005 Tuesday
Home Edition

SECTION: BUSINESS; Business Desk; Part C; Pg. 2

LENGTH: 365 words

HEADLINE: California;
InVision Settles Bribery Claims

BYLINE: From Bloomberg News

BODY:

General Electric Co.'s InVision unit, the biggest U.S. maker of bomb-detection machines, agreed Monday to pay about \$1.12 million to settle allegations that it made illegal payments to foreign government officials before GE bought the company.

Under the settlement with the Securities and Exchange Commission, Newark, Calif.-based InVision neither admits nor denies wrongdoing, the regulatory agency said in a statement. The agreement, which covers the period from June 2002 to June 2004, follows a similar \$800,000 settlement with the Justice Department. GE bought InVision in December for about \$900 million.

"We are pleased to have reached closure on this issue, which involves activities that occurred prior to GE's purchase of InVision," GE spokesman Jeff Demarrais said.

The SEC had said that InVision over those two years was "aware of a high probability" that foreign sales agents or distributors offered "improper payments" to government officials to get or keep business in China, the Philippines and Thailand, according to the SEC's statement.

"InVision had an internal controls problem," said Robert Tashjian, an SEC enforcement lawyer in San Francisco who worked on the case. "InVision was skating on thin ice. They were competing vigorously for overseas market share but they lacked even basic internal controls to make sure the company complied" with U.S. laws prohibiting corporate bribery.

The settlement required InVision to forfeit \$589,000 in illegal profits, as well as interest of about \$28,700, and a \$500,000 civil penalty, according to the SEC.

Fairfield, Conn.-based GE, the world's largest company by market value, agreed last March to buy InVision for \$50 a share to build its security-systems business. It delayed the purchase in July after InVision told U.S. regulators an internal investigation uncovered possible wrongdoing. The companies on Nov. 1 extended the purchase-agreement deadline until Dec. 27 to allow more time for InVision to resolve the issue.

As part of that agreement, InVision and GE agreed to cooperate with the continuing investigations by the SEC and the Justice Department.

Shares of GE rose 9 cents Monday to \$36.32 on the New York Stock Exchange.

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EXHIBIT 8

41 of 71 DOCUMENTS

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HEADLINE: InVision Technologies, Inc. Announces Stockholder Vote to Approve Acquisition by General Electric

DATELINE: NEWARK, Calif., June 25, 2004

BODY:

InVision Technologies, Inc. (Nasdaq:INVN) today announced that its stockholders have voted to adopt the agreement and plan of merger among General Electric Company (NYSE:GE), Jet Acquisition Sub, Inc., a wholly owned subsidiary of GE, and InVision Technologies, Inc.

The vote occurred at a Special Meeting of Stockholders held today at InVision's headquarters. There was no further business discussed at the Special Meeting.

On March 15, 2004, InVision announced that General Electric had agreed to acquire InVision in an all-cash transaction valued at approximately \$900 million, or \$50 per share. GE and InVision anticipate that the proposed acquisition of InVision by GE will be completed on or about July 15, 2004. Completion of the merger remains subject to customary closing conditions, including regulatory approvals. The actual closing date may vary from the currently anticipated closing date.

About InVision

InVision Technologies, Inc. and its subsidiaries develop, manufacture, market and support explosives detection systems based on advanced computed tomography technology, X-ray diffraction and quadrupole resonance. The company is the leading supplier of explosives detection systems to the U.S. government for civil aviation security. InVision is headquartered in Newark, Calif. Additional information can be found at www.invision-tech.com.

Cautions Regarding Forward-Looking Statements

This notice contains forward-looking statements, including statements regarding the expected closing date of the acquisition. These forward-looking statements are subject to material risks and uncertainties that could cause actual results to differ materially from those in the forward-looking statements. Investors should consider important risk factors, which include: the risk that the acquisition will not be completed; the risk that legislative or regulatory developments could have the effect of delaying or preventing the acquisition; and other risks detailed under the caption "Risk Factors" in InVision's most recent reports on Form 10-K and Form 10-Q filed with the Securities and Exchange Commission. InVision is under no obligation, and expressly disclaims any obligation, to update or alter its forward-looking statements whether as a result of new information, future events or otherwise.

Note to Editors: InVision is a trademark of InVision Technologies, Inc.

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