for costs EPA incurred in responding to the release or threatened release of hazardous substances at or from the RAMP Industries Site in Denver, Colorado. Under the terms of the Decree RSO, Inc. will pay the United States $200,000. This payment amount is based on an analysis of defendant's financial resources.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *RSO, Inc.*, D.J. Ref. 90–11–2–1290/3.

The Decree may be examined at the offices of EPA Region VIII, 999 18th Street, Suite 500 South Tower, Denver, Colorado. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy of the Decree, please enclose a check payable to the Consent Decree Library for $4.25 for a complete copy of the decree (25 cents per page reproduction cost).

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–23997 Filed 9–25–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. 3D Systems Corporation and DTM Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *3D Systems Corporation and DTM Corporation*, Civil Action No. No. 1:01CV01237. On June 6, 2001, the United States filed a Complaint alleging that 3D Systems Corporation's proposed acquisition of DTM Corporation would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, filed on August 16, 2001, requires the defendants to license their rapid prototyping patents to a company that will compete in the U.S. market. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC, 20530, (telephone: (202) 307–0924).

Mary Jean Moltenbrey,

Director of Civil Nonmerger Enforcement.

In The United States District Court for the District of Columbia

[Civil No: 1.01CV01237 (GK)]

United States of America, Plaintiff, v. 3D Systems Corporation and DTM Corporation, Defendants

Filed: August 16, 2001.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and, for purposes of this case only, over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States of America (hereinafter ''United States'') has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the parties and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

(5) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(6) In the event (a) the United States has withdrawn its consent, as provided in paragraph (2) above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(7) The defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of mistake, hardship or difficulty of noncompliance as grounds for asking the Court to modify any of the divestiture or termination provisions contained therein.

(8) The parties stipulate that Appendices IIA. and IV of the proposed Final Judgment, relating to defendants' patent applications, shall be filed under seal.

For plaintiff United States of America.
Dando B. Cellini, Esq.
Paul A. Moore III, Esq.
U.S. Department of Justice, Antitrust Division, Litigation II, 1401 H Street, NW, Suite 4000, Washington, DC 20005, (202) 307–0829.

For defendant DTM Corporation.
Charles F. Rule, Esq. (#370818)
Fried Frank Harris Shriver and Jacobson, 1001 Pennsylvania Ave, N.W., Suite 800, Washington, D.C. 20004, (202) 639–7300

For defendant 3D Systems Corporation.
John A. Herfort, Esq.
Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, (212) 351–3832.

For defendant 3D Systems Corporation.
Charles E. Biggio, Esq.
Akin, Gump, Strauss, Hauer & Feld LLP, 590 Madison Avenue, New York, NY 10022, (212) 872–1010.

For defendant 3D Systems Corporation.
David Donohoe, Esq. (#3426);

Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New Hampshire Avenue, NW, Washington, DC 20036, (202) 887–4000.

Order

It is so ordered by the Court, this 16th day of August, 2001.

In the United States District Court for the District of Columbia

[Civil No: 1:01CV01237 (GK)]

United States of America, Plaintiff, v. 3D Systems Corporation and DTM Corporation, Defendants.

Filed: August 16, 2001.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on June 6, 2001, plaintiff and defendants, 3D Systems Corporation (''3D'') and DTM Corporation (''DTM''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is Ordered, Adjudged and Decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and, for purposes of this case only, each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom defendants divest the Divestiture Assets.

B. ''3D'' means defendant 3D Systems Corporation, a Delaware corporation with its headquarters in Valencia, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including 3D Systems, Inc., and their directors, officers, managers, agents, and employees.

C. ''DTM'' means defendant DTM Corporation, a Texas corporation with its headquarters in Austin, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Defendants'' means, collectively or individually as the context requires, DTM and/or 3D.

E. ''Divestiture Assets'' means (1) a perpetual, assignable, transferable, fully paid-up (except as permitted by Section IV(E) below), non-exclusive license (without the right to sublicense, except for establishing distribution and contracting out manufacturing) under the RP Patents to develop, test, produce, market, sell, or distribute, or to supply any support or maintenance services for, products for use only in the field of either (but not both) the SL Technology or the LS Technology, which technology shall be the technology currently used by the Acquirer to manufacture RP Industrial Equipment (the ''Selected Technology''); and (2) the RP Assets.

F. ''North America'' means Canada, Mexico and the United States.

G. ''RP Assets'' means (1) a list of all North American purchasers of RP Industrial Equipment from 3D, if the Selected Technology is SL Technology, or from DTM, if the Selected Technology is LS Technology; (2) all software copyright licenses needed by Acquirer to purchase and resell both defendants' used RP Industrial Equipment in North America; and (3) at the option of the Acquirer, DTM's plant located at 1611 Headway Circle, Bldg. 1, Austin, Texas (''Plant'').

H. ''RP Patents'' means all North American patents owned by or licensed to defendants (including patents relating to materials and software), as of the date of filing of this Final Judgment, including all subsequent continuations, continuation-in-part, divisions, reexaminations or reissues thereof, if any, as well as any patents that have been applied for as of the date of filing of this Final Judgment but have not been issued covering technology marketed by defendants as of the date of filing of this Final Judgment, specifically including but not limited to the parents listed in Appendix I and applied for parents listed in Appendix IIA. annexed hereto, but specifically excluding those Inkjet Technology patents listed in Appendix III and applied for Inkjet Technology patents listed in Appendix IV annexed hereto and those licenses granted to 3D and DTM listed in Appendix V annexed hereto.

I. ''LS Technology'' means technology (other than Inkjet Technology) that uses data to form, by heat, a three-dimensional object, layer-by-layer, from a sinterable powder material.

J. ''SL Technology'' means technology (other than Inkjet Technology) that uses data to form, by radiation, a three-dimensional object, layer-by-layer, from a liquid, photocurable material.

K. ''Inkjet Technology'' shall mean and include equipment, systems, supplies, software, processess or other technology utilized in the fabrication of three-dimensional objects from jettable materials.

L. ''RP Industrial Equipment'' means products or processes incorporating LS Technology or SL Technology, but not the other, and not Inkjet Technology.

M. ''Selected Technology'' means whichever one of the LS Technology or the SL Technology is currently used by the Acquirer to manufacture RP Industrial Equipment.

III. Applicability

A. This Final Judgment applies to 3D and DTM, as defined above, and all other persons in active concert or participation with either of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchaser of the Divestiture Assets agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestitures

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of this Final Judgment, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to extensions of this time period of up to sixty (60) days, and shall

notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Defendants shall provide Acquirer with all software copyright licenses needed by Acquirer to purchase and resell defendants' used RP Industrial Equipment in North America, which licenses shall be on terms no less favorable than defendants offer to other purchased and resellers of their used RP Industrial Equipment.

C. The Acquirer shall be a firm that currently manufactures RP Industrial Equipment in the Selected Technology, and shall be approved by plaintiff in its sole discretion. If plaintiff does not approve a purchaser of the Divestiture Assets under this Final Judgment, any grant by defendants of a license to that purchaser shall not satisfy the requirements of this Judgment.

D. Defendants warrant that they have the authority to convey all intellectual property included in the Divestiture Assets free and clear of any encumbrances, contractual commitments or obligations, except for the licenses granted to 3D and DTM which are identified in Appendix V annexed hereto.

E. To the extent that any rights to the RP Patents require defendants to sublicense rights from a third party to the Acquirer, such sublicense(s) must either be fully paid-up or granted on terms no less favorable than the terms applicable to defendants. Any sublicense granted pursuant to this Final Judgment must include provisions acceptable to plaintiff that will guard against the monitoring of the Acquirer's sales or production by defendants.

F. Nothing in this Final Judgment shall be construed to require the Acquirer, as a condition of any license granted by defendants pursuant to Sections IV(A) or (B), to extend to the defendants the right to use the Acquirer's improvements to any of the Divestiture Assets.

G. Defendants shall not assert against Acquirer any claims (1) for patent or copyright infringement in North America for products made, sold or used pursuant to the licenses granted in accordance with Section IV(A) and (B) of this Final Judgment; (2) for patent infringement in North America of the patents listed in Appendix V; or (3) that any equipment, systems, supplies, software, processes, or other technology sold by the Acquirer outside of North America prior to filing of this Final Judgment infringes in North America any patent or copyright issued or licensed to defendants in North America prior to the date of filing of this Final Judgment.

H. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any eligible person making inquiry regarding a possible license or purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment except those parts filed under seal. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges and except customer lists and information regarding patent applications. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

I. Defendants shall waive any non-compete clause(s) in any employment agreement(s), whether written or oral with any of defendants' present or former employees that are currently in effect, and shall not include non-compete clauses in any future employment agreements with respect to such present or former employees for a period of two (2) years from the date of filing of this Final Judgment. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the sales, marketing and manufacturing of RP Industrial Equipment in the Selected Technology to enable the Acquirer to make offers of employment, which does not preclude defendants from seeking to retain such personnel as employees. Defendants will not interfere with any negotiations by the Acquirer to employ any of defendants' present or former employees for a period of two (2) years from the date of filing of this Final Judgment.

J. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets, other than customer lists or patent applications; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

K. Defendants shall warrant to the Acquirer of the Divestiture Assets that each tangible asset will be operational on the date of sale.

L. Defendants shall not take any action that will impede, jeopardize, or delay in any way the permitting, operation, or divestiture of any of the Divestiture Assets.

M. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of any tangible asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of any of the tangible Divestiture Assets.

N. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed to Section V, of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing commercial enterprise engaged in the sale of RP Industrial Equipment in North America, and that the divestiture will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of servicing and selling RP Industrial Equipment in the United States; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Sales Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V (D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information, customer lists and information relating to patent applications. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential or that would be deemed confidential under Section V(E), such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contracted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the require divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustees deems confidential or that would be deemed confidential under Section V(E), such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV of V of this Final Judgment.

VIII. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished:

A. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Plant as an economically viable facility.

B. Defendants shall not, except as part of a divestiture approved by the United Stases, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

C. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture to

an Acquirer acceptable to the United States.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the proposed Final Judgment in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section or Section IX shall be divulged by the United States of any person other than an authorized representative of the executive branch of the United States, except as required by this Court, or in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Appendix I

UNITED STATES PATENTS ISSUED, ASSIGNED OR LICENSED TO 3D SYSTEMS

Patent No.	Patent title
4,469,654	EDM Electrodes.
4,491,558	Austenitic Manganese Steel-Containing Composite Article.
4,575,330	Apparatus for production of three-dimensional objects by stereolithography.
4,929,402	Method for production of three dimensional objects by stereolithography.
4,961,154	Three dimensional modelling apparatus.
4,996,010	Methods and apparatus for production of three-dimensional objects by stereolithography.
4,999,143	Methods and apparatus for production of three-dimensional objects by stereolithography.
5,015,424	Methods and apparatus for production of three-dimensional objects by stereolithography.
5,058,988	Apparatus and method for profiling a beam.
5,059,021	Apparatus and method for correcting for drift in production of objects by stereolithography.
5,059,359	Methods and apparatus for production of three-dimensional objects by stereolithography.

UNITED STATES PATENTS ISSUED, ASSIGNED OR LICENSED TO 3D SYSTEMS—Continued

Patent No.	Patent title
5,071,337	Apparatus for forming a solid three-dimensional object from a liquid medium.
5,076,974	Methods of curing partially polymerized parts.
5,096,530	Resin film recoating method and apparatus.
5,104,592	Method of and apparatus for production of three-dimensional objects by stereolithography with reduced curl.
5,123,734	Apparatus and method for calibrating and normalizing a stereolithography apparatus.
5,130,064	Method of making a three dimensional object by stereolithography.
5,137,662	Methods and apparatus for production of three-dimensional objects by stereolithography.
5,143,663	Stereolithography method and apparatus.
5,164,128	Methods for curing partially polymerized parts.
5,174,931	Method of and apparatus for making a three-dimensional product by stereolithography.
5,182,055	Method of making a three dimensional object by stereolithography.
5,182,056	Stereolithography method and apparatus employing various penetration depths.
5,182,715	Rapid and Accurate production of stereolithographic parts.
5,184,307	Method and apparatus for production of high resolution three-dimensional objects by stereolithography.
5,192,469	Simultaneous multiple layer curing in stereolithography.
5,192,559	Apparatus for building three-dimensional objects with sheets.
5,209,878	Surface resolution in three-dimensional objects by inclusion of thin fill layers.
5,234,636	Method of coating stereolithographic parts.
5,236,637	Method of and apparatus for production of three-dimensional objects by stereolithography.
5,238,639	Method and apparatus for stereolithographic curl balancing.
5,248,456	Method and apparatus for cleaning stereolithographically produced objects.
5,256,340	Method of making a three-dimensional object by stereolithography.
5,258,146	Method of and apparatus for measuring and controlling fluid level in stereolithography.
5,267,013	Apparatus and Method of profiling a beam.
5,273,691	Stereolithographic curl reduction.
5,321,622	Boolean layer comparison slice.
5,345,391	Method and apparatus for production of high resolution three-dimensional objects by stereolithography.
5,358,673	Applicator device and method for dispensing a liquid medium in a laser modeling machine.
5,447,822	Apparatus and related method for forming a substantially flat stereolithographic working surface.
5,460,758	Method and apparatus for production of a three-dimensional object.
5,481,470	Boolean layer comparison slice.
5,495,328	Apparatus and method for calibrating and normalizing a stereolithographic apparatus.
5,534,104	Method and apparatus for production of three-dimensional objects.
5,536,467	Method and apparatus for producing a three-dimensional object.
5,554,336	Method and apparatus for production of three-dimensional objects by stereolithography.
5,569,431	Method and apparatus for production of three-dimensional objects by stereolithography.
5,571,471	Method of production of three-dimensional objects by stereolithography.
5,573,722	Method and apparatus for production of three-dimensional objects by stereolithography.
5,582,876	Stereographic apparatus and method.
5,597,520	Simultaneous multiple layer curing in stereolithography.
5,609,812	Method of making a three-dimensional object by stereolithography.
5,609,813	Method of making a three-dimensional object by stereolithography.
5,610,824	Rapid and accurate production of stereolithographic parts.
5,630,981	Method for production of three-dimensional objects by stereolithography.
5,637,169	Method of building three-dimensional objects with sheets.
5,651,934	Recoating of stereolithographic layers.
5,665,401	Apparatus for producing an object using stereolithography.
5,667,820	Apparatus for making solid three-dimensional article from a liquid medium.
5,688,464	Vibrationally enhanced stereolithographic recoating.
5,693,144	Vibrationally enhanced stereolithographic recoating.
5,711,911	Methods and apparatus for making a three-dimensional object by stereolithography.
5,745,834	Free Form Fabrication of Metallic Components.
5,753,171	Method and apparatus for producing a three-dimensional object.
5,762,856	Method for production of three-dimensional objects by stereolithography.
5,772,947	Stereolithographic curl reduction.
5,779,967	Method and apparatus for production of three-dimensional objects by stereolithography.
5,785,918	Method and apparatus for production of three-dimensional objects by stereolithography.
5,814,265	Method and apparatus for production of three-dimensional objects by stereolithography.
5,832,415	Method and apparatus for calibrating a control apparatus for deflecting a laser beam.
5,840,239	Apparatus and method for forming three-dimensional objects in stereolithography utilizing a laser exposure system having a diode pumped frequency quadrupled solid state laser.
5,854,748	Boolean layer comparison slice.
5,855,718	Method and apparatus for making partially solidified three-dimensional objects on a layer-by-layer basis from a solidifiable medium.
5,870,307	Method and apparatus for production of high resolution three-dimensional objects by stereolithography.
5,885,511	Method of making a solid three-dimensional article from a liquid medium.
5,891,382	Recoating of stereolithographic layers.

UNITED STATES PATENTS ISSUED, ASSIGNED OR LICENSED TO 3D SYSTEMS—Continued

Patent No.	Patent title
5,897,825	Method for producing a three-dimensional object.
5,902,537	Rapid recoating of three-dimensional objects formed on a cross-sectional basis.
5,902,538	Simplified stereolithographic object formation methods of overcoming minimum recoating depth limitations.
5,904,89	Apparatus and method for producing an object using stereolithography.
5,932,055	Direct Metal fabrication Using a Carbon Precursor to Bind the ''Green Form'' Part and Catalyze a Eutectic Reducing Element in a Supersolidus Liquid Phase Sintering Process.
5,932,059	Method for producing a three-dimensional object.
5,940,890	Apparatus and method for producing three-dimensional objects.
5,945,058	Method and apparatus for identifying surface features associated with selected lamina of a three-dimensional object being stereographically formed.
5,965,079	Method and apparatus for making a three-dimensional object by stereolithography.
5,989,476	Process of making a molded refractory article.
5,999,184	Simultaneous multiple layer curing in stereolithography.
6,001,297	Method for controlling exposure of a solidifiable medium using a pulsed radiation source in building a three-dimensional object using stereolithography.
6,027,324	Apparatus for production of three-dimensional objects by stereolithography.
6,029,096	Method and apparatus for identifying surface features associated with selected lamina of a three-dimensional object being stereolithographically formed.
6,036,911	Method of making a three-dimensional object by stereolithography.
6,048,188	Stereolithographic curl reduction.
6,048,487	Recoating stereolithographic layers.
6,084,980	Method of and apparatus for deriving data intermediate to cross-sectional data descriptive of a three-dimensional object.
6,103,176	Stereolithographic method and apparatus for production of three dimensional objects using recoating parameters for groups of layers.
6,110,409	Rapid prototyping process and apparatus.
6,110,602	Method of making a three-dimensional object.
6,126,884	Stereolithographic method and apparatus with enhanced control of prescribed stimulation production and application.
6,129,884	Stereolithographic method and apparatus with enhanced control of prescribed stimulation production and application.
6,132,667	Stereolithographic method and apparatus with enhanced control of prescribed stimulation production and application.
6,153,142	Stereolithographic method and apparatus for production of three dimensional objects with enhanced control of the build environment.
6,157,663	Laser with optimized coupling of pump light to gain medium in a side-pumped geometry.
6,159,411	Rapid prototyping method and apparatus with simplified build preparation for production of three dimensional objects.
6,172,996	Apparatus and method for forming three-dimensional objects in stereolithography utilizing a laser exposure system with a diode pumped frequency-multiplied solid state laser.
6,179,601	Simplified stereolithographic object formation methods of overcoming minimum recoating depth limitations.
6,215,095	Apparatus and method for controlling exposure of a solidifiable medium using a pulsed radiation source in building a three-dimensional object using stereolithography.
6,224,816	Molding method, apparatus and device including use of powder metal technology for forming a molding tool with thermal control elements.
6,241,934	Stereolithographic method and apparatus with enhanced control of prescribed stimulation production and application.
6,261,077	Rapid prototyping apparatus with enhanced thermal and/or vibrational stability for production of three dimensional objects
6,261,506	Method of making a three dimensional object,
6,261.507	Method of and apparatus for making a three dimensional object by stereolithography.
6,264,873	Method of making a three-dimensional object by stereolithograph.

CANADIAN PATENTS ISSUED TO 3D SYSTEMS

Serial No.	Topic	Patent No.
596827	Curl Reduction	1339750
596825	Slice	1338521
596826	Beam Profiling	1334052
596838	Off-Peak Post Cure	1338954
596850	Stress Reliefs	1338628
596847	Supports	1339751
612990	Doctor Blade/Liquid Leveling	1337955
616962	Beam Profiling Div	1340501
617113	SL Beam Profiling	1341214
617087	SL Curl Reduction	1340890

MEXICAN PATENTS ISSUED TO 3D SYSTEMS

Serial No.	Topic	Patent No.
975844	Rapid Recoating	195669

UNITED STATES PATENTS ISSUED, ASSIGNED OR LICENSED TO DTM CORPORATION

Patent No.	Patent title
4,863,538	Method and apparatus for producing parts by selective sintering.
4,938,816	Selective laser sintering with assisted powder handling.
4,944,817	Multiple material systems for selective beam sintering.
5,017,753	Method and apparatus for producing parts by selective sintering (Deckard).
5,076,869	Multiple material systems for selective beam sintering.
5,132,143	Method for producing parts (Deckard).
5,147,587	Method of producing parts and molds using composite ceramic powders.
5,155,321	Radiant heating apparatus for providing uniform surface temperature useful in selective laser sintering.
5,156,697	Selective laser sintering of parts by compound formation of precursor powders.
5,252,264	Apparatus and method for producing parts with multi-directional powder delivery.
5,296,062	Multiple material systems for selective beam sintering.
5,304,329	Method of recovering recyclable unsintered powder from the part bed of selective laser sintering machine.
5,316,580	Method and apparatus for producing parts by selective sintering.
5,342,919	Sinterable Semi-Crystalline Powder and Near-Fully Dense Article Formed Therewith.
5,352,405	Thermal control of selective laser sintering via control of the laser scan.
5,382,308	Multiple material systems for selective beam sintering.
5,527,887	Sinterable semi-crystalline power and near-fully dense article formed therewith.
5,597,589	Apparatus for producing parts by selective sintering.
5,616,294	Method for producing parts by infiltration of porous intermediate parts.
5,639,070	Method for producing parts by selective sintering.
5,640,667	Laser-directed fabrication of full-density metal articles using hot isostatic processing.
5,648,450	Sinterable semi-crystalline powder and near-fully dense article formed therein.
5,733,497	Selective laser sintering with composite plastic material.
5,749,041	Method of forming three-dimensional articles using thermosetting materials.
5,817,206	Selective laser sintering of polymer powder of controlled particle size distribution.
5,990,268	Sinterable semi-crystalline powder and near fully dense article formed therewith.
6,085,122	End-of-vector laser power control in a selective laser sintering system.
6,136,948	Sinterable semi-crystalline powder and near-fully dense article formed therewith.
6,151,345	Laser power control with stretched initial pulses.

Appendix II

A. Filed Under Seal Pursuant to Court Order

Appendix II

B. Canadian Patents Applied for by 3D Systems

Serial No.	Topic
2072136	Skintinuous/Weave.
2095225	Layer Comparison.
2186613	SMLC/Quickcast.

Appendix III

3D SYSTEMS' UNITED STATES INKJET PATENTS

Patent No.	Title
4,992,806	Method of jetting phase change ink.
5,141,680	Thermal Stereolithography.
5,174,943	Method for production of three-dimensional objects by stereolithography.
5,313,232	Method of jetting phase change ink.
5,344,298	Apparatus for making three-dimensional objects by stereolithography.
5,501,824	Thermal stereolithography.
5,569,349	Thermal stereolithography.
5,672,312	Thermal stereolithography.
5,676,904	Thermal stereolithography.

3D SYSTEMS' UNITED STATES INKJET PATENTS—Continued

Patent No.	Title
5,695,707	Thermal stereolithography.
5,776,409	Thermal stereolithography using slice techniques.
5,855,836	Method for selective deposition modeling.
5,943,235	Rapid prototyping system and method with support region data processing.
5,997,291	Hot-melt material for heating plate.
6,027,682	Thermal stereolithograph using slice techniques.
6,132,665	Compositions and methods for selective deposition modeling.
6,133,353	Phase change solid imaging material.
6,133,355	Selective deposition modeling materials and method.
6,136,252	Apparatus for electro-chemical deposition with thermal anneal chamber.
6,162,378	Method and apparatus for variably controlling the temperature in a selective deposition modeling environment.
6,193,923	Selective deposition modeling method and apparatus for forming three-dimensional objects and supports.
6,270,335	Selective Deposition Modeling Method and Apparatus for Forming Three-Dimensional Objects and Supports.
Des. 420,371	Rapid prototype machine.
Des. 422,609	Container for material loading.
Des. 423,023	Rapid prototype machine.

Appendix IV

Filed Under Seal Pursuant to Court Order

Appendix V

PATENTS LICENSED TO 3D SYSTEMS WITH NO RIGHT TO SUBLICENSE

Patent No.	Assignee
4,704,503	Patlex Corporation.
4,746,201	Patlex Corporation.
5,253,177	NTT Data/CMET Inc.
5,415,820	NTT Data/CMET Inc.

PATENTS LICENSED TO DTM CORPORATION WITH NO RIGHT TO SUBLICENSE

Patent No.	Assignee
5,745,834	Rockwell Science.
5,932,055	Rockwell Science.

In The United States District Court for the District of Columbia

[Civil No.: 1:01CV01237 (GK)]

United States of America, Plaintiff, v. 3D Systems Corporation and DTM Corporation, Defendants

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on June 6, 2001, alleging that the proposed acquisition of DTM Corporation (''DTM'') by 3D Systems Corporation (''3D'') would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that 3D and DTM are two of only three firms that produce industrial rapid prototyping (''RP'') systems in the United States. Both 3D and DTM hold extensive patent portfolio related to RP systems production. These patents have limited the number of firms in the U.S. market by preventing firms that sell RP systems abroad from competing in the United States. The Complaint alleges that the transaction will substantially lessen competition in the development, production and sale of industrial RP systems sold in the United States, thereby harming consumers. Accordingly, the Complaint asks the Court to issue (1) a judgment that the proposed acquisition of DTM by 3D would violate of Section 7 of the Clayton Act, 15 U.S.C. 18; and (2) permanent injunctive relief that would prevent defendants from carrying out the acquisition or otherwise combining their operations.

After this suit was filed, the United States and defendants reached a proposed settlement that permits 3D to complete its acquisition of DTM, while preserving competition in the market for industrial RP systems by requiring defendants to license their RP-related patent portfolios. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court on August 17, 2001.

The proposed Final Judgment orders 3D and DTM to grant a license to develop manufacture and sell, and to supply any support or maintenance services for, products under the defendants' RP patent portfolios within a limited field of use matching either 3D's or DTM's technology. The licensee, to be approved by the United States, must be a firm that currently manufacturers industrial RP systems. The defendants must complete the divestiture within one hundred twenty (120) calendar days after the filing of the proposed Final Judgment, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later. The United States may extend the time period for divestiture for up to sixty (60) days. If the defendants do not complete the divestiture within the prescribed period, the Court will appoint a trustee to achieve the divestiture.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Defendants

Defendant 3D is a Delaware corporation with its principal place of business in Valencia, California. 3D is a manufacturer and supplier of RP systems and related equipment, proprietary materials used in RP systems, and associated services. For the year ending December 31, 2000, 3D reported sales of $110 million.

Defendant DTM is a Texas Corporation with its principal place of business in Austin, Texas. DTM designs, manufactures, markets and supports RP systems and related materials used in RP systems. For the year ending December 31, 2000, DTM reported sales of $40 million.

B. The Proposed Acquisition

On April 2, 2001, 3D and DTM entered into an agreement and plan of merger, pursuant to which 3D intended to acquire DTM in a cash tender offer. The defendants valued the transaction at an estimated $45 million. This proposed transaction, which would have reduced the number of competitors in the U.S. industrial RP systems market from three to two, precipitated the United States' antitrust suit on June 6, 2001. Following the filing of the suit, the defendants postponed closing the proposed transaction pending the outcome of settlement negotiations. On August 16, 2001, the Stipulation and proposed Final Judgment to resolve the suit were filed with the Court.

C. The Competitive Effects of the Acquisition

1. Industrial RP Systems. Rapid prototyping is a process by which a machine transforms a computer design into a three-dimensional prototype or model. Rapid prototyping is significantly faster and less expensive than traditional methods of creating a prototype, such as machining, milling or grinding. Competing technologies are used in industrial RP systems to create prototypes. Stereolithography (''SL'') technology, utilized by 3D, forms a three-dimensional object through radiation from a liquid, photocurable material. DTM's RP systems use laser sintering (''LS'') technology to heat and form a sinterable powder into a three-dimensional form.

There are two types of RP systems: industrial and professional. Industrial RP systems are large, cost hundreds of thousands of dollars and are able to create functional prototypes, tooling inserts, and low volume production quantities of parts. Professional RP systems are smaller and less expensive, use ''inkjet'' printing technology, and are geared toward the creation of concept models in an office setting. Sales of industrial RP systems and associated materials represent the largest and most profitable segment of the U.S. RP industry, accounting for approximately 85% of the total RP-related sales last year. Because of limited capabilities, professional RP systems are not good substitutes for industrial RP systems.

There is a broad range of uses for the technology employed in an industrial RP system. Industrial RP systems can be used to create prototypes, running the gamut from a non-functional model of a hand-held calculator, used for visual inspection in early design phases, to a sophisticated exhaust manifold for an automobile, which can be bolted in place and tested. The Complaint alleges that the development, manufacture and sale of industrial RP systems is a line of commerce or relevant product market within the meaning of Section 7 of the Clayton Act. In other words, in the event of a small but significant increase in the price of industrial RP systems, customers would not switch to less capable professional RP systems or to traditional technologies, such as machining, milling or grinding.

The Complaint alleges that the relevant geographic market within the meaning of Section 7 of the Clayton Act is the United States. There are no imports of industrial RP systems into the United States. Although there are producers of industrial RP systems in other countries, such as Japan and Germany, patents that cover the technology owned by 3D and DTM have prevented importation and sale in the United States. Accordingly, U.S. customers are unable to turn to foreign producers of industrial RP systems. Therefore, a small but significant price increase of industrial RP systems would not cause any purchasers to switch to industrial RP systems manufactured outside the United States, let alone a sufficient number to make the price increase unprofitable.

2. Anticompetitive Consequences of the Proposed Transaction. 3D and DTM are two of only three suppliers of industrial RP systems in the United States. In this highly concentrated market, 3D has approximately a 60% market share and DTM has approximately a 20% market share. Currently, 3D and DTM offer the most sophisticated systems in the industry and compete directly against each other in the development, manufacture and sale of industrial RP systems. Competition for innovations and improvements is evidenced by the many RP-related patents obtained by the defendants. This competition has been the driving force behind the development of innovative industrial RP system technology, which has enabled the industry to develop a less costly method of creating prototypes.

The proposed acquisition would substantially increase concentration in an already highly concentrated market. The proposed acquisition would raise the combined firm's share of industry sales to the level where it would have the ability profitably to raise prices. 3D and DTM's customers would not switch to the one remaining industrial RP systems producer in sufficient numbers to make unprofitable a significant price increase imposed by the combined firm.

Entry into the industrial RP systems market is difficult, time consuming, and expensive and would not deter the exercise of market power caused by 3D's acquisition of DTM. It would take well over two years, and substantial costs, for a new entrant to create the sophisticated and advanced technological capabilities needed to develop and manufacture industrial RP systems.

3D and DTM each hold an extensive array of patents to the prevailing technology used in industrial RP systems. The patent positions of 3D and DTM prevent other industrial RP systems producers from competing in the United States. In combination, the acquisition would enhance 3D's already strong patent portfolio.

The competition between 3D and DTM has benefitted users of industrial RP systems through lower prices for systems, lower prices for materials, and improved products. For these reasons, the United States concluded that 3D's acquisition of DTM, as originally structured, would substantially lessen competition in the development, manufacture and sale of industrial RP systems in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to ensure that competition that would have otherwise been eliminated as a result of the proposed acquisition will be preserved. To maintain competition in the industrial RP systems market, the proposed Final Judgment lifts the patent entry barriers for a firm that is currently prevented from selling its industrial RP systems in the United States. Licensing an acquirer that currently manufactures industrial RP systems and enabling it to compete in the U.S. market will restore the competition that would otherwise be lost by reason of the merger of 3D and DTM. Outside of the United States, defendants face vigorous competition from companies such as Electro Optical Systems, based in Germany, and Teijin Seiki, based in Japan. Under the proposed Final Judgment, defendants must grant a license to one such firm so that it will be able to compete in the U.S. market. Thus, after the merger, there will still be three competitors in the U.S. market for industrial RP systems.

Specifically, the proposed Final Judgment requires defendants to grant the acquirer a perpetual, assignable, transferable, non-exclusive license to develop, test, product, market, sell, or distribute, and to supply any support or maintenance services for, products under both firms' RP patent portfolios. Defendants must license both 3D's and DTM's full industrial RP-related patent portfolios to ensure that the acquirer has the full range of necessary technology to produce and sell RP systems in the United States. This license will be limited to a specific field of RP technology to match the RP technology employed by the acquirer. The proposed Final Judgment also requires defendants to provide the acquirer with a list of all North American purchasers that utilize the acquirer's technology and field of use under the license. In addition, the acquirer will have the option to purchase DTM's assembly plant, located in Austin, Texas.

Under the proposed Final Judgment, defendants must provide the acquirer with all software copyright licenses needed to purchase and resell both defendants' used industrial RP systems in North America. The acquirer will therefore be able to offer to take the defendants' systems as ''trade-ins'' on its own equipment, and then resell defendants' systems as used equipment.

The proposed Final Judgment bars the defendants from asserting against the acquirer any claims for patent or copyright infringement in North America for products under the licenses granted, or any claims that any equipment, systems, supplies, software, processes or other technology currently sold by the acquirer outside of North America infringe any of defendants' patents or copyrights in North America. These provisions ensure that the acquirer will be able to import its current RP systems into the U.S. market, without the threat of patent or copyright litigation from the defendants.

In order to ensure a capable competitor, defendants must license their RP patents portfolios to a company that currently manufactures RP systems. The divestiture required by the proposed Final Judgment must be to an acquirer acceptable to the United States in its sole discretion. Specifically, in the United States' sole judgment, the acquirer must have the intent and capability of competing effectively in the business of servicing and selling industrial RP systems in the United States.

The defendants must use their best efforts to complete the divestiture required by the proposed Final Judgment as expeditiously as possible. Unless the United States grants an extension of time, the divestiture must be completed within one hundred twenty (120) calendar days after the filing of the proposed Final Judgment, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later. If the defendants fail to accomplish the divestiture within this time period, then the proposed Final Judgment calls for the Court, upon the United States' application, to appoint a trustee nominated by the United States to effect the divestiture. If a trustee is appointed, the defendants are to cooperate fully with the trustee and pay all costs and expenses of the trustee and any persons retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the divestiture assets, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the United States, defendants and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time the trustee will furnish this report to the United States and defendants, who will each have the right to be heard and to make additional recommendations.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no effect as prima facie evidence in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States is satisfied, however, that the removal of existing patent entry barriers through the required license to allow a firm that currently manufactures industrial RP systems to compete in the U.S. market, and other relief contained in the proposed Final Judgment, will establish, preserve and ensure a viable competitor in the development, manufacture and sale of industrial RP systems. Thus, the United States is convinced that the proposed Final Judgment, once implemented by the Court, will prevent 3D's acquisition of DTM from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462–63 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d at 1458. Precedent requires that

[t]he balancing of competing social and political interest affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting tot he decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 4, 2001. Washington DC.
Respectfully submitted,

Dando B. Cellini,

Stephen A. Harris,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, 202–307–0729.

Certificate of Service

I hereby certify that I caused a copy of the foregoing Competitive Impact Statement to be served on all parties to this proceeding, by facsimile transmission or by mail, on this 4th day of September 2001.

Stephen A. Harris,

[FR Doc. 01–23999 Filed 9–25–01; 8:45 am]
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[1] 119 Cong. Rec. 24,598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.,* 783 F. Supp. 21, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.,* 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting Gillette, 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev.* Corp., 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of MET Laboratories, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion covers the use of additional standards.

EFFECTIVE DATE: The expansion becomes effective on September 26, 2001 and continues in effect while OSHA recognizes MET as an NRTL under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue,